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Wednesday
December 27, 1995

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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

[Two Sessions]

WHEN:	January 9, 1996 at 9:00 am and January 23, 1996 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

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New Feature in the Reader Aids!
Beginning with the issue of December 4, 1995, a new listing will appear each day in the Reader Aids section of the Federal Register called ''Reminders''. The Reminders will have two sections: ''Rules Going Into Effect Today'' and ''Comments Due Next Week''. Rules Going Into Effect Today will remind readers about Rules documents published in the past which go into effect ''today''. Comments Due Next Week will remind readers about impending closing dates for comments on Proposed Rules documents published in past issues. Only those documents published in the Rules and Proposed Rules sections of the Federal Register will be eligible for inclusion in the Reminders.
The Reminders feature is intended as a reader aid only. Neither inclusion nor exclusion in the listing has any legal significance.
The Office of the Federal Register has been compiling data for the Reminders since the issue of November 1, 1995. No documents published prior to November 1, 1995 will be listed in Reminders.

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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.

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Presidential Documents

Title 3—

The President

Executive Order 12983 of December 21, 1995

Amendment to Executive Order No. 12871

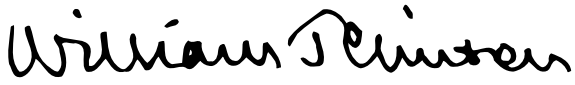
By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to improve the functioning of the National Partnership Council, it is hereby ordered that Executive Order No. 12871, entitled ''Labor-Management Partnerships,'' (''the order'') is amended as follows:

Section 1. Section 1(a) of the order is amended to delete ''and'' at the end of item (9), delete the period at the end of item (10), add ''; and'' at the end of item (10), and add item ''(11) one elected office holder each from both the Senior Executives Association and the Federal Managers Association.''

Sec. 2. Section 1(b) of the order is amended to delete ''and'' at the end of item (4), delete the period at the end of item (5), add ''; and'' at the end of item (5), and add ''(6) reporting to the President by October 1996 on the progress of and results achieved through labor-management partnership throughout the executive branch.''

Sec. 3. Section 1(c)(2) of the order is revised to read: ''(2) The Council shall seek input from nonmember Federal agencies, particularly smaller agencies. It also may, from time to time, invite experts from the private and public sectors to submit information. The Council shall also seek input from Federal manager and professional associations, companies, nonprofit organizations, State and local governments, Federal employees, and customers of Federal services, as needed.''

Sec. 4. Section 1(c)(4) of the order is revised to read: ''(4) Members of the Council shall serve without compensation for their work on the Council, but may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law, for persons serving intermittently in Government service.''



THE WHITE HOUSE,
December 21, 1995.

[FR Doc. 95–31437
Filed 12–22–95; 2:41 pm]
Billing code 3195–01–P

Rules and Regulations

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OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2635

RINs 3209–AA04, 3209–AA15

Further Grace Period Extension for Certain Existing Agency Standards of Conduct

AGENCY: Office of Government Ethics (OGE).

ACTION: Final rule; technical amendment.

SUMMARY: The Office of Government Ethics is granting a further grandfathering grace period extension of just over eight months for certain existing executive agency standards of conduct, dealing with financial interest prohibitions and prior approval for outside employment and activities, which have been temporarily preserved. This further action (two previous extensions have been granted) is necessary because many agencies still have not been able to issue, with OGE concurrence and co-signature, interim or final supplemental regulations during the prior grace periods. This further extension will help ensure that agencies which in conjunction with OGE are actively working on draft supplementals will have adequate time to issue, if they so desire, successor regulatory provisions to replace grandfathered financial interest prohibitions and prior approval requirements.

EFFECTIVE DATE: January 3, 1996.

FOR FURTHER INFORMATION CONTACT: William E. Gressman, Office of Government Ethics, telephone: 202–523–5757, FAX: 202–523–6325.

SUPPLEMENTARY INFORMATION: The Office of Government Ethics is granting under the executive branch standards of ethical conduct a further extension of time for just over eight months, until August 7, 1996, for certain agencies' existing conduct standards dealing with prohibited financial interests and prior approval for outside employment and activities. When OGE published its ethical conduct standards for executive branch employees in the Federal Register on August 7, 1992 (as now codified at 5 CFR part 2635), it provided that most existing individual agency standards of conduct would be superseded once the executive branchwide standards took effect on February 3, 1993. However, OGE also provided, by means of notes following 5 CFR 2635.403(a) and 2635.803, that any existing agency standards dealing with the two types of restrictions noted above would be preserved for one year, until February 3, 1994, or until the agency concerned issued (with OGE concurrence and co-signature) a supplemental regulation, whichever occurred first. See 57 FR 35006–35067, as corrected at 57 FR 48557 and 52583 and 60 FR 51667. In February of 1994 and 1995, OGE extended that original grace period for a total of a year and eleven months, until January 3, 1996 (or until agency issuance of a supplemental regulation), for those executive branch departments and agencies that had not yet been able to issue final or interim final successor rules. See 59 FR 4779–4780 (February 2, 1994) and 60 FR 6390–6391 (February 2, 1995), as well as appendixes A and B which were added to part 2635.

Through OGE's liaison efforts, the Office of the Federal Register (OFR) has assigned new chapters, including parts, at the end of title 5 of the Code of Federal Regulations to accommodate agencies' future supplemental standards regulations (on these two and other appropriate subject areas), as well as any supplemental agency regulations under OGE's executive branchwide financial disclosure provisions at 5 CFR part 2634. Almost 60 agencies have had such chapters reserved, including those which have by now already issued, with OGE concurrence and co-signature, interim final or final supplemental ethics regulations. However, many agencies have still not yet had the time to issue their planned supplemental standards regulations in interim or final form.

The Office of Government Ethics has therefore determined to permit a further preservation of existing agency regulatory standards of conduct setting forth financial interest prohibitions and outside employment and activities prior approval requirements for just over eight more months, until August 7, 1996 (or until issuance by each agency of its supplemental regulation, whichever comes first), for those agencies which are actively working in conjunction with OGE on draft supplemental standards regulations. The agencies subject to this further grandfathering grace period extension (including the Social Security Administration which statutorily separated from the Department of Health and Human Services during the past year), as provided in the notes (which are hereby being further amended) following 5 CFR 2635.403(a) and 2635.803, are enumerated at new appendix C which OGE is adding to part 2635. The agencies are listed in the order of the assignment of their chapter numbers at the end of 5 CFR. Agencies not listed either have not expressed an interest in issuing supplemental agency ethics regulations, have indicated to OGE that they are no longer interested in a further grace period extension, or have already issued final or interim final supplemental standards.

The Office of Government Ethics notes that it is not by this rulemaking setting a deadline for agencies to submit supplemental ethics regulations. Agencies can, with OGE concurrence and co- signature, issue supplementals at any time. Further, they can, at any time, have new title 5 CFR chapters reserved through OGE and OFR for such purpose if they have not already done so. Moreover, if an agency's prohibited financial interest (and/or prior approval) restrictions are based on a separate statute, they are not superseded by the 5 CFR part 2635 executive branchwide standards. If any related regulatory provisions were located in its old agency standards of conduct, the agency concerned could, after consultation with OGE, retain them in their existing place in the agency's own CFR title and chapter or move the provisions to another appropriate part of its regulations. See 5 CFR 2635.105(c)(3). Only prior standards of conduct provisions that are purely regulatory in nature are subject to supersession from the executive branchwide regulation at 5 CFR part 2635, with entitlement to the successive grace periods for the two enumerated types of provisions as provided in the further amended notes

at §§ 2635.403(a) and 2635.803 as well as appendixes A, B and C.

Administrative Procedure Act

Pursuant to 5 U.S.C. 553(b) and (d), as Director of the Office of Government Ethics, I find good cause exists for waiving the general notice of proposed rulemaking and 30-day delay in effectiveness as to this further grace period extension. The notice and delayed effective date are being waived because this rulemaking concerns a matter of agency organization, practice and procedure. Furthermore, it is in the public interest that those agencies concerned have adequate time to promulgate successor provisions to another their existing standards of conduct regulations in these two areas without a lapse in necessary regulatory restrictions.

Executive Order 12866

In promulgating this grace period extension technical amendment, the Office of Government Ethics has adhered to the regulatory philosophy and the applicable principles of regulation set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. This amendment has not been reviewed by the Office of Management and Budget under that Executive order, as it is not deemed ''significant'' thereunder.

Regulatory Flexibility Act

As Director of the Office of Government Ethics, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this rulemaking will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this rulemaking does not contain information collection requirements that require the approval of the Office of Management and Budget.

List of Subjects in 5 CFR Part 2635

Conflict of interests, Government employees.

Approved: December 14, 1995.

Stephen D. Potts,

Director, Office of Government Ethics.

Accordingly, pursuant to its authority under title IV of the Ethics in Government Act and Executive Order 12674/12731, the Office of Government Ethics is amending 5 CFR part 2635 as follows:

PART 2635—[AMENDED]

1. The authority citation for part 2635 continues to read as follows:

Authority: 5 U.S.C. 7351, 7353; 5 U.S.C. App. (Ethics in Government Act of 1978); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

2. The notes following both §§ 2635.403(a) and 2635.803 are amended by adding a new sentence at the end of each to read as follows:

Note: * * * Provided still further, that for those agencies listed in appendix C to this part, the grace period for any such existing provisions shall be further extended until August 7, 1996 or until issuance by each individual agency concerned of a supplemental regulation, whichever occurs first.

3. A new appendix C is added at the end of part 2635 to read as follows:

Appendix C to Part 2635—Agencies Entitled to Another Further (Third) Grace Period Extension Pursuant to Notes Following §§ 2635.403(a) and 2635.803

1. Department of the Treasury
2. Department of Energy
3. Federal Energy Regulatory Commission
4. Department of the Interior
5. Department of Commerce
6. Department of Justice
7. Federal Communications Commission
8. Securities and Exchange Commission
9. Office of Personnel Management
10. Thrift Depositor Protection Oversight Board
11. United States Information Agency
12. Occupational Safety and Health Review Commission
13. Department of State
14. Department of Labor
15. National Science Foundation
16. Small Business Administration
17. Department of Health and Human Services
18. Department of Transportation
19. Pension Benefit Guaranty Corporation
20. Environmental Protection Agency
21. National Transportation Safety Board
22. General Services Administration
23. Board of Governors of the Federal Reserve System
24. National Labor Relations Board
25. Equal Employment Opportunity Commission
26. Department of Housing and Urban Development
27. National Archives and Records Administration
28. Peace Corps
29. Tennessee Valley Authority
30. Consumer Product Safety Commission
31. Executive Office of the President
32. Department of Agriculture
33. Federal Mine Safety and Health Review Commission
34. Agency for International Development
35. Social Security Administration

[FR Doc. 95–31280 Filed 12–26–95; 8:45 am]

BILLING CODE 6345–01–U

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 923

[Docket No. FV94–923–1FR]

Sweet Cherries Grown in Designated Counties in Washington: Establishment of Minimum Size and Maturity Requirements for Rainier Variety Cherries

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Correction amendment.

SUMMARY: This docket contains a correction to the final regulation which was published Tuesday, June 21, 1994, (59 FR 31917). The final rule established a minimum size requirement of 11 row size (61/64 inch diameter) and a minimum maturity requirement of 17 percent soluble solids for Rainier variety cherries that can be shipped to fresh market outlets. The rule inadvertently omitted some regulatory text, and this action corrects those errors.

EFFECTIVE DATE: The correcting amendments are effective December 27, 1995.

FOR FURTHER INFORMATION CONTACT: Britthany E. Beadle, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2523–S., P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–5127 or FAX (202) 720–5698; or Teresa Hutchinson, Marketing Specialist, Northwest Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 1220 S.W. Third Avenue, room 369, Portland, OR 97204–2807; telephone: (509) 326–2724 or FAX (509) 326–7440.

SUPPLEMENTARY INFORMATION:

Background

The final regulation that is the subject of this correction inadvertently omitted several paragraphs of regulatory language which should be added. These paragraphs were omitted from the June 21, 1994, final rule (59 FR 31917) regulating minimum size and maturity requirements for Rainier variety cherries effective and resulted in an incomplete text of the regulatory requirements for the handling of cherries.

Need for Correction

As published, the final regulation contains errors which may prove to be misleading and are in need of proper clarification.

List of Subjects in 7 CFR parts 923

Cherries, Marketing agreements, Reporting and recordkeeping requirements.

Accordingly, 7 CFR part 923 is corrected by making the following correcting amendments:

PART 923—SWEET CHERRIES GROWN IN DESIGNATED COUNTIES IN WASHINGTON

1. The authority citation for 7 CFR part 923 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. In § 923.322, paragraphs (f) (1), (2), and (3) are added to read as follows:

§ 923.322 Washington Cherry Regulation 22.

* * * * *

(f) * * *

(1) The shipment consists of cherries sold for home use and not for resale;

(2) The shipment does not, in the aggregate, exceed 100 pounds, net weight, of cherries; and

(3) Each container is stamped or marked with the words ''not for resale'' in letters at least one-half inch in height.

* * * * *

Dated: December 18, 1995.

Sharon Bomer Lauritsen,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 95–31278 Filed 12–26–95; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Part 966

[Docket No. FV95–966–1FIR]

Tomatoes Grown in Florida; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an interim final rule that authorized expenses and established an assessment rate that generated funds to pay those expenses. Authorization of this budget enables the Florida Tomato Committee (Committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

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

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone 202–720–9918, or Aleck J. Jonas, Southeast Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, P.O. Box 2276, Winter Haven, FL 33883–2276, telephone 941–299–4770.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 125 and Order No. 966, both as amended (7 CFR part 966), regulating the handling of tomatoes grown in Florida, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

This rule has been reviewed under Executive order 12778, Civil Justice Reform. Under the provisions of the marketing order now in effect, Florida tomatoes are subject to assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable tomatoes handled during the 1995–96 fiscal period, which began August 1, 1995, and ends July 31, 1996. This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

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

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

Since the interim final rule was issued, new information on the actual number of producers and handlers was received. There are approximately 90 producers of Florida tomatoes under this marketing order, and approximately 75 handlers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of Florida tomato producers and handlers may be classified as small entities.

The budget of expenses for the 1995–96 fiscal period was prepared by the Florida Tomato Committee, the agency responsible for local administration of the marketing order, and submitted to the Department for approval. The members of the Committee are producers of Florida tomatoes. They are familiar with the Committee's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Florida tomatoes. Because that rate will be applied to actual shipments, it must be established at a rate that will provide sufficient income to pay the Committee's expenses.

The Committee met September 7, 1995, and unanimously recommended a 1995–96 budget of $2,025,000, $190,000 less than the previous year. Budget items for 1995–96 which have increased compared to those budgeted for 1994–95 (in parentheses) are: Office salaries, $319,100 ($297,300), depreciation, $19,000 ($18,200), employee's retirement program, $50,500 ($46,600), insurance and bonds, $8,000 ($7,000), payroll tax, $22,150 ($20,000), supplies and printing, $8,500 ($7,500), and miscellaneous, $2,000 ($1,600), audit, $3,750 ($2,500), and research expense, $245,000 ($192,100). Items which have decreased compared to those budgeted for 1994–95 (in parentheses) are: Office

rent, $24,500 ($24,700), and education and promotion expense, $1,225,000 ($1,500,000). All other items are budgeted at last year's amounts.

The Committee also unanimously recommended an assessment rate of $0.04 per 25-pound container, the same as last year. This rate, when applied to anticipated shipments of 50,000,000 25-pound containers, will yield $2,000,000 in assessment income. This, along with $25,000 in interest and other income, will be adequate to cover budgeted expenses.

An interim final rule was published in the Federal Register on October 30, 1995 (60 FR 55176). That interim final rule added § 966.233 to authorize expenses and establish an assessment rate for the Committee. That rule provided that interested persons could file comments through November 29, 1995. No comments were received.

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

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

It is further found that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register (5 U.S.C. 553) because the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. The 1995–96 fiscal period began on August 1, 1995. The marketing order requires that the rate of assessment for the fiscal period apply to all assessable tomatoes handled during the fiscal period. In addition, handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and published in the Federal Register as an interim final rule.

List of Subjects in 7 CFR Part 966

Marketing agreements, Reporting and recordkeeping requirements, Tomatoes.

For the reasons set forth in the preamble, 7 CFR part 966 is amended as follows:

PART 966—TOMATOES GROWN IN FLORIDA

Accordingly, the interim final rule amending 7 CFR part 966 which was published at 60 FR 55176 on October 30, 1995, is adopted as a final rule without change.

Dated: December 18, 1995.

Sharon Bomer Lauritsen,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 95–31274 Filed 12–26–95; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Part 1250

[Docket No. PY–95–005]

Technical Amendments to Egg Research and Promotion Order and Rules and Regulations

AGENCY: Agricultural Marketing Service.

ACTION: Final Rule; Termination Order.

SUMMARY: A review of the Order and rules and regulations implementing the egg research and promotion program identified a number of changes to eliminate sections which are duplicative or obsolete and will avoid current and future conflict. The revisions eliminate certain sections dealing with membership on the Egg Board, obtaining refunds, and other miscellaneous provisions.

EFFECTIVE DATE: December 27, 1995.

FOR FURTHER INFORMATION CONTACT: Angela C. Clonts, Standardization Branch, Poultry Division, AMS, USDA, P.O. Box 96456, Room 3944–S, Washington, DC 20090–6456; telephone (202) 720–3506; fax (202) 720–5631.

SUPPLEMENTARY INFORMATION: This rule amends the Egg Research and Promotion Order and Rules and Regulations [7 CFR part 1250], hereinafter referred to as the Order and regulations. The Order and regulations are effective under the Egg Research and Consumer Information Act, as amended, hereinafter referred to as the Act.

This regulatory action is being taken as part of the National Performance Review program to eliminate unnecessary regulations and improve those that remain in force.

Executive Orders 12866 and 12778

This rule has been determined to be not-significant for purposes of Executive Order 12866 and therefore has not been reviewed by OMB.

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

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 14 of the Act, a person subject to the Order may file a petition with the Secretary stating that the Order, any provisions of the order, or any obligations imposed in connection with the Order, are not in accordance with law and requesting a modification of the Order or an exemption therefrom. The petitioner is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which such person is an inhabitant, or has his principal place of business, has jurisdiction to review the Secretary's ruling on the petition, if a complaint for that purpose is filed within 20 days after the date of the entry of the ruling.

Effect on Small Entities

The Administrator of the Agricultural Marketing Service has determined that this rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), because the changes are primarily to remove obsolete and duplicate material and establish definitions consistent with current industry terminology.

Paperwork Reduction

Information collection requirements and recordkeeping provisions contained in 7 CFR Part 1250 have been previously approved by the Office of Management and Budget and assigned OMB Control No. 0581–0093 under the Paperwork Reduction Act of 1980.

No additional recordkeeping requirements are imposed as a result of this rule.

Background and Proposed Changes

A review of the Order and regulations was conducted in response to the President's Regulatory Review Initiative of March 4, 1995. As a result, a number of provisions were identified that could be removed without adverse impact to the program. The amendments eliminate sections that contain provisions duplicated in other sections or are obsolete.

Membership Provisions

Section 1250.328(d) was developed to establish the manner in which the initial Board would be nominated. Since June 1984, any changes in the

geographic areas and number of members assigned to each area have been accomplished through informal rulemaking in § 1250.510 of the regulations. Therefore, portions of § 1250.328(d) are outdated and obsolete. Removing § 1250.328(d) in the Order except for the last sentence avoids current and future conflicting information in companion rules should additional changes be required. Appropriate language of § 1250.328(e) also is removed.

Miscellaneous Provisions

Sections 1250.360 and 1250.552 are miscellaneous provisions which were included in the Order and rules and regulations when they were originally published.

Section 1250.360 deals with board members' and alternates' personal liability and is similar to provisions found in § 1250.547 of the rules and regulations. Therefore, § 1250.360 is removed.

Section 1250.552 establishes the right of the Secretary to review and approve substantive plans of the board; it duplicates § 1250.361 of the Order and is removed.

Refund Provisions

Other sections [§§ 1250.336 (g) and (h), 1250.350, and 1250.523] originally implemented a statutory provision allowing producers to request refunds of assessments paid to the Egg Board. In a July-August 1990 referendum, producers voted in favor of mandatory assessments and eliminating the refund option. Therefore, the refund provisions are no longer applicable and should be removed from the Order and regulations.

After consideration of all relevant material with regard to the termination of the order provisions as hereinafter set forth, it is found that the provisions no longer tend to effectuate the declared policy of the Act.

Pursuant to the provisions in 5 U.S.C. 553, it is found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice or to engage in further public procedure prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register for the following reasons: (1) The sections being removed are either duplicative or obsolete, and removal will not alter any aspect of the program; and (2) no useful purpose would be served by a delay of the effective date.

List of Subjects in 7 CFR Part 1250

Administrative practice and procedure, Advertising, Agricultural research, Eggs and egg products, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 1250 is amended as follows:

PART 1250—[AMENDED]

1. The authority citation of part 1250 continues to read as follows:

Authority: Pub. L. 93–428, 88 Stat. 1171, as amended, 7 U.S.C. 2701–2718.

§ 1250.328 [Amended]

2. § 1250.328, the first sentence of paragraph (d) is removed.

§ 1250.328 [Amended]

3. In § 1250.328(e), the words ''provided for in paragraph (d) of this section'' are removed.

§ 1250.336 [Amended]

4. In § 1250.336, paragraphs (g) and (h) are removed and reserved.

§ 1250.350 [Removed and Reserved]

5. Section 1250.350 is removed and reserved.

§ 1250.360 [Removed and Reserved]

6. Section 1250.360 is removed and reserved.

§ 1250.523 [Removed]

7. Section 1250.523 and the undesignated center heading preceding it are removed.

§ 1250.552 [Removed]

8. Section 1250.552 and the undesignated center heading preceding it are removed.

Dated: December 18, 1995

Shirley R. Watkins,

Acting Assistant Secretary, Marketing and Regulatory Programs.

[FR Doc. 95–31275 Filed 12–26–95; 8:45 am]

BILLING CODE 3410–02–P

Cooperative State Research, Education, and Extension Service

7 CFR Part 3404

Availability of Information

AGENCY: Cooperative State Research, Education, and Extension Service, USDA.

ACTION: Final rule.

SUMMARY: This document amends regulations of the Department of Agriculture (USDA) regarding the availability of information to the public in accordance with the Freedom of Information Act (FOIA) to reflect the establishment of the Cooperative State Research, Education, and Extensive Service (CSREES) by the Department of Agriculture Reorganization Act of 1994.

EFFECTIVE DATE: December 27, 1995.

FOR FURTHER INFORMATION CONTACT: Stasia A.M. Hutchison, FOIA Coordinator, Agricultural Research Service, USDA, 6303 Ivy Lane, Room 456, Greenbelt, MD 20770; (301) 344–2207.

SUPPLEMENTARY INFORMATION: The FOIA (5 U.S.C. 552(a)(1)) requires Federal agencies to publish in the Federal Register regulations describing how the public may obtain information from the agency. This part is issued in accordance with the regulations of the Secretary of Agriculture at 7 CFR part 1, Subpart A, implementing FOIA.

CSREES was established by section 251(d) of the Department of Agriculture Reorganization Act of 1994, Public Law 103–354 (USDA Reorganization Act). The USDA Reorganization Act abolished the former Cooperative State Research Service (CSRS) and Extension Service (ES) and consolidated the functions of the Department related to cooperative State research programs and cooperative extension and education programs formerly administered by CSRS and ES into the new CSREES. This document amends 7 CFR part 3404 to reflect the reorganization of USDA, to make technical corrections in the regulations, and to inform the public of the change in location of the FOIA Coordinator for CSREES delegated the authority to make initial determinations on FOIA requests in accordance with 7 CFR 1.3(a)(3).

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity for comment are not required, and this rule may be made effective less than 30 days after publication in the Federal Register. Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Orders 12778 and 12866. Also, this rule will not cause a significant economic impact or other substantial effect on small entities. Therefore, the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, do not apply.

List of Subjects in 7 CFR Part 3404

Freedom of information.

Accordingly, 7 CFR part 3404 is revised to read as follows:

PART 3404—PUBLIC INFORMATION

Sec.
3404.1 General statement.
3404.2 Public inspection, copying, and indexing.
3404.3 Requests for records.
3404.4 Denials.
3404.5 Appeals.

Authority: 5 U.S.C. 301, 552; 7 CFR part 1, subpart A.

§ 3404.1 General statement.

This part is issued in accordance with the regulations of the Secretary of Agriculture in part 1, subpart A of this title, implementing the Freedom of Information Act (FOIA) (5 U.S.C. 552). The Secretary's regulations, as implemented by the regulations in this part, govern the availability of records of the Cooperative State Research, Education, and Extension Service to the public.

§ 3404.2 Public inspection, copying, and indexing.

5 U.S.C. 552(a)(2) requires that certain materials be made available for public inspection and copying and that a current index of these materials be published quarterly or otherwise be made available. Members of the public may request access to such materials maintained by CSREES at the following office: Information Staff, Agricultural Research Service, USDA, 6303 Ivy Lane, Room 456, Greenbelt, MD 20770; Telephone (301) 344–2207. Office hours are 8:00 a.m. to 4:30 p.m.

§ 3404.3 Requests for records.

Requests for records of CSREES under 5 U.S.C. 552(a)(3) shall be made in accordance with § 1.6 of this title and submitted to the FOIA Coordinator at the following address: Information Staff, Agricultural Research Service, USDA, 6303 Ivy Lane, Room 456, Greenbelt, MD 20770; Telephone (301) 344–2207; Facsimile (301) 344–2325; TDD (301) 344–2435. The FOIA Coordinator is delegated authority to make determinations regarding such requests in accordance with § 1.3(a)(3) of this title.

§ 3404.5 Denials.

If the FOIA Coordinator determines that a requested record is exempt from mandatory disclosure and that discretionary release would be improper, the FOIA Coordinator shall give written notice of denial in accordance with § 1.8(a) of this title.

§ 13404.6 Appeals.

Any person whose request is denied shall have the right to appeal such denial. Appeals shall be made in accordance with § 1.6(e) of this title and should be addressed as follows: Administrator, Cooperative State Research, Education, and Extension Service, U.S. Department of Agriculture, Washington, DC 20250.

Done at Washington, D.C., this 15th day of December 1995.

Colien Hefferan,

Acting Administrator, Cooperative State Research, Education, and Extension Service.

[FR Doc. 95–31183 Filed 12–26–95; 8:45 am]

BILLING CODE 3410–22–M

Economic Research Service

7 CFR Part 3701

Availability of Information

AGENCY: Economic Research Service, USDA.

ACTION: Final rule.

SUMMARY: This document amends regulations of the Economic Research Service (ERS) regarding the availability of information to the public in accordance with the Freedom of Information Act (FOIA) to notify the public of a change in the location of the ERS FOIA Coordinator and the location where published data is available.

EFFECTIVE DATE: December 27, 1995.

FOR FURTHER INFORMATION CONTACT: Stasia A.M. Hutchison, FOIA Coordinator, Agricultural Research Service, USDA, 6303 Ivy Lane, Room 456, Greenbelt, MD 20770, (301) 344–2207.

SUPPLEMENTARY INFORMATION: The FOIA (5 U.S.C. 552(a)(1)) requires Federal agencies to publish in the Federal Register regulations describing how the public may obtain information from the agency. This part is issued in accordance with the regulations of the Secretary of Agriculture at 7 CFR part 1, subpart A, implementing FOIA. This document amends 7 CFR part 3701 to inform the public of the change in location of the FOIA Coordinator for ERS delegated the authority to make initial determinations on FOIA requests in accordance with 7 CFR 1.3(a)(3), and the location where published data are available to the public.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity for comment are not required, and this rule may be made effective less than 30 days after publication in the Federal Register. Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Orders 12778 and 12866. Also, this rule will not cause a significant economic impact or other substantial effect on small entities. Therefore, the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, do not apply.

List of Subjects in 7 CFR Part 3701

Freedom of information.

Accordingly, 7 CFR part 3701 is revised to read as follows:

PART 3701—PUBLIC INFORMATION

Sec.
3701.1 General statement.
3702.2 Public inspection, copying, and indexing.
3701.3 Request for records.
2701.4 Denials.
3701.5 Appeals.
3701.6 Requests for published data and information.

Authority: 5 U.S.C. 301 and 552; 7 CFR part 1, subpart A.

§ 3701.1 General statement.

This part is issued in accordance with the regulations of the Secretary of Agriculture in part 1, subpart A of this title, implementing the Freedom of Information Act (FOIA) (5 U.S.C. 552). The Secretary's regulations, as implemented by the regulations in this part, govern the availability of records of the Economic Research Service (ERS) to the public.

§ 3701.2 Public inspection, copying, and indexing.

5 U.S.C. 552(a)(2) requires that certain materials be made available for public inspection and copying and that a current index of these materials be published quarterly or otherwise be made available. Members of the public may request access to such materials maintained by ERS at the following office: Information Staff, Agricultural Research Service, USDA, 6303 Ivy Lane, Room 456, Greenbelt, MD 20770; Telephone (301) 344–2207. Office Hours are 8:00 a.m. to 4:30 p.m.

§ 3701.3 Request for records.

Requests for records of ERS shall be made in accordance with § 1.6 (a) and (b) of this title and submitted to the FOIA Coordinator, Agricultural Research Service, USDA, 6303 Ivy Lane, Room 456, Greenbelt, MD 20770; Telephone (301) 344–2207, Facsimile (301) 344–2325, TDD (301) 344–2425. The FOIA Coordinator is delegated authority to make determinations regarding such requests in accordance with § 1.3(a)(3) of this title.

§ 3701.4 Denials.

If the FOIA Coordinator determines that a requested record is exempt from mandatory disclosure and that

discretionary release would be improper, the FOIA Coordinator shall give written notice of denial in accordance with § 1.8(a) of this title.

§ 3701.5 Appeals.

Any person whose request is denied shall have the right to appeal such denial. Appeals shall be made in accordance with Section 1.6(e) of this title and should be addressed as follows: Administrator, Economic Research Service, U.S. Department of Agriculture, Washington, DC 20250.

§ 3701.6 Requests for published data and information.

Information on published data from ERS programs is contained in the ERS ''Reports'' newsletter, available without cost from the Economic Research Service, Information Center, U.S. Department of Agriculture, 1301 New York Avenue, NW., Washington, DC 20005.

Done at Washington, DC, this 19th day of December 1995.

John Dunmore,

Acting Administrator, Economic Research Service.

[FR Doc. 95–31185 Filed 12–26–95; 8:45 am]

BILLING CODE 3410–18–M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 360

RIN 3064–AB69

Definition of Qualified Financial Contracts

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Federal Deposit Insurance Corporation (FDIC or Corporation) has adopted a rule to include spot and other short-term foreign exchange agreements and repurchase agreements on qualified foreign government securities within the definition of ''qualified financial contracts'' under the Federal Deposit Insurance Act (FDI Act). The FDI Act authorizes the FDIC to expand the definition of qualified financial contract by promulgation of regulations to include agreements similar to those currently identified as qualified financial contracts within the FDI Act. The FDIC has determined that spot and other short-term foreign exchange agreements are similar to swap agreements, which are included within the qualified financial contract provisions of the statute and that repurchase agreements on qualified foreign government securities are similar to those repurchase agreements already recognized as qualified financial contracts under the statute.

EFFECTIVE DATE: December 27, 1995.

FOR FURTHER INFORMATION CONTACT: Sharon Powers Sivertsen, Assistant General Counsel, Legal Division, (202) 736–0112; Keith A. Ligon, Senior Counsel, Legal Division, (202) 736–0160; or Christine M. Bradley, Attorney, Legal Division, (202) 736–0106, Legal Division.

SUPPLEMENTARY INFORMATION:

Background

Sections 11(e)(8) through (10) of the FDI Act, 12 U.S.C. 1821(e)(8) through (10), provide special rules for the treatment of qualified financial contracts in the event the FDIC is appointed receiver or conservator for an insured depository institution. The statute seeks, among other things, to protect parties to qualified financial contracts by allowing for the liquidation, termination, and netting of their agreements. The statute defines certain securities contracts, commodity contracts, forward contracts, repurchase agreements and swap agreements as qualified financial contracts.

Section 11(e)(8)(D) of the FDI Act identifies in some detail the types of contracts to be treated as qualified financial contracts, but additionally affords the FDIC express authority to adopt regulations extending the definition to any similar agreement. 12 U.S.C. 1821(e)(8)(D)(i).

Proposed Rule

In September 1995, the FDIC requested comment on a proposed regulation that would expand the definition of qualified financial contract to include agreements similar to the agreements identified within the FDI Act as qualified financial contracts. (60 FR 48935, Sept. 21, 1995). The FDIC proposed that spot and other short-term foreign exchange agreements and that repurchase agreements on securities issued or guaranteed by the central governments belonging to the Organization for Economic Cooperation and Development (OECD), or that have concluded special lending arrangements with the International Monetary Fund (IMF) associated with the IMF's General Arrangements to Borrow, be considered as qualified financial contracts under the FDI Act.

The FDIC intended that the definition of qualified financial contract be expanded to include certain instruments that facilitate appropriate liquidity, hedging and financial intermediation operations in financial institutions. Adoption of the regulation to include spot and other short-term foreign exchange contracts and repurchase agreements on qualified foreign government securities within the definition of qualified financial contract is not intended to exclude other agreements that may otherwise qualify to be qualified financial contracts under the language of section 11(e)(8)(D) itself.

Final Rule

The final rule adopted by the Corporation includes spot and other short-term foreign exchange agreements within the definition of qualified financial contract. The final rule clarifies that short-dated foreign exchange transactions such as spots, tomorrow/next day and same day/tomorrow transactions are similar agreements to those agreements identified within the statute as swap agreements.

The final rule also expands the definition of qualified financial contract to include repurchase agreements on securities issued or guaranteed by the central governments of countries that are either full members of the OECD or that have concluded special lending arrangements with the International Monetary Fund (IMF) associated with the IMF's General Arrangements to Borrow (repurchase agreement on qualified foreign government securities). The final rule incorporates by reference the definition of ''central government'' as set forth in 12 CFR part 325, appendix A, II.C note 17 [1] and ''OECD-based group of countries'' as set forth in 12 CFR part 325, appendix A, II.B.2, note 12 (and incorporating any changes to these definitions that should occur by future amendment).

Summary of Comments

The FDIC received 8 comment letters on the proposed regulation on the Definition of Qualified Financial Contracts. All commenters strongly support the Corporation's expansion of the definition of qualified financial contract to include spot and other short-term foreign exchange agreements and repurchase agreements on qualified foreign government securities. The commenters generally agree that promulgation of the proposed regulation

[1] The definition of central government includes departments and ministries of the central government, as well as central banks, but does not extend to state, provincial, or local governments or commercial enterprises owned by central governments. Nor does it extend to securities of local government entities or commercial enterprises guaranteed by the central government. 12 CFR part 325, II.C., note 17 (1995).

clarifies the treatment these contracts would receive in the event the FDIC were appointed receiver or conservator of an insured depository institution. Five of the commenters provided additional suggestions on the proposed rule, which are summarized below.

Definition of Spot Foreign Exchange Agreements

Two of the commenters suggested that the final regulation recognize spot and other short-term foreign exchange agreements as qualified financial contracts through the expansion of the existing definition of ''swap agreement'' as provided in 12 U.S.C. 1821(e)(8)(D)(vi), rather than by creating a definition specific to these short-term agreements. The commenters stated that by including spot and other short-term foreign exchange agreements within the definition of swap agreement, counterparties to the agreements would be assured that a master agreement for any such agreement would be treated as one swap agreement under 12 U.S.C. 1821(e)(8)(D)(vii).

Additionally, the commenters noted that expansion of the definition of swap agreement to include spot foreign exchange agreements is consistent with the manner in which the Bankruptcy Code was amended as a part of the Bankruptcy Reform Act of 1994. 11 U.S.C. 101(53B).

The Corporation agrees with this recommendation and has revised the final regulation to provide that ''spot foreign exchange agreements'' as defined in the regulation are to be considered qualified financial contracts through the specific expansion of the definition of swap agreement contained at 12 U.S.C. 1821(e)(8)(D)(vi). In light of this revision, the Corporation has determined that the phrase ''or combination of agreements (including master agreements)'', which appeared in the proposed regulation at § 360.5(b)(1), is unnecessary. Accordingly, this phrase is deleted in § 360.5(c)(1) of the final regulation. A swap agreement includes any combination of such agreements and a master agreement for such agreements is treated as one swap agreement under 12 U.S.C. 1821(e)(8)(vi) and (vii).

Repurchase Agreements on Qualified Foreign Government Securities

The Corporation received 4 comments on the proposal to expand the definition of repurchase agreements which are recognized as qualified financial contracts to include repurchase agreements on securities issued or guaranteed by the central governments of OECD countries. Although all of the commenters supported promulgation of the proposed regulation, three of the commenters suggested that they would prefer that the Corporation not restrict the expansion of the definition of repurchase agreement under 12 U.S.C. 1821(e)(8)(D)(v) to repurchase agreements on securities issued or guaranteed by the OECD countries. The fourth commenter endorsed the Corporation's proposed expansion of the definition of repurchase agreements to include repurchase agreements issued or guaranteed by the OECD countries, and commented that the proposed scope of the definition was appropriate in order to limit potential exposure to the deposit insurance funds.

One commenter asserted that because repurchase agreements on the securities of any issuer should be recognized as qualified financial contracts through the definition of ''securities contract'' provided at 12 U.S.C. 1821(e)(8)(D)(ii), the regulation should not be restricted to repurchase agreements on securities issued or guaranteed by the central governments of the OECD countries, and, as a result, any repurchase agreement involving any type of security should be considered a qualified financial contract.

The FDI Act identifies the repurchase agreements which are qualified financial contracts with reference to the Bankruptcy Code definition of repurchase agreement. The Bankruptcy Code defines repurchase agreement as:

> an agreement, including related terms, which provides for the transfer of certificates of deposit, eligible bankers' acceptances, or securities that are direct obligations of, or that are fully guaranteed as to principal and interest by, the United States or any agency of the United States against the transfer of funds by the transferee of such certificates of deposit, eligible bankers' acceptances, or securities with a simultaneous agreement by such transferee to transfer to the transferor thereof certificates of deposit, eligible bankers' acceptances, or securities as described above, at a date certain not later than one year after such transfers or on demand, against the transfer of funds.

11 U.S.C. 101(47). Consequently, the Bankruptcy Code definition and by incorporation the FDI Act definition of repurchase agreement does not include repurchase agreements on qualified foreign government securities. In order for such repurchase agreements to be treated as qualified financial contracts under the current statute, the FDIC is required to promulgate this final regulation under its regulatory authority. 12 U.S.C. 1821(e)(8)(D)(i).

The second comment on the FDIC's limited expansion of the definition of repurchase agreement under 12 U.S.C. 1821(e)(8)(D)(v) concentrates on the growth of the international market for repurchase agreements on foreign government securities. One commenter stated that the growth of this market is not limited to securities issued or guaranteed by the central governments of the OECD countries. Another commenter submitted that non-OECD government securities were becoming a growing portion of the market for repurchase agreements on foreign government securities. These commenters conclude that there is no difference between repurchase agreements on OECD government securities and repurchase agreements on non-OECD government securities other than the nature of the risks posed by the underlying securities.

Qualified financial contracts are accorded special status under the FDI Act and are treated differently from other contracts upon appointment of the FDIC as conservator or receiver for an insured depository institution. Any expansion of the definition of qualified financial contract results in a commensurate potential increase in cost to the receivership or conservatorship, which indirectly creates potential losses to the deposit insurance funds. By limiting the expansion of the definition of repurchase agreements, the FDIC is balancing the growing internationalization of major banking and financial markets with the potential risks posed to the deposit insurance funds arising from the credit risk inherent in such an expansion.

In 1989, the FDIC implemented risk-based capital guidelines in order to implement the International Convergence of Capital Measurement and Capital Standards of July 1988, as reported by the Basle Committee on Banking Supervision (the Basle Accord).[2] The Basle Committee concluded that claims unconditionally guaranteed by governments of countries that are full members of the OECD should be distinguished from claims similarly guaranteed by governments of non-OECD countries.[3] The Basle

[2] The Basle Accord is a risk-based framework that was originally proposed by the Basle Committee on Banking Supervision (Basle Supervisors' Committee) and endorsed by the central bank governors of the Group of 10 (G–10) countries in July 1988. The Basle Supervisors' Committee was comprised at that time of representatives of the central bank and supervisory authorities from the G–10 countries (Belgium, Canada, France, Germany, Italy, Japan, the Netherlands, Sweden, Switzerland, the United Kingdom, and the United States) and Luxembourg.

[3] Long-term claims on banks of OECD countries also generally receive lower risk weights than corresponding claims on the banks of non-OECD countries. See , *e.g.*, Proposed Rule for Capital Maintenance Guidelines, 60 FR 8582 (1995).

Committee analyzed the credit risk and country transfer risk associated with government securities and determined that membership in OECD was an appropriate basis for granting a more favorable risk weighting.[4]

The OECD is an international organization of countries which are committed to market-oriented economic policies, including the promotion of private enterprise and free market prices, liberal trade policies, and the absence of exchange controls. These commitments are expressed in the Code of Liberalisation of Capital Movements and the Code of Liberalisation of Current Invisible Operations (collectively, the Codes). OECD members are expected to ensure that the obligations accepted under either Code are honored, including the removal of legal or administrative regulations that would otherwise frustrate the movement of capital from one member country to another. The OECD countries' adherence to the Codes is generally associated with a relatively low transfer risk when considering transactions between member countries.

The same considerations which were analyzed by the Basle Committee and the FDIC in establishing its risk-based capital guidelines, including the commitments of the OECD countries under the Codes, are important in determining how the definition of qualified financial contract should be expanded under 12 U.S.C. 1821(e)(8)(D)(i). Consequently, the FDIC is retaining the provision restricting the repurchase agreements recognized as qualified financial contracts to repurchase agreements on securities issued or guaranteed by the central governments of the countries belonging to the OECD or that have concluded special lending arrangements with the IMF associated with the IMF's General Arrangements to Borrow.

Other Comments

One commenter suggested that the FDIC conform its definition of qualified financial contract to the definition of ''financial contract'' as used by the Board of Governors of the Federal Reserve System (Board) in Regulation EE, Netting Eligibility for Financial Institutions, 12 CFR part 231 (59 FR 4780, Feb. 2, 1995). Regulation EE defines financial contract with reference to the definition of qualified financial contract contained in the FDI Act (12 U.S.C. 1821(e)(8)(D), as amended), except that Regulation EE specifies that a forward contract includes a contract with a maturity date of two days or less after the date the contract is entered into (i.e., a ''spot'' contract). 12 CFR 231.2(c)(1995).

The FDIC has determined that the definition of financial contract as used by the Board in Regulation EE does not affect the FDIC's definition of qualified financial contract under the FDI Act. As the Board stated in the final publication of Regulation EE, the definition of financial contract within Regulation EE is relevant only to a determination of whether a particular institution qualifies as a ''financial institution'' under the regulation. Once an institution qualifies as a financial institution under Regulation EE, its ability to avail itself of the netting provisions as set forth in 12 U.S.C. 4401–4407 is determined with reference to the definition of ''netting contract'' contained at 12 U.S.C. 4402(14). (59 FR 4780, 4783, Feb. 2, 1994). The FDIC has determined that its proposed regulation on the Definition of Qualified Financial Contracts does not change the interpretation of Regulation EE or the netting provisions of sections 4401–4407 of title 12.

Finally, one commenter requested that the FDIC delete the provisos outlined in paragraph (d) of the § 360.5.[5] The FDIC has determined that paragraph (d) should be retained to clarify that nothing in this regulation is intended to affect any rights and powers the Corporation might otherwise have in its capacity of insurer and regulator of certain depository institutions.

In order to facilitate the continued participation of United States financial institutions in major financial markets after January 1, 1996, the Board of Directors has determined that good cause exists for waiving the 30-day delayed effective date ordinarily required by the Administrative Procedures Act (5 U.S.C. 553). The Board of Directors has also determined that section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 (Pub. L. 103–325, 108 Stat. 2160)(1994) (RCDRIA) does not apply to the issuance of the final rule.[6]

List of Subjects in 12 CFR Part 360

Banks, banking, Saving associations.

For the reasons set out in the preamble, the FDIC Board of Directors amends 12 CFR part 360 as follows:

PART 360—RESOLUTION AND RECEIVERSHIP RULES

1. The authority citation for part 360 is revised to read as follows:

Authority: 12 U.S.C. 1821(d)(11), 1821(e)(8)(D)(i), 1823(c)(4); Sec. 401(h), Pub. L. 101–73, 103 Stat. 357.

2. Section 360.5 is added to part 360 to read as follows:

§ 360.5 Definition of qualified financial contracts.

(a) *Authority and purpose.* Sections 11(e) (8) through (10) of the Federal Deposit Insurance Act, 12 U.S.C. 1821(e) (8) through (10), provide special rules for the treatment of qualified financial contracts of an insured depository institution for which the FDIC is appointed conservator or receiver, including rules describing the manner in which qualified financial contracts may be transferred or closed out. Section 11(e)(8)(D)(i) of the Federal Deposit Insurance Act, 12 U.S.C. 1821(e)(8)(D)(i), grants the Corporation authority to determine by regulation whether any agreement, other than those identified within section 11(e)(8)(D), should be recognized as qualified financial contracts under the statute. The purpose of this section is to identify additional agreements which the Corporation has determined to be qualified financial contracts.

(b) *Repurchase agreements.* The following agreements shall be deemed ''repurchase agreements'' under section 11(e)(8)(D)(v) of the Federal Deposit Insurance Act, as amended (12 U.S.C. 1821(e)(8)(D)(v)): A repurchase agreement on qualified foreign government securities is an agreement or combination of agreements (including master agreements) which provides for the transfer of securities that are direct obligations of, or that are fully guaranteed by, the central governments (as set forth at 12 CFR part 325, appendix A, section II.C, n. 17, as may be amended from time to time) of the OECD-based group of countries (as set forth at 12 CFR part 325, appendix A, section II.B.2., note 12 as may be amended from time to time) against the transfer of funds by the transferee of such securities with a simultaneous agreement by such transferee to transfer to the transferor thereof securities as described above, at a date certain not later than one year after such transfers or on demand, against the transfer of funds.

[4] Transfer risk generally refers to the possibility that an asset cannot be serviced in the currency of payment because of a lack of, or restraints on, the availability of needed foreign exchange in the country of the obligor. See, *e.g.*, 60 FR 8582 (1995).

[5] Paragraph (d) of § 360.5 appeared as paragraph (c) in the Proposed Rule.

[6] Section 302 of RCDRIA provides that any new regulations and amendments to existing regulations which impose reporting, disclosure or other requirements on insured depository institutions may only take effect on the first day of a calendar quarter unless certain exceptions are satisfied.

(c) *Swap agreements.* The following agreements shall be deemed ''swap agreements'' under section 11(e)(8)(D)(vi) of the Federal Deposit Insurance Act, as amended (12 U.S.C. 1821(e)(8)(D)(vi)): A spot foreign exchange agreement is any agreement providing for or effecting the purchase or sale of one currency in exchange for another currency (or a unit of account established by an intergovernmental organization such as the European Currency Unit) with a maturity date of two days or less after the agreement has been entered into, and includes short-dated transactions such as tomorrow/next day and same day/tomorrow transactions.

(d) Nothing in this section shall be construed as limiting or changing a party's obligation to comply with all reasonable trading practices and requirements, non-insolvency law requirements and any other requirements imposed by other provisions of the FDI Act. This section in no way limits the authority of the Corporation to take supervisory or enforcement actions, or to otherwise manage the affairs of a financial institution for which the Corporation has been appointed conservator or receiver.

By Order of the Board of Directors.

Dated at Washington, DC, this 19th day of December, 1995.

Federal Deposit Insurance Corporation

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 95–31247 Filed 12–26–95; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 500, 504, 510, 515, 529, 533, 543, 545, 552, 556, 562, 563, 563d, 563g, 571, 583, and 584

[No. 95–201]

RIN 1550–AA85

Regulatory Review

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Thrift Supervision (OTS or Office) is today issuing a final rule eliminating duplicative, unduly burdensome, and unnecessary regulations. These amendments result from a review of OTS regulations pursuant to section 303(a) of the Community Development and Regulatory Improvement Act of 1994 (CDRIA) and the Regulatory Reinvention Initiative of the Vice President's National Performance Review.

EFFECTIVE DATE: December 27, 1995.

FOR FURTHER INFORMATION CONTACT: Francis E. Raue, Policy Analyst, Supervision Policy, (202) 906–5750; or Valerie J. Lithotomos, Counsel (Banking and Finance), Regulations and Legislation Division, Chief Counsel's Office, (202) 906–6439, Office of Thrift Supervision, 1700 G Street NW., Washington, D.C. 20552.

SUPPLEMENTARY INFORMATION:

I. Background

The OTS conducted a comprehensive review of its regulations in the spring of 1995 pursuant to section 303 of CDRIA and the Administration's Reinvention Initiative. Staff in both the Washington and Regional Offices reviewed the regulations and policy statements contained in Chapter V of Title 12 of the Code of Federal Regulations (CFR) to: ''streamline and modify those regulations and policies in order to improve efficiency, reduce unnecessary costs, * * * eliminate unwarranted constraints on credit availability [and] remove inconsistencies and outmoded and duplicative requirements.'' [1] The OTS sought industry input through town meetings and industry roundtable meetings held by the Acting Director and Regional Directors.

As a result of this effort, the OTS identified a number of ways in which its regulations could be improved and, on August 28, 1995, issued a notice of proposed rulemaking.[2] The preamble to the proposed rulemaking described a multi-step process that the agency intends to follow to implement the results of its regulatory review.

The first step in that process is to eliminate regulations that are clearly outdated, duplicative, or otherwise unnecessary. Today's final rule draws this first step to a close.

The second step is to conduct focused, intensive reviews of key areas of OTS's regulations in an effort to find additional ways to streamline and reduce burden. This effort is already underway. Over the next several months, OTS expects to issue proposals that will reduce the burden imposed by its regulations governing lending, subsidiaries, corporate governance, and preemption.

A third step in the review process is to determine whether the OTS's regulations should be reorganized to make them more user-friendly. In the August 28 preamble, the agency posed five questions regarding the overall structure and content of its regulations.[3] The OTS appreciates the comments received in response to these questions and will take them into consideration in future rulemakings that specifically address the organizational issues raised by the comments.

II. Summary of Comments

The August 28, 1995, notice of proposed rulemaking targeted approximately eight percent of OTS's regulations for immediate repeal. The public comment period on the August 28 proposal closed on October 27, 1995. Two federal savings banks, one savings and loan holding company, and one national trade association submitted comments. In addition to its comment letter, the national trade association, America's Community Bankers (ACB), included the results of a survey which ACB sent to a number of OTS-supervised institutions.[4]

Generally all of the commenters supported the OTS initiative to streamline and eliminate unnecessary and burdensome rules in the proposal. They indicated that the deletions and modifications, with a few exceptions, would be helpful.

However, one commenter recommended that paragraphs (a) and (c) of § 545.15 not be deleted. Paragraph (a) provides generally that a Federal savings association shall require at least seven days advance notice of withdrawals from savings accounts that do not have fixed or minimum terms of at least seven days. The commenter asked that this paragraph be retained because it believes that the elimination of the seven-day withdrawal notice on savings accounts may conflict with

[1] Section 303 of CDRIA, 12 U.S.C. 4803(a)(1)(A), (B).

[2] See 60 FR 44442 (August 28, 1995).

[3] The specific questions in the preamble were:

1. Should OTS consolidate common definitions of general applicability now in parts 541, 561, 563, and 583 in a new part 501?

2. Should OTS consolidate the remaining safety and soundness regulations in part 545 into part 563?

3. Should OTS delete regulations that only repeat statutory authority or list an implied power?

4. Should policy statements in parts 556 and 571 be deleted and either recast as regulations or placed as guidance in the appropriate regulatory handbook?

5. What is the best method of communicating different types of information, guidance, policies, restrictions, and requirements?

[4] ACB is a trade association representing 2,000 savings associations and community financial institutions and related business firms. ACB's survey was sent to 94 OTS-supervised institutions; 43 institutions completed the survey. As reported by ACB, 86 percent of the respondents deem simplification of OTS rules to be worth the time and attention of the OTS and the industry.

section 5(b)(1)(C) of the Home Owners' Loan Act (HOLA).[5] We disagree. Section 5(b)(1)(C) of the HOLA provides that a ''Federal savings association may require not less than 14 days notice * * * if the charter of the savings association or the regulations of the Director so provide.'' By its terms, this statutory provision applies only to withdrawal notice requirements that equal or exceed 14 days. The provision does not affect the ability of savings associations to impose notice requirements of shorter duration.

Moreover, the seven-day notice requirement that currently appears in OTS's regulations is unrelated to, and does not implement, section 5(b)(1)(C) of the HOLA. Section 545.15(a) was meant to mirror the requirements under the Federal Reserve Board's Regulation D for savings accounts.[6] Regulation D defines a savings deposit for reserve purposes as a deposit or account where a depository institution may require at least seven days advance notice of withdrawal.[7] The OTS is removing section 545.15(a) because it is duplicative of Regulation D. Savings associations will, of course, still be required to comply with Regulation D.

Because section 545.15(a) does not implement HOLA section 5(b)(1)(C), its removal will not adversely affect the ability of savings associations to impose notice requirements of 14 days or more. Associations that wish to do so may continue, as under current law, to include an authorizing provision in their charters and appropriate terms in their savings account contracts.

The same commenter requested that OTS retain paragraph (c) of section 545.15. That paragraph states that, when computing earnings due on deposit accounts at the end of a business period, a Federal savings association may elect to disregard amounts withdrawn from accounts in the last three days of any business period—thereby effectively paying depositors slightly more interest than they might be entitled to under the terms of their deposit contracts. The commenter stated that the three-day grace period should be retained because it may have operational significance for small institutions without adequate technology to make computations on all of their accounts on one day at the end of the period. Removal of paragraph (c) will not adversely affect the flexibility of savings associations in computing interest on their deposit accounts. Institutions that wish to compute interest without reference to withdrawals made during the last three days of a business period may continue to do so. A regulation is not needed to authorize this practice.

The same commenter asked that section 556.15 be retained because it delineates the specific services that may and may not be performed at drive-in and pedestrian facilities. Under § 545.92(g), Federal savings associations are authorized to establish such facilities without prior OTS approval, subject to certain restrictions. The services provided at such facilities are limited to those ''ordinary functions'' provided at teller windows at branch offices. Section 556.15 defines what constitutes services ''ordinarily'' provided at teller windows. This definition is outdated and unduly restrictive. Elimination of § 556.15 will allow more flexibility in defining the scope of services that can be offered from drive-in and pedestrian facilities.

One commenter stated that it would prefer that § 545.31(a) (Election regarding classification of loans or investments) not be removed unless it would be included in its entirety in the regulatory handbook. The OTS notes that the proposal did not suggest the deletion of that section and that it is not anticipated that OTS's regulatory review of its lending regulations will propose deleting that section.

One commenter requested that the OTS review the documentation and recordkeeping requirements in §§563.41 (Loans and other transactions with affiliates and subsidiaries) and 563.42 (Additional standards applicable to transactions with affiliates and subsidiaries) because they are too cumbersome. The commenter also requested that certain clarifications be made to these regulations. On the same subject, another commenter requested that the term ''affiliated person'' in the OTS's regulations be replaced by the term ''insider'' as defined in the regulations of the other Federal banking agencies. The OTS will address these comments in a subsequent notice of proposed rulemaking, during the phase of regulatory review dealing with OTS's regulations on subsidiaries and related entities.

Finally, one commenter suggested that the OTS consider reviewing its manufactured home financing regulation at section 545.45 so that savings associations may more fairly compete with other lenders in the market. The OTS will address this comment in the phase of regulatory review addressing the OTS's lending regulations.

III. Description of Final Rule

The final rule issued today implements all of the proposed revisions and modifications contained in the August 28, 1995 proposal, except for the proposed revision to § 567.1's definition of an OECD-based country, which will be addressed in a later final rule.

The following parts and sections are being removed:

Part or section No.	Title
Part 504	National security information.
§ 510.1	Ex parte communications.
§ 510.3	Coordination of subchapters.
Part 515	Use of penalty mail in the location and recovery of missing children.
Part 529	Nondiscrimination in federally assisted programs.
Part 533	Electronic funds transfers.
§ 543.12	Bank Insurance Fund-insured Federal savings banks.
§ 543.13	Notice to FDIC.
§ 545.15	Withdrawal requests.
§ 545.18	Issuance of mutual capital certificates.
§ 545.19	Issuance of net worth certificates.
§ 545.20	Borrowing, issuing obligations and giving security.
§ 545.44	Mortgage transactions with the Federal Home Loan Mortgage Corporation.
§ 545.122	Employment contracts.
§ 545.136	Financial futures transactions.
§ 545.137	Financial options transactions.
§ 552.2–4	Limitation on transaction of business.
§ 556.4	Insurance.
§ 556.6	Savings accounts.
§ 556.8	Suretyship.
§ 556.9	Imposition of late charges and due on sale clauses.
§ 556.11	Prepayment penalty on mortgage loans.
§ 556.14	Chief executive officer of a branch office.
§ 556.15	Drive-in and pedestrian facilities.
§ 562.3	Statements of Condition.
§ 563.8	Negotiable order of withdrawal accounts authorized.
§ 563.49	Membership in a Federal Home Loan Bank.
§ 563.72	Form, return, and maturity of securities.
§ 563d.200–30	Delegation of authority to the Chief Counsel.
§ 563g.22	Delegation of authority to the Chief Counsel.
§ 584.3	Transactions with affiliates.
§ 584.6	Penalty for loss of QTL status.
§ 584.11	Hearings.

[5] 12 U.S.C. 1464(b)(1)(C).

[6] See 12 CFR Part 204.

[7] 12 CFR 204.2(d)(1).

The OTS is also amending the following parts or sections to remove unnecessary burdens, as proposed.

Part or section No.	Description of amendment
Part 500	Simplification of organizational structure.[1]
§ 563.41(b)(11)	Addition of definition of ''unimpaired capital and unimpaired surplus'' for purposes of transactions with affiliates limitations.
§ 563.41(d)(1) .	Removal of expired limitation on sister bank provision for transactions with affiliates.
§ 563.42(d)(1) .	Removal of expired limitation on sister bank provision for transactions with affiliates.
§ 563.43(f)	Addition of definition of ''unimpaired capital and unimpaired surplus'' for purposes of loans to insiders limitations.
§ 563g.5	Reduction in the number of copies required for securities filings.

[1] OTS's current organizational structure will be reflected in a notice to be published in the FEDERAL REGISTER at a later date.

The preamble to the August 28 proposal contains a full section-by-section discussion of the reasons why these sections are being amended or removed. Today's final rule also adopts the proposed modifications to cross-references in other OTS regulations to conform to the changes being made today.

IV. Administrative Procedure Act

Section 553(d)[8] of the APA permits the waiver of its 30-day delayed effective date requirement for good cause, or where a rule relieves a restriction. Also, Section 302 of the CDRIA[9] requires that a federal banking agency regulation that imposes new requirements take effect on the first day of the quarter following publication of the final rule. That section provides, however, that an agency may determine that the rule should take effect earlier upon a finding of good cause.

The OTS believes that the final rule will relieve regulatory burden by eliminating obsolete, redundant and unnecessary requirements. The final rule eliminates inefficient and unduly costly regulatory requirements and better focuses thrifts on the substantive and relevant requirements. For these reasons, the OTS believes there is good cause pursuant to both the APA and CDRIA section 302 provisions to make the final rule effective immediately upon publication in the Federal Register.

V. Executive Order 12866

The Director of the OTS has determined that this final rule does not constitute a ''significant regulatory action'' for the purposes of Executive Order 12866.

VI. Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act, the OTS certifies that this final rule will not have a significant economic impact on a substantial number of small entities. The final rule does not impose any additional burdens or requirements upon small entities and lowers several paperwork and other burdens on all savings associations.

VII. Unfunded Mandates Reform Act of 1995

The OTS has determined that the requirements of this final rule will not result in expenditures by State, local, and tribal governments, or by the private sector, of more than $100 million in any one year. Accordingly, a budgetary impact statement is not required under section 202 of the Unfunded Mandates Reform Act of 1995.

List of Subjects

12 CFR Part 500

Organization and functions (Government agencies).

12 CFR Part 504

Classified information.

12 CFR Part 510

Administrative practice and procedure.

12 CFR Part 515

Infants and children, Postal service.

12 CFR Part 529

Administrative practice and procedure, Civil rights.

12 CFR Part 533

Consumer protection, Electronic funds transfers, Savings associations.

12 CFR Part 543

Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 545

Accounting, Consumer protection, Credit, Electronic funds transfers, Investments, Manufactured homes, Mortgages, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 552

Reporting and recordkeeping requirements, Savings associations, Securities.

12 CFR Part 556

Savings associations.

12 CFR Part 562

Accounting, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 563

Accounting, Advertising, Crime, Currency, Flood insurance, Investments, Mortgages, Reporting and recordkeeping requirements, Savings associations, Securities, Surety bonds.

12 CFR Part 563d

Authority delegations (Government agencies), Reporting and recordkeeping requirements, Savings associations, Securities.

12 CFR Parts 563g

Reporting and recordkeeping requirements, Savings associations, Securities.

12 CFR Part 571

Accounting, Conflicts of interest, Investments, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 583

Holding companies, Savings associations.

12 CFR Part 584

Administrative practice and procedure, Holding companies, Reporting and recordkeeping requirements, Savings associations, Securities.

Accordingly, and under the authority of 12 U.S.C. 1462a, the Office of Thrift Supervision amends chapter V, title 12, Code of Federal Regulations, as set forth below.

PART 500—ORGANIZATION AND CHANNELLING OF FUNCTIONS

1. The authority citation for part 500 continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464.

§ 500.1 [Amended]

§§ 500.3—500.5 [Removed]

2. The existing text of § 500.1 is designated as paragraph (a), the existing texts of §§ 500.3, 500.4, and 500.5 are redesignated as paragraphs (b), (c) and (d), respectively, of § 500.1, and §§ 500.3, 500.4, and 500.5 are removed.

[8] 5 U.S.C. 553(d).

[9] 12 U.S.C. 4802.

3. Section 500.10 is amended by adding two new sentences at the end of the section to read as follows:

§ 500.10 The OTS or The Office.

* * * The Director directs and carries out the mission of the OTS with the assistance of offices reporting directly to him. One of these offices oversees the direct examination and supervision of savings associations by regulatory staff to ensure the safety and soundness of the industry.

§§ 500.11–500.17 [Removed]

4. Sections 500.11 through 500.17 are removed.

PART 504—[REMOVED]

5. Part 504 is removed.

PART 510—MISCELLANEOUS ORGANIZATIONAL REGULATIONS

6. The authority citation for part 510 continues to read as follows:

Authority: 5 U.S.C. 301; 12 U.S.C. 1462a, 1463, 1464.

§ 510.1 [Removed]

7. Section 510.1 is removed.

§ 510.3 [Removed]

8. Section 510.3 is removed.

PART 515—[REMOVED]

9. Part 515 is removed.

PART 529—[REMOVED]

10. Part 529 is removed.

PART 533—[REMOVED]

11. Part 533 is removed.

PART 543—INCORPORATION, ORGANIZATION, AND CONVERSION OF FEDERAL MUTUAL ASSOCIATIONS

12. The authority citation for part 543 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 2901 *et seq.*

§§ 543.12–543.13 [Removed]

13. Sections 543.12 and 543.13 are removed.

PART 545—OPERATIONS

14. The authority citation for part 545 continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1828.

§§ 545.15, 545.18–545.20, 545.44, 545.122, 545.136–545.137 [Removed]

15. Sections 545.15, 545.18 through 545.20, 545.44, 545.122, 545.136 and 545.137 are removed.

PART 552—INCORPORATION, ORGANIZATION, AND CONVERSION OF FEDERAL STOCK ASSOCIATIONS

16. The authority citation for part 552 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a.

§ 552.2–4 [Removed]

17. Section 552.2–4 is removed.

§ 552.6–2 [Amended]

18. Section 552.6–2 is amended by removing the phrase ''§ 545.122 of this chapter'' in paragraph (b), and by adding in lieu thereof the phrase ''§ 563.39 of this chapter''.

PART 556—STATEMENTS OF POLICY

19. The authority citation for part 556 continues to read as follows:

Authority: 5 U.S.C. 552, 559; 12 U.S.C. 1464, 1701j–3; 15 U.S.C. 1693–1693r.

§§ 556.4, 556.6, 556.8–556.9, 556.11, 556.14–556.15 [Removed]

20. Sections 556.4, 556.6, 556.8 through 556.9, 556.11, and 556.14 through 556.15 are removed.

PART 562—REGULATORY REPORTING STANDARDS

21. The authority citation for part 562 continues to read as follows:

Authority: 12 U.S.C. 1463.

§ 562.3 [Removed]

22. Section 562.3 is removed.

PART 563—OPERATIONS

23. The authority citation for part 563 continues to read as follows:

Authority: 12 U.S.C. 375b, 1462, 1462a, 1463, 1464, 1467a, 1468, 1817, 1828, 3806; 42 U.S.C. 4106.

§§ 563.8, 563.49, 563.72 [Removed]

24. Sections 563.8, 563.49 and 563.72 are removed.

25. Section 563.41 is amended by removing the period at the end of paragraph (b)(10)(iv) and adding a semicolon in its place, by adding paragraph (b)(11), by removing paragraph (d)(1), by redesignating paragraphs (d)(2) through (d)(7) as paragraphs (d)(1) through (d)(6), respectively, and by removing the phrase ''After January 1, 1995, any'' in the introductory text of newly designated paragraph (d)(1) and adding the word ''Any'' in its place, to read as follows:

§ 563.41 Loans and other transactions with affiliates and subsidiaries.

* * * * *

(b) * * *

(11) The term *capital stock and surplus of the savings association* means ''unimpaired capital and unimpaired surplus'' as defined at § 563.93(b)(11) of this part.

* * * * *

§ 563.42 [Amended]

26. Section 563.42 is amended, in paragraph (d)(1), by removing the phrase ''§ 563.41, any bank, any savings association in a structure qualifying under § 563.41(d)(1) of this part or, after January 1, 1995,'', and by adding in lieu thereof the phrase ''§ 563.41 of this part, any bank, or''.

§ 563.45 [Amended]

27. Section 563.43 is amended by adding paragraph (f) to read as follows:

§ 563.43 Loans by savings associations to their executive officers, directors and principal shareholders.

* * * * *

(f) References to the term ''unimpaired capital and unimpaired surplus'' shall be deemed to refer to ''unimpaired capital and unimpaired surplus'' as defined at § 563.93(b)(11) of this part.

§ 563.52 [Amended]

28. Section 563.52 is amended by removing the phrase ''§ 584.6 of this chapter'' in paragraph (b), and by adding in lieu thereof the phrase ''12 U.S.C. 1467a(m)''.

PART 563d—SECURITIES OF SAVINGS ASSOCIATIONS

29. The authority citation for part 563d continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464; 15 U.S.C. 78c(b), 78l, 78m, 78n, 78w, 78d–1.

§ 563d.200–30 [Removed]

30. Section 563d.200–30 is removed.

PART 563g—SECURITIES OFFERINGS

31. The authority citation for part 563g continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464; 15 U.S.C. 78c(b), 78l, 78m, 78n, 78p, 78w.

32. Section 563g.5 is amended by revising paragraphs (b)(1) and (b)(2) to read as follows:

§ 563g.5 Filing and signature requirements.

* * * * *

(b) *Number of copies.* (1) Unless otherwise required, any filing under this part shall include nine copies of the document to be filed with the OTS, as follows:

(i) Seven copies, which shall include one manually signed copy with exhibits,

three conformed copies with exhibits, and three conformed copies without exhibits, to the Dissemination Branch, Records Management and Information Policy; and

(ii) Two copies, which shall include one manually signed copy with exhibits and one conformed copy, without exhibits, to the Regional Director.

(2) Within five days after the effective date of an offering circular or the commencement of a public offering after the effective date, whichever occurs later, nine copies of the offering circular used shall be filed with the OTS, as follows: seven copies to the Dissemination Branch, Records Management and Information Policy, and two copies to the Regional Director.

* * * * *

§ 563g.22 [Removed]

33. Section 563g.22 is removed.

PART 571—STATEMENTS OF POLICY

34. The authority citation for part 571 continues to read as follows:

Authority: 5 U.S.C. 552, 559; 12 U.S.C. 1462a, 1463, 1464.

§ 571.24 [Amended]

35. Section 571.24 is amended by removing the phrase ''parts 528 and 529'' in paragraph (a), and by adding in lieu thereof the phrase ''part 528''.

PART 583—DEFINITIONS

36. The authority citation for part 583 is revised to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1468.

§ 583.17 [Amended]

37. Section 583.17 is amended by removing the phrase ''§ 584.6 of this chapter'', and by adding in lieu thereof the phrase ''12 U.S.C. 1467a(m)''.

PART 584—REGULATED ACTIVITIES

38. The authority citation for part 584 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1468.

§ 584.2a [Amended]

39. Section 584.2a is amended by removing the phrase ''§ 584.6 of this chapter'' in paragraph (a)(2), and by adding in lieu thereof the phrase ''12 U.S.C. 1467a(m)''.

§ 584.2–1 [Amended]

40. Section 584.2–1 is amended by removing the phrase ''§ 584.3 of this part'' where it appears in paragraphs (b)(2) and (b)(3) introductory text, and by adding in lieu thereof the phrase ''12 U.S.C. 1468''.

§§ 584.3, 584.6, 584.11 [Removed]

41. Sections 584.3, 584.6 and 584.11 are removed.

Dated: December 8, 1995.

By the Office of Thrift Supervision.

Jonathan L. Fiechter,

Acting Director.

[FR Doc. 95–31121 Filed 12–26–95; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–NM–246–AD; Amendment 39–9469; AD 95–26–11]

Airworthiness Directives; Lockheed Model L–1011–385 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to all Lockheed Model L–1011–385 series airplanes, that currently requires visual inspections to detect cracking of the fittings that attach the aft pressure bulkhead to the fuselage stringers. That AD also currently requires replacement of cracked fittings, and repair of adjacent structure if found to be cracked. This amendment requires new repetitive inspections to detect cracking of the fittings and of the splice tab of the aft pressure bulkhead, and corrective actions, if necessary. This amendment is prompted by the results of the visual inspections performed in accordance with the existing AD, which indicate that the visual inspection is inadequate to detect fatigue cracking. The actions specified in this AD are intended to prevent fatigue cracking of the aft pressure bulkhead, which could lead to failure of the end fittings and splice tabs, and subsequent rapid decompression of the airplane during flight.

DATES: Effective January 11, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 11, 1996.

Comments for inclusion in the Rules Docket must be received on or before February 26, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–246–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Lockheed Aeronautical Systems Support Company, Field Support Department, Dept. 693, Zone 0755, 2251 Lake Park Drive, Smyrna, Georgia 30080. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, Small Airplane Directorate, Campus Building, 1701 Columbia Avenue, Suite 2–160, College Park, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Thomas Peters, Aerospace Engineer, Systems and Flight Test Branch, ACE–116A, FAA, Atlanta Aircraft Certification Office, Small Airplane Directorate, Campus Building, 1701 Columbia Avenue, Suite 2–160, College Park, Georgia; telephone (404) 305–7367; fax (404) 305–7348.

SUPPLEMENTARY INFORMATION: On September 6, 1995, the FAA issued AD 95–18–52, amendment 39–9366 (60 FR 47465, September 13, 1995), which is applicable to all Lockheed Model L–1011–385 series airplanes. That AD requires repetitive detailed visual inspections to detect cracking of the fittings that attach the aft pressure bulkhead to the fuselage stringers at stringers 1 through 10 and at stringers 64 through 56, and various follow-on actions. That action was prompted by reports of cracks found in these fittings. The actions required by that AD are intended to prevent fatigue cracking that can lead to failure of the fittings that attach the aft pressure bulkhead to the fuselage stringer, and subsequent rapid decompression of the airplane during flight.

The FAA has reviewed the findings from the visual inspections performed in accordance with AD 95–18–52, and from eddy current inspections performed voluntarily by an operator. The eddy current inspections revealed findings of cracks in the end fittings; these same fittings had been inspected previously using the visual inspection technique required by the existing AD and this cracking was identified. In light of these findings, the FAA has determined that the currently required visual inspections are inadequate to detect all fatigue cracking. Such fatigue cracking, if not detected and corrected in a timely manner, could lead to failure of the fittings and splice tabs of the aft pressure bulkhead, and subsequently

could result in rapid decompression of the airplane during flight.

The FAA has reviewed and approved Lockheed L–1011 Service Bulletin 093–53–105, Revision 1, dated November 17, 1995, which describes procedures for:

1. Repetitive eddy current surface scan (ECSS) inspections to detect cracking of the end fittings that attach the aft pressure bulkhead to the fuselage stringers at stringers 1 through 14 (right side) and at stringers 52 through 64 (left side);

2. Repetitive ECSS inspections to detect cracking of the lower (or inner) surface of the upper bonded splice tab of the bulkhead assembly at stringers 1 through 14 and at stringers 52 through 64.

3. If any end fitting is found cracked, replacement of a fitting with a new fitting without pilot holes, rework of the fitting, and various follow-on actions (i.e., bolt hole eddy current, ECSS, and borescope inspections; and repair) of the inner and outer tee caps; and

4. A bolt hole eddy current inspection to detect cracking of the forward flange of the inner tee cap, if any fastener is found cracked; and repair, if necessary.

Accomplishment of the ECSS inspections described in this service bulletin would eliminate the need for the repetitive visual inspections.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of this same type design, this AD supersedes AD 95–18–52 to continue to require repetitive detailed visual inspections to detect cracking of the fittings that attach the aft pressure bulkhead to the fuselage stringers at stringers 1 through 10 (right side) and at stringers 56 through 64 (left side). This AD adds a requirement to conduct repetitive ECSS inspections to detect cracking of the end fittings and of the splice tab at stringers 1 through 14 (right side) and at stringers 52 through 64 (left side) of the aft pressure bulkhead, and corrective actions, if necessary.

Once the ECSS inspections are initiated, the repetitive visual inspection requirements of this AD are terminated.

The previous requirement of AD 95–18–52 to submit a report of inspection findings to the FAA has been deleted from this AD.

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

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 95–NM–246–AD.'' The postcard will be date stamped and returned to the commenter.

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

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 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 39–9366 (60 FR 47465, September 13, 1995), and by adding a new airworthiness directive (AD), amendment 39–9469, to read as follows:

95–26–11 Lockheed: Amendment 39–9469. Docket 95–NM–246–AD. Supersedes AD 95–18–52, Amendment 39–9366.

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

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (h) 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 fatigue cracking of the aft pressure bulkhead, which could lead to failure of the end fittings and splice tab, and

subsequent rapid decompression of the airplane during flight, accomplish the following:

Restatement of Actions Required by AD 95–18–52, Amendment 39–9366

Perform a detailed visual inspection to detect cracking of the fittings that attach the aft pressure bulkhead to the fuselage stringers (hereinafter referred to as ''fittings'') at stringers 1 through 10 (right side) and at stringers 56 through 64 (left side), at the later of the times specified in either paragraph (a)(1) or (a)(2) of this AD.

(1) Prior to the accumulation of 20,000 total flight cycles; or

(2) Within the next 25 flight cycles or 10 days after September 28, 1995 (the effective date of AD 95–18–52, amendment 39–9366), whichever occurs earlier.

(b) If any cracking is detected in the fitting at either stringer 10 or stringer 56 during the inspection required by paragraph (a) of this AD, prior to further flight, perform a detailed visual inspection to detect cracking of the next adjacent fitting (i.e., at stringer 11 or 55). If cracking is detected in that fitting, prior to further flight, perform a detailed visual inspection to detect cracking of the next adjacent fitting (i.e., at stringer 12 or 54). If cracking is detected in that fitting, prior to further flight, continue to perform detailed visual inspections to detect cracking of the next adjacent fitting(s) until such a fitting is found to be free of cracks.

(c) If any cracked fitting is detected during the inspections required by either paragraph (a) or (b) of this AD, prior to further flight, accomplish the requirements of paragraphs (c)(1) and (c)(2) of this AD.

(1) Replace the cracked fitting with a new fitting, or with a serviceable fitting on which a detailed visual inspection has been performed previously to detect cracking and that has been found to be free of cracks; and

(2) Perform a detailed visual inspection to detect cracking in the radius at the lower end of the vertical leg of the bulkhead T-shaped frame between the stringer locations on either side of the stringer having the cracked fitting. If any cracked T-shaped frame is detected, prior to further flight, repair in accordance with a method approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA, Small Airplane Directorate.

(d) Repeat the inspections and other necessary actions required by paragraphs (a), (b), and (c) of this AD at intervals not to exceed 1,800 flight cycles or 3,000 flight hours, whichever occurs earlier, until paragraph (e) of this AD is accomplished.

New Actions Required by This Amendment

(e) Except as provided by paragraph (f) of this AD, prior to the accumulation of 20,000 flight cycles, or within 30 days after the effective date of this AD, whichever occurs later, accomplish the requirements of both paragraphs (e)(1) and (e)(2) of this AD, in accordance with Lockheed L–1011 Service Bulletin 093–53–105, Revision 1, dated November 17, 1995. Repeat the ECSS inspections thereafter at intervals not to exceed 2,500 flight cycles. Accomplishment of the eddy current surface scan (ECSS) inspection constitutes terminating action for the repetitive inspection requirements of paragraph (d) of this AD.

(1) Perform an ECSS inspection to detect cracking of the fittings at stringers 1 through 14 (right side) and at stringers 52 through 64 (left side), in accordance with the service bulletin. Except as provided by paragraph (g) of this AD, if any cracking is detected, prior to further flight, replace the fitting with a new fitting without pilot holes, rework the fitting, and perform various follow-on actions (i.e., bolt hole eddy current, ECSS, and borescope inspections; and repair) of the inner and outer tee caps, in accordance with the service bulletin. And

(2) Perform an ECSS inspection to detect cracking of the lower (or inner) surface of the upper bonded splice tab of the bulkhead assembly at stringers 1 through 14 (right side) and at stringers 52 through 64 (left side), in accordance with the service bulletin.

(i) Except as provided by paragraph (g) of this AD, if any cracking is detected at the upper bonded splice tab, repair in accordance with a method approved by the Manager, Atlanta ACO, FAA, Small Airplane Directorate.

(ii) Except as provided by paragraph (g) of this AD, if any cracking is detected at a fastener, prior to further flight, perform a bolt hole eddy current (BHEC) inspection to detect cracking of the forward flange of the inner tee cap, in accordance with the service bulletin. If any cracking is detected, prior to further flight, repair in accordance with the service bulletin.

(f) Accomplishment of the initial ECSS inspections required by paragraph (e) of this AD may be deferred to a date within 120 days after the effective date of this AD provided that, in the interim, a visual inspection as specified in paragraph (a) of this AD is accomplished within 30 days after the effective date of this AD and repeated thereafter at intervals not to exceed 50 flight cycles. Once the ECSS inspections begin, the visual inspections may be terminated.

(g) If two or more adjacent fittings on both sides of the cracked fittings or bonded splice tabs/fasteners are determined to be free of cracks by the ECSS inspection required by paragraph (e)(1) and (e)(2) of this AD, repeat the ECSS inspection of the adjacent fittings thereafter at intervals not to exceed 600 flight cycles until the cracked fittings or splice tabs/fasteners are replaced or repaired. Within 2,500 total flight cycles after finding the crack, replace or repair the cracked fitting and/or splice tab/fasteners in accordance with Lockheed L–1011 Service Bulletin 093–53–105, Revision 1, dated November 17, 1995.

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

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

(i) 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.

(j) The actions shall be done in accordance with Lockheed L–1011 Service Bulletin 093–53–105, Revision 1, dated November 17, 1995. 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 Lockheed Aeronautical Systems Support Company, Field Support Department, Dept. 693, Zone 0755, 2251 Lake Park Drive, Smyrna, Georgia 30080. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, Small Airplane Directorate, Campus Building, 1701 Columbia Avenue, Suite 2–160, College Park, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(k) This amendment becomes effective on January 11, 1996.

Issued in Renton, Washington, on December 18, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–31297 Filed 12–26–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 95–ANE–58; Amendment 39–9461; AD 95–26–03]

Airworthiness Directives; Pratt and Whitney JT8D Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to Pratt & Whitney (PW) JT8D series turbofan engines, that currently requires inspection, and replacement, if necessary, of suspect 7th through 12th stage high pressure compressor (HPC) disks. This amendment adds 46 more applicable engines, revises the inspection requirements, incorporates a new PW Alert Service Bulletin (ASB), and requires reporting the results of the inspection to the manufacturer. This amendment is prompted by the identification of additional suspect engines, by the development of revised inspection intervals, and by the issuance of the new PW ASB. The actions specified by this AD are intended to prevent an uncontained HPC disk failure, which can result in damage to the aircraft.

DATES: Effective January 11, 1996.

The incorporation by reference of certain publications listed in the

regulations is approved by the Director of the Federal Register as of January 11, 1996.

Comments for inclusion in the Rules Docket must be received on or before February 26, 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–58, 12 New England Executive Park, Burlington, MA 01803–5299.

The service information referenced in this AD may be obtained from Pratt & Whitney, Publications Department, M/S 132–30, 400 Main St., East Hartford, CT 06108. 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: Mark A. Rumizen, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7137, fax (617) 238–7199.

SUPPLEMENTARY INFORMATION: On August 15, 1995, the Federal Aviation Administration (FAA) issued airworthiness directive (AD) 95–15–51, Amendment 39–9345 (60 FR 43963, August 24, 1995), applicable to Pratt & Whitney (PW) JT8D series engines with specified serial numbers, to require inspection, and replacement if necessary, of suspect 7th through 12th stage high pressure compressor (HPC) disks. That action was prompted by a report that on June 8, 1995, a PW JT8D–9A engine, installed on a McDonnell Douglas DC–9–32 aircraft, experienced an uncontained engine failure during takeoff at the William B. Hartsfield International Airport in Atlanta, Georgia. The FAA determined that the 7th stage HPC disk failed due to a fatigue crack that originated at a corrosion pit in a shielding hole. The FAA further determined that the fatigue crack origination could have resulted from a disk inspection not performed in accordance with all practices and procedures specified by the FAA and PW. This disk inspection was performed at Turk Hava Yollari (THY), a Turkish engine overhaul and maintenance facility. The FAA identified 24 suspect engines in that AD that had been overhauled by THY for which HPC disk inspection was required. That condition, if not corrected, could result in an uncontained HPC disk failure, which can result in damage to the aircraft.

Since the issuance of that AD, the FAA has identified an additional 46 suspect engines, based on a review of records from the THY facility. In addition, the FAA has also developed revised inspection intervals, based on further examination and analysis of suspect disks. Also, PW has issued Alert Service Bulletin (ASB) No. A6226, dated October 17, 1995. Finally, this superseding AD requires reporting the results of the inspection to the manufacturer. The FAA has reviewed and approved the technical contents of that ASB, which defines inspection requirements of these suspect disks.

Since an unsafe condition has been identified that is likely to exist or develop on other engines of this same type design, this AD supersedes AD 95–15–51 to add 46 more applicable engines, to revise the inspection requirements, to incorporate PW ASB No. A6226, dated October 17, 1995, and to report the results of the inspection to the manufacturer. The actions are required to be accomplished in accordance with the ASB described previously.

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

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 95–ANE–58.'' The postcard will be date stamped and returned to the commenter.

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

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 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—9345 (60 FR 43963, August 24, 1995), and by adding a new airworthiness directive, Amendment 39–9461, to read as follows:

95–26–03 Pratt & Whitney: Amendment 39–9461. Docket 95–ANE–58. Supersedes AD 95–15–51, Amendment 39–9345.

Applicability: Pratt & Whitney (PW) Models JT8D–1, –1A, –1B, –7, –7A, –9, –9A, –11, –15, –15A, –17, –17A, –17R, –17AR engines with serial numbers specified in Section 2 of PW Alert Service Bulletin (ASB) No. A6226, dated October 17, 1995. These engines are installed on but not limited to Boeing B727 and B737, and McDonnell Douglas DC–9 aircraft.

Note: This airworthiness directive (AD) applies to each engine 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 engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) 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 engine from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent an uncontained high pressure compressor (HPC) disk failure, which can result in damage to the aircraft, accomplish the following:

(a) Perform a records search, inspect if necessary, repair or replace if necessary, and report results, of stage 7 through 12 HPC disks in accordance with the intervals and procedures of paragraph 2.A through 2.D of PW ASB No. A6226, dated October 17, 1995. Reporting requirements have been approved by the Office of Management and Budget and assigned OMB control number 2120–0056.

(b) For the purpose of this AD, the accomplishment effective date to be used for determination of inspection intervals, as required by Section 2.B of PW ASB A6226, dated October 17, 1995, is defined as the effective date of this AD.

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

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

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

(e) The actions required by this AD shall be done in accordance with the following service document:

Document No.	Pages	Revision	Date
PW ASB No. A6226 ..... Total pages: 20.	1–20	Original ..	October 17, 1995.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Pratt & Whitney, Publications Department, M/S 132–30, 400 Main St., East Hartford, CT 06108. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on January 11, 1996.

Issued in Burlington, Massachusetts, on December 11, 1995.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 95–31332 Filed 12–26–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 91

[Docket No. 24456; Amendment No. 91–247]

Special VFR Weather Minimums

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; technical amendment.

SUMMARY: This action corrects the Special visual flight rules (SVFR) weather minimums in Alaska. Specifically, this action allow SVFR operations in Alaska when the sun is 6 degrees or more below the horizon.

EFFECTIVE DATE: December 27, 1995.

FOR FURTHER INFORMATION CONTACT: Janet Apple, Air Traffic Rules Branch, ATP–230, Airspace Rules and Aeronautical Information Division, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8783.

SUPPLEMENTARY INFORMATION: On December 17, 1991, the FAA published the Airspace Reclassification final rule (56 FR 65638) that, in pertinent part, changed regulations and procedures in regard to airspace classifications. These changes, effective September 16, 1992, were intended to simplify airspace classifications to reduce airspace complexity and thereby enhance safety.

Prior to the Airspace Reclassification final rule, § 91.157 of Title 14, Code of Federal Regulations (14 CFR) stated that no person may operate an aircraft (other than a helicopter) in a control zone under the special weather minimums of section 91.157 between sunset and sunrise (or in Alaska, when the sun is more than 6 degrees below the horizon), with additional conditions. However, the amendment language in the Airspace Reclassification final rule (Amdt. 91–227 56 FR 65660, December 17, 1991) inadvertently changed section 91.157 to read ''* * * 6 degrees or more above the horizon.'' This technical amendment corrects that error.

The Amendment

This amendment to 14 CFR part 91 subparagraph (b)(4) revises the restriction for Special VFR operations in Alaska to 6 degrees or more below the horizon. The FAA has determined that this action: (1) Is not a ''major rule'' under Executive Order 12291; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is negligible.

This action is a clarification of an existing rule and does not place any new restrictions or requirements on the public, but rather lifts certain restrictions presently in place. Notice and public procedure under 5 U.S.C. 553(b) are unnecessary.

List of Subjects in 14 CFR Part 91

Air traffic control, Aircraft, Airmen, Airports, Aviation safety.

PART 91—GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for Part 91 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1155, 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46502, 46504, 46506, 46507, 47122, 47508, 47528–47531; articles 12 and 29 of the Convention on International Civil Aviation 961 stat. 1180.

2. Section 91.157 is amended by revising paragraph (b)(4) introductory text to read as follows:

§ 91.157 Special VFR weather minimums.

* * * * *

(b) Special VFR operations may only be conducted—

* * * * *

(4) Except for helicopters, between sunrise and sunset (or in Alaska, when the sun is 6 degrees or more below the horizon) unless—

* * * * *

Issued in Washington, D.C. on December 18, 1995.

Harold W. Becker,

Acting Program Director for Air Traffic Rules and Procedures.

[FR Doc. 95–31290 Filed 12–26–95; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Parts 922, 924, 925, 935, 936, 938, 940, 941, 942, 943 and 944

[Docket No. 951201283–5283–01]

RIN 0648–AI51

National Marine Sanctuary Program

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

ACTION: Final rule.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) is removing 15 CFR Parts 924, 925, 935, 936, 938, 940, 941, 942, 943, and 944 and revising 15 CFR Part 922 by consolidating therein the removed regulations. As revised, Part 922 implements the National Marine Sanctuaries Act, as amended, (Act), 16 U.S.C. 1431 *et seq.* and governs ten of the present twelve National Marine Sanctuaries. The rulemakings to implement the designations of the eleventh and twelfth Sanctuaries, the Florida Keys National Marine Sanctuary and the Hawaiian Islands Humpback Whale National Marine Sanctuary, are presently ongoing and the regulations governing the old Key Largo and Looe Key National Marine Sanctuaries (15 CFR Parts 929 and 937) subsumed in the new Florida Keys Sanctuary will continue to be maintained until replaced by regulations governing the entire Florida Keys Sanctuary. This final rule does not make substantive changes to the existing regulations governing the other ten Sanctuaries, rather it removes duplicative and outdated provisions, makes technical changes to incorporate current term usage and achieve uniformity in regulatory language, and consolidates and reorganizes all remaining provisions in a more logical and cohesive order. The effect of this final rule is to make the regulations implementing the Act more concise, better organized, and thereby easier for the public to use.

EFFECTIVE DATE: December 27, 1995.

FOR FURTHER INFORMATION CONTACT: Harriet Sopher, Office of Ocean and Coastal Resource Management, at 301–713–3125 (ext. 109), fax: 301–713–0404, e-mail: hsopher@ocean.nos.noaa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The National Oceanic and Atmospheric Administration (NOAA) is removing 15 CFR Parts 924, 925, 935, 936, 938, 940, 941, 942, 943, and 944 and is revising 15 CFR Part 922 by consolidating therein the removed regulations.

In March 1995, President Clinton issued a directive to Federal agencies regarding their responsibilities under his Regulatory Reinvention Initiative. This initiative is part of the National Performance Review and calls for immediate, comprehensive regulatory reform. The President directed all agencies to undertake an exhaustive review of all their regulations, with an emphasis on eliminating or modifying those that are obsolete, duplicative, or otherwise in need of reform. This final rule is intended to carry out the President's directive with respect to the regulations implementing the Act and the National Marine Sanctuary program and revises those regulations as follows:

II. Consolidates National Marine Sanctuary Regulations in One CFR Part, 15 CFR Part 922, and removes Ten CFR Parts Containing Site-Specific Regulations

Currently, regulations implementing the Act are included in 13 separate Parts of title 15, Code of Federal Regulations. This rulemaking removes ten parts of the Code and consolidates the removed regulations, which addressed ten of the twelve National Marine Sanctuaries, in 15 CFR Part 922. The rulemakings to implement the designations of the eleventh and twelfth Sanctuaries, the Florida Keys National Marine Sanctuary and the Hawaiian Islands Humpback Whale National Marine Sanctuary, are presently ongoing and the regulations governing the old Key Largo and Looe Key National Marine Sanctuaries (15 CFR Parts 929 and 937) subsumed in the new Florida Keys Sanctuary will continue to be maintained until replaced by regulations governing the entire Florida Keys Sanctuary. As revised, subparts A, D and E of the 15 CFR Part 922 are applicable to all the ten Sanctuaries. Site-specific regulations for each of the ten appear in each Sanctuary's own subpart (subparts F through O). Subparts B and C apply to the Site Evaluation List (SEL) and to the designation of future Sanctuaries.

III. Makes Technical Changes to Incorporate Current Term Usage and Achieve Uniformity in Regulatory Language, and Replaces the Duplicative Provisions in the Site-Specific Regulations With Uniform Definitions and Provisions in Subparts A, D and E Applicable to the Ten Covered Sanctuaries

Many of the existing regulations for the ten Sanctuaries covered by this rulemaking contain identical or nearly identical provisions addressing matters such as definitions, emergency regulations, penalties, appeals of administrative action, and permit procedures and criteria. The consolidation of these provisions and the deletion of the duplicative provisions results in the deletion of many pages of text from the CFR.

The site specific prohibitions were retained for each Sanctuary in its own respective subpart. Site-specific definitions were only retained in those cases where application of a given term to other Sanctuaries other than the Sanctuary in question might create a conflict with either regulatory provisions or management practice at another Sanctuary.

IV. Reorganizes Remaining Regulations

The final rule reorganizes the remaining regulations of the present 15 CFR Part 922 in a more logical and cohesive order. For example, those provisions relating to the SEL and to the designation of future Sanctuaries have been moved to two separate subparts. Provisions pertaining to management

plan development and implementation have been moved to a single subpart. This reorganization will make the regulations easier for the public to use.

V. Removes Regulations Restating Statutory Language

The final rule removes those regulations in 15 CFR Part 922 that simply restate provisions contained in the Act relating to the designation of National Marine Sanctuaries. These provisions are replaced, where appropriate, with references to the applicable sections of the Act.

VI. Removes Site Selection and Identification Criteria and Other Outdated Provisions

The final rule removes Appendix 1 to 15 CFR Part 922 which sets forth National Marine Sanctuary site selection and identification criteria. Removal of these criteria is appropriate because the SEL is not presently active and the National Marine Sanctuary program intends to issue revised, updated criteria prior to its reactivation. This rulemaking does not affect the status of sites currently on the SEL; such sites remain on the SEL.

In addition, the final rule removes certain regulatory provisions that are no longer applicable because of the passage of the provision's effective period as specified in the regulations. The most notable of these are the provisions found in site-specific regulations for the Flower Garden Banks, Monterey Bay, Stellwagen Bank and Olympic Coast National Marine Sanctuaries which describe the process for obtaining certification of a valid lease, permit, license, other authorization, or right of subsistence use or access in existence on the date of Sanctuary designation. The 90-day period specified in these regulations for notifying NOAA of the existence of such authorizations or rights has long since expired. Since this type of certification is no longer available for those individual sites, these sections are obsolete and continued codification of them in the CFR is not necessary.

VII. Miscellaneous Rulemaking Requirements

Executive Order 12612: Federalism Assessment

NOAA has concluded that this regulatory action does not have federalism implications sufficient to warrant the preparation of a Federalism Assessment under Executive Order 12612.

Executive Order 12630: Takings Implication

NOAA has concluded that this regulatory action does not have takings implications within the meaning of Executive Order 12630.

Executive Order 12866: Regulatory Impact

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

Paperwork Reduction Act

The revision of 15 CFR Part 922 and removal of 15 CFR Parts 924, 925, 935, 936, 938, 940, 941, 942, 943, and 944 does not impose any information collection requirement subject to review and approval by OMB under the Paperwork Reduction Act of 1980, 44 U.S.C. 3500 *et seq.*

National Environmental Policy Act

NOAA has concluded that this regulatory action does not constitute a major federal action significantly affecting the quality of the human environment. Therefore, an environmental impact statement is not required.

Administrative Procedure Act

Because this rule makes only technical nonsubstantive and consolidating and organizational changes to existing regulations, no useful purpose would be served by providing notice and opportunity for public comment. Accordingly, the Assistant Administrator for Ocean Services and Coastal Zone Management under 5 U.S.C. 553(b)(B) for good cause finds that providing notice and opportunity for public comment is unnecessary. Because this rule is not substantive, under 5 U.S.C. 553(d) it is not subject to a 30-day delay in effective date.

Authority: National Marine Sanctuaries Act, as amended, 16 U.S.C. 1431 *et seq.*

List of Subjects

15 CFR Part 922

Administrative practice and procedure, Coastal zone, Education, Environmental protection, Marine resources, Penalties, Recreation and recreation areas, Reporting and recordkeeping requirements, Research.

15 CFR 924

Administrative practice and procedure
Historic preservation
Monitor
Monuments and memorials
National Oceanic and Atmospheric Administration
Penalties
Reporting and recordkeeping requirements
Vessels

15 CFR 925

Administrative practice and procedure
Coastal zone
Marine resources
National Oceanic and Atmospheric Administration
Penalties
Recreation and recreation areas
Reporting and recordkeeping requirements
Research

15 CFR 935

Administrative practice and procedure
Coastal zone
Marine resources
National Oceanic and Atmospheric Administration
Penalties
Recreation and recreation areas
Reporting and recordkeeping requirements
Research

15 CFR 936

Administrative practice and procedure
Coastal zone
Marine resources
National Oceanic and Atmospheric Administration
Penalties
Recreation and recreation areas
Reporting and recordkeeping requirements
Research

15 CFR 938

Administrative practice and procedure
Coastal zone
Marine resources
National Oceanic and Atmospheric Administration
Penalties
Recreation and recreation areas
Reporting and recordkeeping requirements
Research

15 CFR 940

Administrative practice and procedure
Coastal zone
Marine resources
National Oceanic and Atmospheric Administration
Penalties
Recreation and recreation areas
Reporting and recordkeeping requirements
Research

15 CFR 941

Administrative practice and procedure
American Samoa
Coastal zone

Marine resources
National Oceanic and Atmospheric Administration
Penalties
Recreation and recreation areas
Reporting and recordkeeping requirements
Research

15 CFR 942

Administrative practice and procedure
Coastal zone
Marine resources
National Oceanic and Atmospheric Administration
Penalties
Recreation and recreation areas
Reporting and recordkeeping requirements
Research

15 CFR 943

Administrative practice and procedure
Coastal zone
Marine resources
National Oceanic and Atmospheric Administration
Penalties
Recreation and recreation areas
Reporting and recordkeeping requirements
Research

15 CFR 944

Administrative practice and procedure
Coastal zone
Marine resources
National Oceanic and Atmospheric Administration
Penalties
Recreation and recreation areas
Reporting and recordkeeping requirements
Research

Dated: December 8, 1995.

W. Stanley Wilson,

Assistant Administrator for Ocean Services and Coastal Zone Management.

1. Accordingly, for the reasons set forth above, 15 CFR Part 922 is revised to read as follows:

PART 922—NATIONAL MARINE SANCTUARY PROGRAM REGULATIONS

Subpart A—General

Subpart B—Site Evaluation List (SEL)

Subpart C—Designation of National Marine Sanctuaries

Subpart D—Management Plan Development and Implementation

Subpart E—Regulations of General Applicability

Subpart F—Monitor National Marine Sanctuary

Subpart G—Channel Islands National Marine Sanctuary

Subpart H—Point Reyes/Farallon Islands National Marine Sanctuary

Subpart I—Gray's Reef National Marine Sanctuary

Subpart J—Fagatele Bay National Marine Sanctuary.

Subpart K—Cordell Bank National Marine Sanctuary

Subpart L—Flower Garden Banks National Marine Sanctuary

Subpart M—Monterey Bay National Marine Sanctuary

Subpart N—Stellwagen Bank National Marine Sanctuary

Subpart O—Olympic Coast National Marine Sanctuary

Authority: 16 U.S.C. 1431 *et seq.*

Subpart A—General

§ 922.1 Applicability of regulations.

Unless noted otherwise, the regulations in subparts A, D and E apply to all ten National Marine Sanctuaries for which site-specific regulations appear in subparts F through O, respectively. Subparts B and C apply to the site evaluation list and to the designation of future Sanctuaries.

§ 922.2 Mission, goals, and special policies.

(a) In accordance with the standards set forth in title III of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, also known as the National Marine Sanctuaries Act (Act) the mission of the National Marine Sanctuary program (Program) is to identify, designate and manage areas of the marine environment of special national, and in some cases international, significance due to their conservation, recreational, ecological, historical, research, educational, or aesthetic qualities.

(b) The goals of the Program are to carry out the mission to:

(1) Identify and designate as National Marine Sanctuaries areas of the marine environment which are of special national significance;

(2) Provide authority for comprehensive and coordinated conservation and management of these marine areas, and activities affecting them, in a manner which complements existing regulatory authorities;

(3) Support, promote, and coordinate scientific research on, and monitoring of, the resources of these marine areas, especially long-term monitoring and research of these areas;

(4) Enhance public awareness, understanding, appreciation, and wise use of the marine environment;

(5) Facilitate to the extent compatible with the primary objective of resource protection, all public and private uses of the resources of these marine areas not prohibited pursuant to other authorities;

(6) Develop and implement coordinated plans for the protection and management of these areas with appropriate Federal agencies, State and local governments, Native American tribes and organizations, international organizations, and other public and private interests concerned with the continuing health and resilience of these marine areas;

(7) Create models of, and incentives for, ways to conserve and manage these areas;

(8) Cooperate with global programs encouraging conservation of marine resources; and

(9) Maintain, restore, and enhance living resources by providing places for species that depend upon these marine areas to survive and propagate.

(c) To the extent consistent with the policies set forth in the Act, in carrying out the Program's mission and goals:

(1) Particular attention will be given to the establishment and management of marine areas as National Marine Sanctuaries for the protection of the area's natural resource and ecosystem values; particularly for ecologically or economically important or threatened species or species assemblages, and for offshore areas where there are no existing special area protection mechanisms;

(2) The size of a National Marine Sanctuary, while highly dependent on the nature of the site's resources, will be no larger than necessary to ensure effective management;

(d) Management efforts will be coordinated to the extent practicable with other countries managing marine protected areas;

(4) Program regulations, policies, standards, guidelines, and procedures under the Act concerning the identification, evaluation, registration, and treatment of historical resources shall be consistent, to the extent practicable, with the declared national policy for the protection and preservation of these resources as stated in the National Historic Preservation Act of 1966, 16 U.S.C. 470 *et seq.*, the Archeological and Historical Preservation Act of 1974, 16 U.S.C. 469 *et seq.*, and the Archeological Resources Protection Act of 1979 (ARPA), 16 U.S.C. 470aa *et seq.* The same degree of regulatory protection and preservation planning policy extended to historical resources on land shall be extended, to the extent practicable, to historical resources in the marine environment within the boundaries of designated National Marine Sanctuaries. The management of historical resources under the authority of the Act shall be consistent, to the extent practicable, with the Federal archeological program by consulting the Uniform Regulations, ARPA (43 CFR part 7) and other relevant Federal regulations. The Secretary of the Interior's Standards and Guidelines for Archeology may also be consulted for guidance. These guidelines are available from the Office of Ocean and Coastal Management at (301) 713–3125.

§ 922.3 Definitions.

Act means title III of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 16 U.S.C. 1431 *et seq.*, also known as the National Marine Sanctuaries Act.

Active Candidate means a site selected by the Secretary from the Site Evaluation List for further consideration for possible designation as a National Marine Sanctuary.

Assistant Administrator means the Assistant Administrator for Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration (NOAA), or designee.

Benthic community means the assemblage of organisms, substrate, and structural formations found at or near the bottom that is periodically or permanently covered by water.

Commercial fishing means any activity that results in the sale or trade for intended profit of fish, shellfish, algae, or corals.

Conventional hook and line gear means any fishing apparatus operated aboard a vessel and composed of a single line terminated by a combination of sinkers and hooks or lures and spooled upon a reel that may be hind- or electrically operated, hand-held or mounted. This term does not include bottom longlines.

Cultural resources means any historical or cultural feature, including archaeological sites, historic structures, shipwrecks, and artifacts.

Director means, except where otherwise specified, the Director of the Office of Ocean and Coastal Resource Management, NOAA, or designee.

Exclusive economic zone means the exclusive economic zone as defined in the Magnuson Fishery Conservation and Management Act, 16 U.S. 1801 *et seq.*

Fish wastes means waste materials resulting from commercial fish processing operations.

Historical resource means a resource possessing historical, cultural, archaeological or paleontological significance, including sites, structures, districts, and objects significantly associated with or representative of earlier people, cultures, and human activities and events. Historical resource also includes ''historical properties'' as defined in the National Historic Preservation Act, as amended, 16 U.S.C. 470 *et seq.*, and its implementing regulations, as amended.

Indian tribe means any American Indian tribe, band, group, or community recognized as such by the Secretary of the Interior.

Injure means to change adversely, either in the short or long term, a chemical, biological or physical attribute of, or the viability of. This includes, but is not limited to, to cause the loss of or destroy.

Lightering means at-sea transfer of petroleum-based products, materials, or other matter from vessel to vessel.

Marine means those areas of coastal and ocean waters, the Great Lakes and their connecting waters, and submerged lands over which the United States exercises jurisdiction, including the exclusive economic zone, consistent with international law.

Mineral means clay, stone, sand, gravel, metalliferous ore, non-metalliferous ore, or any other solid material or other matter of commercial value.

National historic landmark means a district, site, building, structure or object designated as such by the Secretary of the Interior under the National Historic Landmarks Program (36 CFR part 65).

National Marine Sanctuary means an area of the marine environment of special national significance due to its resource or human-use values, which is designated as such to ensure its conservation and management.

Person means any private individual, partnership, corporation or other entity; or any officer, employee, agent, department, agency or instrumentality of the Federal government, of any State or local unit of government, or of any foreign government.

Regional Fishery Management Council means any fishery council established under section 302 of the Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.*

Sanctury quality means any particular and essential characteristic of a Sanctuary, including, but not limited to, water, sediment, and air quality.

Sanctuary resource means any living or none-living resource of a National Marine Sanctuary that contributes to the conservation, recreational, ecological, historical, research, educational, or aesthetic value of the Sanctuary, including, but not limited to, the substratum of the area of the Sanctuary, other submerged features and the surrounding seabed, carbonate rock, corals and other bottom formations, coralline algae and other marine plants and algae, marine invertebrates, brine-seep biota, phytoplankton, zooplankton, fish, seabirds, sea turtles and other marine reptiles, marine mammals and historical resources.

Secretary means the Secretary of the United States Department of Commerce, or designee.

Shunt means to discharge expended drilling cuttings and fluids near the ocean seafloor.

Site Evaluation List (SEL) means a list of selected natural and historical resource sites selected by the Secretary as qualifying for further evaluation for possible designation as National Marine Sanctuaries.

State means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samos, the United States Virgin Islands, Guam, and any other commonwealth, territory, or possession of the United States.

Subsistence use means the customary and traditional use by rural residents of areas near or in the marine environment for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation; for the making and selling of handicraft articles; and for barter, if for food or non-edible items other than money, if the exchange is of a limited and non-commercial nature.

Take or taking means: (1) For any marine mammal, sea turtle, or seabird listed as either endangered or threatened pursuant to the Endangered Species Act, to harass, harm, pursue, hunt, shoot, would, kill, trap, capture, collect or injure, or to attempt to engage in any such conduct; (2) For any other marine mammal, sea turtle, or seabird, to harass, hunt, capture, kill, collect or injure, or to attempt to engage in any such conduct. For the purposes of both (1) and (2) of this definition, this includes, but is not limited to, to collect any dead or injured marine mammal, sea turtle or seabird, or any part thereof; to restrain or detain any marine mammal, sea turtle or seabird, or any part thereof, no matter how temporarily; to tag any sea turtle, marine mammal or seabird; to operate a vessel or aircraft or to do any other act that results in the disturbance or molestation of any marine mammal, sea turtle or seabird.

Tropical fish means fish or minimal sport and food value, usually brightly colored, often used for aquaria purposes and which lives in a direct relationship with live bottom communities.

Vessel means a watercraft of any description capable of being used as a means of transportation in/on the waters of a Sanctuary.

§ 922.4 Effect of National Marine Sanctuary designation.

The designation of a National Marine Sanctuary, and the regulations implementing it, are binding on any person subject to the jurisdiction of the United States. Designation does not constitute any claim to territorial jurisdiction on the part of the United States for designated sites beyond the U.S. territorial sea, and the regulations implementing the designation shall be applied in accordance with generally recognized principles of international law, and in accordance with treaties, conventions, and other agreements to which the United States is a party. No regulation shall apply to a person who is not a citizen, national, or resident alien of the United States, unless in accordance with:

(a) Generally recognized principles of international law;

(b) An agreement between the United States and the foreign state of which the person is a citizen; or

(c) An agreement between the United States and the flag state of the foreign vessel, if the person is a crew member of the vessel.

Subpart B—Site Evaluation List (SEL)

§ 922.10 General.

(a) The Site Evaluation List (SEL) was established as a comprehensive list of marine sites with high natural resource values and with historical qualities of special national significance that are highly qualified for further evaluation for possible designation as National Marine Sanctuaries.

(b) The SEL is currently inactive. Criteria for inclusion of marine sites on a revised SEL will be issued, with public notice and opportunity to comment, when the Director determines that the SEL should be reactivated.

(c) Only sites on the SEL may be considered for subsequent review as active candidates for designation.

(d) Placement of a site on the SEL, or selection of a site from the SEL as an active candidate for designation as provided for in § 922.21, by itself shall not subject the site to any regulatory control under the Act. Such controls may only be imposed after designation.

Subpart C—Designation of National Marine Sanctuaries

§ 922.20 Standards and procedures for designation.

In designating a National Marine Sanctuary, the Secretary shall apply the standards and procedures set forth in section 303 and section 304 of the Act.

§ 922.21 Selection of active candidates.

(a) The Secretary shall, from time to time, select a limited number of sites from the SEL for Active Candidate consideration based on a preliminary assessment of the designation standards set forth in section 303 of the Act.

(b) Selection of a site as an Active Candidate shall begin the formal Sanctuary designation-evaluation process. A notice of intent to prepare a draft environmental impact statement shall be published in the Federal Register and in newspapers in the area(s) of local concern. A brief written analysis describing the site shall be provided. The Secretary, at any time, may drop a site from consideration if the Secretary determines that the site does not meet the designation standards and criteria set forth in the Act.

§ 922.22 Development of designation materials.

(a) In designating a National Marine Sanctuary, the Secretary shall prepare the designation materials described in section 304 of the Act.

(b) If a proposed Sanctuary includes waters within the exclusive economic zone, the Secretary shall notify the appropriate Regional Fishery Management Council(s) which shall have one hundred and twenty (120) days from the date of such notification to make recommendations and, if appropriate, prepare draft fishery regulations and to submit them to the Secretary. In preparing its recommendations and draft regulations, the Council(s) shall use as guidance the national standards of section 301(a) of the Magnuson Act (16 U.S.C. 1851) to the extent that they are consistent and compatible with the goals and objectives of the proposed Sanctuary designation. Fishery activities not proposed for regulation under section 304(a)(5) of the Act may be listed in the draft Sanctuary designation document as potentially subject to regulation, without following the procedures specified in section 304(a)(5) of the Act. If the Secretary subsequently determines that regulation of any such fishery activity is necessary, then the procedures specified in section 304(a)(5) of the Act shall be followed.

§ 922.23 Coordination with States and other Federal agencies.

(a) The Secretary shall consult and cooperate with affected States throughout the National Marine Sanctuary designation process. In particular the Secretary shall:

(1) Consult with the relevant State officials prior to selecting any site on the SEL as an Active Candidate pursuant to § 922.21, especially concerning the relationship of any site to State waters and the consistency of the proposed designation with a federally approved State coastal zone management program. For the purposes of a consistency review by States with federally approved coastal zone management programs, designation of a National Marine Sanctuary is deemed to be a Federal activity, which, if affecting the State's coastal zone, must be undertaken in a manner consistent to the maximum extent practicable with the approved State coastal zone program as provided by section 307(c)(1) of the Coastal Zone Management Act of 1972, as amended, and implementing regulations at 15 CFR part 930, subpart.

(2) Ensure that relevant State agencies are consulted prior to holding any public hearings pursuant to section 304(a)(3) of the Act.

(3) Provide the Governor(s) of any State(s) in which a proposed Sanctuary would be located an opportunity to certify the designation or any of its terms as unacceptable as specified in section 304(b)(1) of the Act.

(b) The Secretary shall develop proposed regulations relating to activities under the jurisdiction of one or more other Federal agencies in consultation with those agencies.

§ 922.24 Congressional documents.

In designating a National Marine Sanctuary, the Secretary shall prepare and submit to Congress those documents described in section 304 of the Act.

§ 922.25 Designation determination and findings.

(a) In designating a National Marine Sanctuary, the Secretary shall prepare a written Designation Determination and Findings which shall include those findings and determinations described in section 303 of the Act.

(b) In addition to those factors set forth in section 303 of the Act, the Secretary, when making a designation determination, shall consider the Program's fiscal capability to manage the area as a National Marine Sanctuary.

Subpart D—Management Plan Development and Implementation

§ 922.30 General.

(a) The Secretary shall implement each management plan, and applicable regulations, including carrying out surveillance and enforcement activities and conducting such research, monitoring, evaluation, and education programs as are necessary and reasonable to carry out the purposes and policies of the Act.

(b) Consistent with Sanctuary management plans, the Secretary shall develop and implement site-specific contingency and emergency-response plans designed to protect Sanctuary resources. The plans shall contain alert procedures and actions to be taken in the event of an emergency such as a shipwreck or an oil spill.

§ 922.31 Promotion and coordination of Sanctuary use.

The Secretary shall take such action as is necessary and reasonable to promote and coordinate the use of National Marine Sanctuaries for research, monitoring, and education purposes. Such action may include consulting with Federal agencies, or other persons to promote use of one or more Sanctuaries for research, monitoring and education, including coordination with the National Estuarine Research Reserve System.

Subpart E—Regulations of General Applicability

§ 922.40 Purpose.

The purpose of the regulations in this subpart and in subparts F through O is to implement the designations of the ten National Marine Sanctuaries for which site-specific regulations appear in subparts F through O, respectively, by regulating activities affecting them, consistent with their respective terms of designation in order to protect, preserve and manage and thereby ensure the health, integrity and continued availability of the conservation, ecological, recreational, research, educational, historical and aesthetic resources and qualities of these areas.

§ 922.41 Boundaries.

The boundary for each of the ten National Marine Sanctuaries covered by this part is described in subparts F through O, respectively.

§ 922.42 Allowed activities.

All activities except those site-specific activities prohibited or otherwise regulated in subparts F through O, may be conducted subject to any emergency regulations promulgated pursuant to §§ 922.44 and 922.111(c), subject to all prohibitions, restrictions and conditions validly imposed by any other authority of competent jurisdiction, and subject to the liability established by section 312 of the Act.

§ 922.43 Prohibited or otherwise regulated activities.

Subparts F through O set forth site-specific regulations applicable to the activities specified therein.

§ 922.44 Emergency regulations.

Where necessary to prevent or minimize the destruction of, loss of, or injury to a Sanctuary resource or quality, or minimize the imminent risk of such destruction, loss, or injury, any and all activities are subject to

immediate temporary regulation, including prohibition. The provisions of this section do not apply to the Cordell Bank National Marine Sanctuary. See § 922.111(c) for the authority to issue emergency regulations with respect to that Sanctuary.

§ 922.45 Penalties.

(a) Each violation of the Act, any regulation in this part, or any permit issued pursuant thereto, is subject to a civil penalty of not more than $100,000. Each day of a continuing violation constitutes a separate violation.

(b) Regulations setting forth the procedures governing administrative proceedings for assessment of civil penalties, permit sanctions, and denials for enforcement reasons, issuance and use of written warnings, and release or forfeiture of seized property appear at 15 CFR part 904.

§ 922.46 Response costs and damages.

Under section 312 of the Act, any person who destroys, causes the loss of, or injures any Sanctuary resource is liable to the United States for response costs and damages resulting from such destruction, loss or injury, and any vessel used to destroy, cause the loss of, or injure any Sanctuary resource is liable *in rem* to the United States for response costs and damages resulting from such destruction, loss or injury.

§ 922.47 Pre-existing authorizations or rights and certifications of pre-existing authorizations or rights.

(a) Leases, permits, licenses, or rights of subsistence use or access in existence on the date of designation of any National Marine Sanctuary shall not be terminated by the Director. The Director may, however, regulate the exercise of such leases, permits, licenses, or rights consistent with the purposes for which the Sanctuary was designated.

(b) The prohibitions listed in subparts F through O do not apply to any activity authorized by a valid lease, permit, license, approval or other authorization in existence on the effective date of Sanctuary designation and issued by any Federal, State or local authority of competent jurisdiction, or by any valid right of subsistence use or access in existence on the effective date of Sanctuary designation, provided that the holder of such authorization or right complies with certification procedures and criteria promulgated at the time of Sanctuary designation and with any terms and conditions on the exercise of such authorization or right imposed by the Director as a condition of certification as he or she deems necessary to achieve the purpose for which the Sanctuary was designated.

§ 922.48 National Marine Sanctuary permits—application procedures and issuance criteria.

(a) A person may conduct an activity prohibited by this part if conducted in accordance with the scope, purpose, terms and conditions of a permit issued under this section and subparts F through O.

(b) Applications for such permits should be addressed to the Director and sent to the address specified in subparts F through O. An application must include:

(1) A detailed description of the proposed activity including a timetable for completion;

(2) The equipment, personnel and methodology to be employed;

(3) The qualifications and experience of all personnel;

(4) The potential effects of the activity, if any, on Sanctuary resources and qualities; and

(5) Copies of all other required licenses, permits, approvals or other authorizations.

(c) Upon receipt of an application, the Director may request such additional information from the applicant as he or she deems necessary to act on the application and may seek the views of any persons or entity, within or outside the Federal government, and may hold a public hearing, as deemed appropriate.

(d) The Director, at his or her discretion, may issue a permit, subject to such terms and conditions as he or she deems appropriate, to conduct a prohibited activity, in accordance with the criteria found in subparts F through O. The Director shall further impose, at a minimum, the conditions set forth in the relevant subpart.

(e) A permit granted pursuant to this section is nontransferable.

(f) The Director may amend, suspend, or revoke a permit issued pursuant to this section for good cause. The Director may deny a permit application pursuant to this section, in whole or in part, if it is determined that the permittee or applicant has acted in violation of the terms and conditions of a permit or of the regulations set forth in this section or subparts F through O or for other good cause. Any such action shall be communicated in writing to the permittee or applicant by certified mail and shall set forth the reason(s) for the action taken. Procedures governing permit sanctions and denials for enforcement reasons are set forth in subpart D of 15 CFR part 904.

§ 922.49 Notification and review of applications for leases, licenses, permits, approvals or other authorizations to conduct a prohibited activity.

(a) The prohibitions set forth in regulations found in subparts L through O, do not apply to any activity authorized by any valid lease, permit, license, approval or other authorization issued after the effective date of Sanctuary designated by any Federal, State or local authority of competent jurisdiction, provided that:

(1) The applicant notifies the Director, in writing, of the application for such authorization (and of any application for an amendment, renewal or extension of such authorization) within fifteen (15) days of the date of application or of the effective date of Sanctuary designation, whichever is later;

(2) The applicant complies with the other provisions of this section;

(3) The Director notifies the applicant and authorizing agency that he or she does not object to issuance of the authorization (or amendment, renewal or extension); and

(4) The applicant complies with any terms and conditions the Director deems necessary to protect Sanctuary resources and qualities.

(b) Any potential applicant for a lease, permit, license, approval or other authorization for any Federal, State or local authority (or for an amendment, renewal or extension of such authorization) may request the Director to issue a finding as to whether the activity for which an application is intended to be made is prohibited by regulations in this part.

(c) Notifications of filings of applications and requests for findings should be addressed to the address found in subparts F through O. A copy of the application must accompany the notification.

(d) The Director may request additional information from the applicant as he or she deems necessary to determine whether to object to issuance of such lease, license, permit, approval or other authorization (or to issuance of an amendment, extension or renewal of such authorization), or what terms and conditions are necessary to protect Sanctuary resources and qualities. The information requested must be received by the Director within 45 days of the postmark date of the request. The Director may seek the views of any persons on the application.

(e) The Director shall notify, in writing, the agency to which application has been made of his or her review of the application and possible objection to issuance. After review of the application and information received with respect

thereto, the Director, or designee shall notify both the agency and applicant, in writing, whether he or she has an objection to issuance and what terms and conditions he or she deems necessary to protect Sanctuary resources and qualities. The Director shall state the reason(s) for any objection or the reason(s) that any terms and conditions are deemed necessary to protect Sanctuary resources and qualities.

(f) The Director may amend the terms and conditions deemed necessary to protect Sanctuary resources and qualities whenever additional information becomes available justifying such an amendment.

(g) Any time limit prescribed in or established under this section may be extended by the Director for good cause.

(h) The applicant may appeal any objection by or terms or conditions imposed by the Director, to the Assistant Administrator in accordance with the procedures set forth in § 922.50.

§ 922.50 Appeals of administrative action.

(a)(1) Except for permit actions taken for enforcement reasons (see subpart D of 15 CFR part 904 for applicable procedures), an applicant for, or a holder of, a National Marine Sanctuary permit; an applicant for, or a holder of, a Special Use permit pursuant to section 310 of the Act; a person requesting certification of an existing lease, permit, license or right of subsistence use or access under § 922.47; or, for those Sanctuaries described in subparts L through O, an applicant for a lease, permit, license or other authorization issued by any Federal, State, or local authority of competent jurisdiction (hereinafter appellant) may appeal to the Assistant Administrator:

(i) The granting, denial, conditioning, amendment, suspension or revocation by the Director of a National Marine Sanctuary or Special Use permit;

(ii) The conditioning, amendment, suspension or revocation of a certification under § 922.47; or

(iii) For those Sanctuaries described in subparts L through O, the objection to issuance of or the imposition of terms and conditions on a lease, permit, license or other authorization issued by any Federal, State, or local authority of competent jurisdiction.

(2) For those National Marine Sanctuaries described in subparts F through K, any interested person may also appeal the same actions described in paragraphs (a)(1) (i) and (ii) of this section. For appeals arising from actions taken with respect to these National Marine Sanctuaries, the term ''appellant'' includes any such interested persons.

(b) An appeal under paragraph (a) of this section must be in writing, state the action(s) by the Director appealed and the reason(s) for the appeal, and be received within 30 days of receipt of notice of the action by the Director. Appeals should be addressed to the Assistant Administrator for Ocean Services and Coastal Zone Management, NOAA 1305 East-West Highway, 13th Floor, Silver Spring, MD 20910.

(c)(1) The Assistant Administrator may request the appellant to submit such information as the Assistant Administrator deems necessary in order for him or her to decide the appeal. The information requested must be received by the Assistant Administrator within 45 days of the postmark date of the request. The Assistant Administrator may seek the views of any other persons. For the Monitor National Marine Sanctuary, if the appellant has requested a hearing, the Assistant Administrator shall grant an informal hearing. For all other National Marine Sanctuaries, the Assistant Administrator may determine whether to hold an informal hearing on the appeal. If the Assistant Administrator determines that an informal hearing should be held, the Assistant Administrator may designate an officer before whom the hearing shall be held.

(2) The hearing officer shall give notice in the Federal Register of the time, place and subject matter of the hearing. The appellant and the Director may appear personally or by counsel at the hearing and submit such material and present such arguments as deemed appropriate by the hearing officer. Within 60 days after the record for the hearing closes, the hearing officer shall recommend a decision in writing to the Assistant Administrator.

(d) The Assistant Administrator shall decide the appeal using the same regulatory criteria as for the initial decision and shall base the appeal decision on the record before the Director and any information submitted regarding the appeal, and, if a hearing has been held, on the record before the hearing officer and the hearing officer's recommended decision. The Assistant Administrator shall notify the appellant of the final decision and he reason(s) therefore in writing. The Assistant Administrator's decision shall constitute final agency action for the purpose of the Administrative Procedure Act.

(e) Any time limit prescribed in or established under this section other than the 30-day limit for filing an appeal may be extended by the Assistant Administrator or hearing office for good cause.

Subpart F—Monitor National Marine Sanctuary

§ 922.60 Boundary.

The Monitor National Marine Sanctuary (Sanctuary) consists of a vertical water column in the Atlantic Ocean one mile in diameter extending from the surface to the seabed, the center of which is at 35°00′23″ north latitude and 75°24′32″ west longitude.

§ 922.61 Prohibited or otherwise regulated activities.

Except as may be permitted by the Director, the following activities are prohibited and thus are unlawful for any person to conduct or to cause to be conducted within the Sanctuary:

(a) Anchoring in any manner, stopping, remaining, or drifting without power at any time;

(b) Any type of subsurface salvage or recovery operation;

(c) Diving of any type, whether by an individual or by a submersible;

(d) Lowering below the surface of the water any grappling, suction, conveyor, dredging or wrecking device;

(e) Detonating below the surface of the water any explosive or explosive mechanism;

(f) Drilling or coring the seabed;

(g) Lowering, laying, positioning or raising any type of seabed cable or cable-laying device;

(h) Trawling; or

(i) Discharging waster material into the water in violation of any Federal statute or regulation.

§ 922.62 Permit procedure and criteria.

(a) Any person or entity may conduct in the Sanctuary any activity listed in § 922.61 if such activity is either: (1) For the purpose of research related to the Monitor, or (2) Pertains to salvage or recovery operations in connection with an air or marine casualty and such person or entity is in possession of a valid permit issued by the Director authorizing the conduct of such activity; except that, no permit is required for the conduct of any activity immediately and urgently necessary for the protection of life, property or the environment.

(b) Any person or entity who wishes to conduct in the Sanctuary an activity for which a permit is authorized by this section (hereafter a permitted activity) may apply in writing to the Director for a permit to conduct such activity citing this section as the basis for the application. Such application should be made to: Director, Office of Ocean and Coastal Resource Management; ATTN: Manager, Monitor National Marine

Sanctuary, Building 1519, NOAA, Fort Eustis, VA 23604–5544.

(c) In considering whether to grant a permit for the conduct of a permitted activity for the purpose of research related to the Monitor, the Secretary shall evaluate such matters as:

(1) The general professional and financial responsibility of the applicant;

(2) The appropriateness of the research method(s) envisioned to the purpose(s) of the research;

(3) The extent to which the conduct of any permitted activity may diminish the value of the MONITOR as a source of historic, cultural, aesthetic and/or maritime information;

(4) The end value of the research envisioned; and

(5) Such other matters as the Director deems appropriate.

(d) In considering whether to grant a permit for the conduct of a permitted activity in the Sanctuary in relation to an air or marine casualty, the Director shall consider such matters as:

(1) The fitness of the applicant to do the work envisioned;

(2) The necessity of conducting such activity;

(3) The appropriateness of any activity envisioned to the purpose of the entry into the Sanctuary;

(4) The extent to which the conduct of any such activity may diminish the value of the Monitor as a source of historic, cultural, aesthetic and/or maritime information; and

(5) Such other matters as the Director deems appropriate.

(e) In considering any application submitted pursuant to this section, the Director shall seek and consider the views of the Advisory Council on Historic Preservation.

(f) The Director may observe any activity permitted by this section; and/or may require the submission of one or more reports of the status or progress of such activity.

Subpart G—Channel Islands National Marine Sanctuary

§ 922.70 Boundary.

The Channel Islands National Marine Sanctuary (Sanctuary) consists of an area of the waters off the coast of California of approximately 1252.5 square nautical miles (NM) adjacent to the following islands and offshore rocks: San Miguel Island, Santa Cruz Island, Santa Rosa Island, Anacapa Island, Santa Barbara Island, Richardson Rock, and Castle Rock (collectively the Islands) extending seaward to a distance of six NM. The boundary coordinates are listed in appendix A to this subpart.

§ 922.71 Prohibited or otherwise regulated activities.

(a) Except as may be necessary for the national defense (subject to the terms and conditions of Article 5, Section 2 of the Designation Document) or to respond to an emergency threatening life, property, or the environment, or except as may be permitted by the Director in accordance with § 922.48 and § 922.72, the following activities are prohibited and thus are unlawful for any person to conduct or to cause to be conducted within the Sanctuary:

(1) Exploring for, developing, and producing hydrocarbons except pursuant to leases executed prior to March 30, 1981, and except the laying of pipeline, if the following oil spill contingency equipment is available at the site of such operations:

(i) 1500 feet of open ocean containment boom and a boat capable of deploying the boom;

(ii) One oil skimming device capable of open ocean use; and

(iii) Fifteen bales of oil sorbent material, and subject to all prohibitions, restrictions and conditions imposed by applicable regulations, permits, licenses or other authorizations and consistency reviews including those issued by the Department of the Interior, the Coast Guard, the Corps of Engineers, the Environmental Protection Agency and under the California Coastal Management Program and its implementing regulations.

(2) Discharging or depositing any material or other matter except:

(i) Fish or fish parts and chumming materials (bait);

(ii) Water (including cooling water) and other biodegradable effluents incidental to vessel use of the Sanctuary generated by:

(A) Marine sanitation devices;

(B) Routine vessel maintenance, e.g., deck wash down;

(C) Engine exhaust; or

(D) Meals on board vessels;

(iii) Effluents incidental to hydrocarbon exploration and exploitation activities allowed by paragraph (a)(1) of this section.

(3) Except in connection with the laying of any pipeline as allowed by paragraph (a)(1) of this section, within 2 NM of any Island:

(i) Constructing any structure other than a navigation aid,

(ii) Drilling through the seabed, or

(iii) Dredging or otherwise altering the seabed in any way, other than

(A) To anchor vessels, or

(B) To bottom trawl from a commercial fishing vessel.

(4) Except to transport persons or supplies to or from an Island, operating within one NM of an Island any vessel engaged in the trade of carrying cargo, including, but not limited to, tankers and other bulk carriers and barges, or any vessel engaged in the trade of servicing offshore installations. In no event shall this section be construed to limit access for fishing (including kelp harvesting), recreational, or research vessels.

(5) Disturbing seabirds or marine mammals by flying motorized aircraft at less than 1000 feet over the waters within one NM of any Island except:

(i) For enforcement purposes;

(ii) To engage in kelp bed surveys; or

(iii) To transport persons or supplies to or from an Island.

(6) Removing or damaging any historical or cultural resource.

(b) All activities currently carried out by the Department of Defense within the Sanctuary are essential for the national defense and, therefore, not subject to the prohibitions in this section. The exemption of additional activities having significant impact shall be determined in consultation between the Director and the Department of Defense.

§ 922.72 Permit procedures and criteria.

(a) Any person in possession of a valid permit issued by the Director in accordance with this section and § 922.48 may conduct any activity in the Sanctuary prohibited under § 922.71 if such activity is either:

(1) Research related to the resources of the Sanctuary,

(2) To further the educational value of the Sanctuary; or

(3) For salvage or recovery operations.

(b) Permit applications shall be addressed to: Director, Office of Ocean and Coastal Resource Management, ATTN: Manager, Channel Islands National Marine Sanctuary, 113 Harbor Way, Santa Barbara, CA 93109.

(c) In considering whether to grant a permit the Director shall evaluate such matters as:

(1) The general professional, and financial responsibility of the applicant;

(2) The appropriateness of the methods envisioned to the purpose(s) of the activity;

(3) The extent to which the conduct of any permitted activity may diminish or enhance the value of the Sanctuary as a source of recreation, or as a source of educational or scientific information;

(4) The end value of the activity and

(5) Such other matters as may be deemed appropriate.

(d) The Director may observe any permitted activity and/or require the submission of one or more reports of the status or progress of such activity. Any information obtained shall be available to the public.

Appendix A to Subpart G of Part 922—Channel Islands National Marine Sanctuary Boundary Coordinates

Point No.	Latitude north	Longitude west
Northern Channel Islands Section		
01	33°56′28.959″	119°16′23.800″
02	33°58′03.919″	119°14′56.964″
03	34°01′33.846″	119°14′07.740″
04	34°04′24.203″	119°15′21.308″
05	34°06′06.653″	119°17′27.002″
06	34°06′54.809″	119°19′46.046″
07	34°06′57.988″	119°23′24.905″
08	34°06′51.627″	119°24′04.198″
09	34°07′01.640″	119°25′40.819‴
10	34°06′59.904″	119°26′50.959″
11	34°08′02.002″	119°28′47.501″
12	34°08′17.693″	119°29′27.698″
13	34°08′52.234″	119°30′39.562″
14	34°09′16.780″	119°35′22.667″
15	34°09′05.106″	119°36′41.694″
16	34°08′02.782″	119°39′33.421″
17	34°08′46.870″	119°41′48.621″
18	34°09′35.563″	119°45′57.284″
19	34°09′32.627″	119°46′37.335″
20	34°09′33.396″	119°47′32.285″
21	34°09′43.668″	119°48′09.018″
22	34°10′10.616″	119°50′07.659″
23	34°10′21.586″	119°51′05.146″
24	34°10′33.161″	119°53′17.044″
25	34°10′36.545″	119°55′57.373″
26	34°10′21.283″	119°57′26.403″
27	34°08′07.255″	120°01′07.233″
28	34°08′13.144″	120°02′27.930″
29	34°07′47.772″	120°05′05.449″
30	34°07′29.314″	120°06′36.262″
31	34°07′30.691″	120°09′35.238″
32	34°06′36.285″	120°12′39.335″
33	34°06′40.634″	120°13′33.940″
34	34°08′10.759″	120°15′07.017″
35	34°09′12.290″	120°17′07.046″
35A ..	34°09′50.706″	120°17′31.649″
36	34°10′56.346″	120°18′40.520″
36B ..	34°11′28.249″	120°19′29.213″
37	34°12′08.078″	120°21′00.835″
37C ..	34°12′25.468″	120°25′01.261″
38	34°12′18.754″	120°25′39.373″
38D ..	34°11′33.184″	120°27′33.921″
39	34°12′19.470″	120°30′22.620″
39E ..	34°12′17.540″	120°32′19.959″
40	34°10′54.592″	120°35′57.887″
40F ..	34°06′07.491″	120°38′27.883″
41	34°04′53.454″	120°38′16.602″
41G ..	34°03′30.539″	120°37′39.442″
42	34°01′09.860″	120°35′04.808″
42H ..	34°00′48.573″	120°34′25.106″
43	33°59′13.122″	120°33′53.385″
44	33°57′01.427″	120°31′54.590″
45	33°55′36.973″	120°27′37.188″
46	33°55′30.037″	120°25′14.587″
47	33°54′50.522″	120°22′29.536″
48	33°55′01.640″	120°19′26.722″
49	33°54′34.409″	120°18′27.344″
50	33°53′23.129″	120°17′39.927″
51	33°50′39.990″	120°15′13.874″
52	33°49′53.260″	120°13′41.904″
53	33°49′03.437″	120°12′06.750″
54	33°48′36.087″	120°11′10.821″
55	33°47′39.280″	120°07′59.707″
56	33°47′37.617″	120°06′04.002″
57	33°47′59.351″	120°04′08.370″
58	33°48′38.700″	120°02′33.188″
59	33°48′52.167″	120°01′50.244″
60	33°50′28.486″	119°57′50.820″
61	33°50′55.128″	119°55′19.934″
62	33°52′13.338″	119°52′53.439″
63	33°52′04.900″	119°52′10.719″
64	33°51′39.919″	119°47′21.152″
65	33°51′48.592″	119°46′13.213″
66	33°51′35.798″	119°44′34.589″
67	33°51′44.374″	119°41′12.738″
68	33°52′23.857″	119°39′14.708″
69	33°53′09.365″	119°37′30.784″
70	33°53′12.754″	119°35′35.793″
71	33°53′17.114″	119°34′54.567″
72	33°53′38.865″	119°32′51.578″
73	33°54′02.277″	119°31′06.274″
74	33°54′56.444″	119°28′54.052″
75	33°54′39.349″	119°27′37.512″
76	33°54′15.236″	119°25′23.779″
77	33°54′07.847″	119°24′22.849″
78	33°54′04.682″	119°22′58.006″
79	33°54′14.311″	119°21′44.573″
80	33°54′22.824″	119°21′09.003″
81	33°54′46.904″	119°19′54.677″
82	33°55′05.834″	119°19′16.027″
Santa Barbara Island Section		
83	33°28′56.904″	119°10′04.092″
84	33°26′32.364″	119°10′01.328″
85	33°24′19.904″	119°08′52.236″
86	33°23′26.019″	119°07′54.826″
87	33°22′04.836″	119°05′16.716″
88	33°21′49.387″	119°04′01.551″
89	33°21′44.594″	119°02′49.887″
90	33°21′49.556″	119°01′37.839″
91	33°22′07.538″	118°59′49.357″
92	33°22′27.774″	118°58′51.623″
93	33°22′47.957″	118°58′07.633″
94	33°23′20.805″	118°57′14.375″
95	33°24′18.458″	118°56′08.450″
96	33°26′24.130″	118°54′51.352″
97	33°29′02.820″	118°54′22.276″
98	33°31′27.917″	118°54′50.367″
99	33°32′17.935″	118°55′18.396″
100 ..	33°35′10.090″	118°59′40.091″
101 ..	33°35′24.575″	119°01′22.108″
102 ..	33°35′06.497″	119°03′59.463″
103 ..	33°34′48.322″	119°05′03.374″
104 ..	33°32′37.151″	119°08′37.201″
105 ..	33°30′41.731″	119°09′45.845″

Subpart H—Point Reyes/Farallon Islands National Marine Sanctuary

§ 922.80 Boundary.

(a) The Point Reyes/Farallon Islands Marine Sanctuary (Sanctuary) consists of an area of the waters adjacent to the coast of California north and south of the Point Reyes Headlands, between Bodega Head and Rocky Point and the Farallon Islands (including Noonday Rock), and includes approximately 948 square nautical miles (NM). The boundary coordinates are listed in Appendix A to this subpart.

(b) The shoreward boundary follows the mean high tide line and the seaward limit of Point Reyes National Seashore. Between Bodega Head and Point Reyes Headlands, the Sanctuary extends seaward 3 NM beyond State waters. The Sanctuary also includes the waters within 12 NM of the Farallon Islands, and between the Islands and the mainland from Point Reyes Headlands to Rocky Point. The Sanctuary includes Bodega Bay, but not Bodega Harbor.

§ 922.81 Definitions.

In addition to those definitions found at § 922.3, the following definition applies to this subpart:

Areas of Special Biological Significance (ASBS) means those areas established by the State of California prior to the designation of the Sanctuary except that for purposes of the regulations in this subpart, the area established around the Farallon Islands shall not be included.

§ 922.82 Prohibited or otherwise regulated activities.

(a) Except as may be necessary for national defense (subject to the terms and conditions of Article 5, Section 2 of the Designation Document) or to respond to an emergency threatening life, property or the environment, or except as may be permitted by the Director in accordance with § 922.48 and § 922.83, the following activities are prohibited and thus are unlawful for any person to conduct or to cause to be conducted within the Sanctuary:

(1) Exploring for, developing and producing oil or gas except that pipelines related to hydrocarbon operations outside the Sanctuary may be placed at a distance greater than 2 NM from the Farallon Islands, Bolinas Lagoon, and ASBS where certified to have no significant effect on Sanctuary resources in accordance with § 922.84.

(2) Discharging or depositing any material or other matter except:

(i) Fish or fish parts and chumming materials (bait).

(ii) Water (including cooling water) and other biodegradable effluents incidental to vessel use of the Sanctuary generated by:

(A) Marine sanitation devices;

(B) Routine vessel maintenance, e.g., deck wash down;

(C) Engine exhaust; or

(D) Meals on board vessels.

(iii) Dredge material disposed of at the interim dumpsite now established approximately 10 NM south of the southeast Farallon Island and municipal sewage provided such discharges are certified in accordance with § 922.84.

(3) Except in connection with the laying of pipelines or construction of an outfall if certified in accordance with § 922.84:

(i) Constructing any structure other than a navigation aid,

(ii) Drilling through the seabed, and

(iii) Dredging or otherwise altering the seabed in any way other than by anchoring vessels or bottom trawling from a commercial fishing vessel, except for routine maintenance and navigation, ecological maintenance, mariculture, and the construction of docks and piers in Tomales Bay.

(4) Except to transport persons or supplies to or from islands or mainland areas adjacent to Sanctuary waters, within an area extending 2 NM from the Farallon Islands, Bolinas Lagoon, or any ASBS, operating any vessel engaged in the trade of carrying cargo, including but not limited to tankers and other bulk carriers and barges, or any vessel engaged in the trade of servicing offshore installations. In no event shall this section be construed to limit access for fishing, recreational or research vessels.

(5) Disturbing seabirds or marine mammals by flying motorized aircraft at less than 1000 feet over the waters within one NM of the Farallon Islands, Bolinas Lagoon, or any ASBS except to transport persons or supplies to or from the Islands or for enforcement purposes.

(6) Removing or damaging any historical or cultural resource.

(b) All activities currently carried out by the Department of Defense within the Sanctuary are essential for the national defense and, therefore, not subject to the prohibitions in this section. The exemption of additional activities having significant impacts shall be determined in consultation between the Director and the Department of Defense.

§ 922.83 Permit procedures and criteria.

(a) Any person in possession of a valid permit issued by the Director in accordance with this section and § 922.48 may conduct any activity in the Sanctuary, prohibited user § 922.82, if such an activity is

(1) Research related to the resources of the Sanctuary,

(2) To further the educational value of the Sanctuary, or

(3) For salvage or recovery operations.

(b) Permit applications shall be addressed to the Director, Office of Ocean and Coastal Resource Management, ATTN: Manager, Point Reyes/Farallon Islands National Marine Sanctuary, Fort Mason, building #201, San Francisco, CA 94123.

(c) In considering whether to grant a permit, the Director shall evaluate

(1) The general professional and financial responsibility of the applicant,

(2) The appropriateness of the methods envisioned to the purpose(s) of the activity,

(3) The extent to which the conduct of any permitted activity may diminish or enhance the value of the Sanctuary,

(4) The end value of the activity, and

(5) Other matters as deemed appropriate.

(d) The Director may observe any permitted activity and/or require the submission of one or more reports of the status or progress of such activity. Any information obtained will be made available to the public.

§ 922.84 Certification of other permits.

(a) A permit, license, or other authorization allowing the discharge of municipal sewage, the laying of any pipeline outside 2 NM from the Farallon Islands, Bolinas Lagoon and ASBS, or the disposal of dredge material at the interim dumpsite now established approximately 10 NM south of the Southeast Farallon Island prior to the selection of a permanent dumpsite shall be valid if certified by the Director as consistent with the purpose of the Sanctuary and having no significant effect on Sanctuary resources. Such certification may impose terms and conditions as deemed appropriate to ensure consistency.

(b) In considering whether to make the certifications called for in this section, the Director may seek and consider the views of any other person or entity, within or outside the Federal government, and may hold a public hearing as deemed appropriate.

(c) Any certification called for in this section shall be presumed unless the Director acts to deny or condition certification within 60 days from the date that the Director receives notice of the proposed permit and the necessary supporting data.

(d) The Director may amend, suspend, or revoke any certification made under this section whenever continued operation would violate any terms or conditions of the certification. Any such action shall be forwarded in writing to both the holder of the certified permit and the issuing agency and shall set forth reason(s) for the action taken.

Appendix A to Subpart H of Part 922—Point Reyes/Farallon Islands National Marine Sanctuary Boundary Coordinates

Point No.	Latitude north	Longitude west
1	38°15′50.349″	123°10′48.933″
2	38°12′36.338″	123°07′04.846″
3	38°09′57.033″	123°05′27.435″
4	38°08′26.872″	123°04′52.524″
5	38°07′42.125″	123°05′10.714″
6	38°06′08.017″	123°05′48.920″
7	38°05′26.765″	123°06′09.922″
8	38°04′44.587″	123°06′29.251″
9	38°03′54.439″	123°06′57.591″
10	38°03′07.527″	123°07′37.755″
11	37°59′32.425″	123°08′24.905″
12	37°59′22.344″	123°14′06.127″
13	37°57′31.931″	123°19′19.187″
14	37°54′16.943″	123°23′18.456″
15	37°50′05.522″	123°25′28.791″
16	37°45′33.799″	123°25′32.666″
17	37°41′20.351″	123°23′29.811″
18	37°38′01.053″	123°19′37.445″
19	37°36′04.665″	123°14′30.483″
20	37°35′30.191″	123°13′31.060″
21	37°33′47.197″	123°11′50.904″
22	37°31′12.270″	123°07′39.618″
23	37°30′29.706″	123°05′42.221″
24	37°29′39.287″	123°00′23.711″
25	37°30′34.337″	122°54′18.139″
26	37°31′47.784″	122°51′31.592″
27	37°34′17.533″	122°48′10.415″
28	37°36′58.627″	122°46′05.779″
29	37°39′59.303″	122°44′59.838″
30	37°52′56.355″	122°37′35.195″

Subpart I—Gray's Reef National Marine Sanctuary

§ 922.90 Boundary.

The Gray's Reef National Marine Sanctuary (Sanctuary) consists of 16.68 square nautical miles (NM) of high sea waters off the coast of Georgia. The Sanctuary boundary includes all waters within a rectangle starting at coordinate 31°21′45″N, 80°55′17″W, commencing to coordinate 31°25′15″N, 80°55′17″W, thence to coordinate 31°25′15″N, 80°49′42″W, thence to coordinate 31°21′45″N, 80°49′42″W, thence back to the point of origin.

§ 922.91 Prohibited or otherwise regulated activities.

(a) Except as may be necessary for national defense (subject to the terms and conditions of Article 5, Section 2 of the Designation Document) or to respond to an emergency threatening life, property, or the environment, or except as may be permitted by the Director in accordance with § 922.48 and § 922.92, the following activities are prohibited and thus are unlawful for any person to conduct or to cause to be conducted within the Sanctuary:

(1) Dredging, drilling, or otherwise altering the seabed in any way nor constructing any structure other than a navigation aid.

(2) Discharging or depositing any material or other matter except:

(i) Fish or parts, bait, and chumming materials;

(ii) Effluent from marine sanitation devices; and

(iii) Vessel cooling waters.

(3) Operating a watercraft other than in accordance with the Federal rules and regulations that would apply if there were no Sanctuary.

(4) Using, placing, or possessing wire fish traps.

(5) Using a bottom trawl, specimen dredge, or similar vessel-towed bottom sampling device.

(6)(i)(A) Breaking, cutting, or similarly damaging, taking, or removing any bottom formation, marine invertebrate, or marine plant.

(B) Taking any tropical fish.

(C) Using poisons, electric charges, explosives, or similar methods to take any marine animal not otherwise prohibited to be taken.

(ii) There shall be a rebuttable presumption that any bottom formation, marine invertebrate, tropical fish, marine plant, or marine animal found in the possession of a person within the Sanctuary have been collected within or removed from the Sanctuary.

(7) Tampering with, damaging, or removing any historic or cultural resources.

(b) All activities currently carried out by the Department of Defense within the Sanctuary are essential for the national defense and, therefore, not subject to the prohibitions in this section. The exemption of additional activities having significant impacts shall be determined in consultation between the Director and the Department of Defense.

§ 922.92 Permit procedures and criteria.

(a) Any person in possession of a valid permit issued by the Director in accordance with this section and § 922.48 may conduct the specific activity in the Sanctuary including any activity specifically prohibited under § 922.91, if such activity is

(1) Research related to the resources of the Sanctuary,

(2) To further the educational value of the Sanctuary, or

(3) For salvage or recovery operations.

(b) Permit applications shall be addressed to the Director, Office of Ocean and Coastal Resource Management, ATTN: Manager, Gray's Reef National Marine Sanctuary, 10 Ocean Science Circle, Savannah, GA 31411.

(c) In considering whether to grant a permit, the Director shall evaluate

(1) The general professional and financial responsibility of the applicant,

(2) The appropriateness of the methods envisioned to the purpose(s) of the activity,

(3) The extent to which the conduct of any permitted activity may diminish or enhance the value of the Sanctuary,

(4) The end value of the activity, and

(5) Other matters as deemed appropriate.

(d) The Director may observe any permitted activity and/or require the submission of one or more reports of the status or progress of such activity. Any information obtained will be made available to the public.

Subpart J—Fagatele Bay National Marine Sanctuary

§ 922.100 Scope of regulations.

The provisions of this subpart J apply only to the area of the Territory of American Samoa within the boundary of the Fagatele Bay National Marine Sanctuary (Sanctuary). Neither the provisions of this subpart J nor any permit issued under their authority shall be construed to relieve a person from any other requirements imposed by statute or regulation of the Territory of American Samoa or of the United States. In addition, no statute or regulation of the Territory of American Samoa shall be construed to relieve a person from the restrictions, conditions, and requirements contained in this subpart J.

§ 922.101 Boundary.

The Sanctuary is a 163-acre (0.25 sq. mi.) coastal embayment formed by a collapsed volcanic crater on the island of Tutuila, Territory of American Samoa and includes Fagatele Bay in its entirety. The landward boundary is defined by the mean high high water (MHHW) line between Fagatele Point (14°22′15″ S, 170°46′5″ W) and Steps Point (14°22′44″ S, 170°45′27″ W). The seaward boundary of the Sanctuary is defined by a straight line between Fagatele Point and Steps Point.

§ 922.102 Prohibited or otherwise regulated activities.

(a) Except as may be necessary for national defense or to respond to an emergency threatening life, property, or the environment, or as may be permitted by the Director in accordance with § 922.48 and § 922.104, the following activities are prohibited and thus are unlawful for any person to conduct or to cause to be conducted within the Sanctuary:

(1)(i)(A) Gathering, taking, breaking, cutting, damaging, destroying, or possessing any invertebrate, coral, bottom formation, or marine plant.

(B) Taking, gathering, cutting, damaging, destroying, or possessing any crown-of-thorns starfish (*Acanthaster planci*).

(C) Possessing or using poisons, electrical charges, explosives, or similar environmentally destructive methods.

(D) Possessing or using spearguns, including such devices known as Hawaiian slings, pole spears, arbalettes, pneumatic and spring-loaded spearguns, bows and arrows, bang sticks, or any similar taking device.

(E) Possessing or using a seine, trammel net, or any type of fixed net.

(ii) There shall be a rebuttable presumption that any items listed in this paragraph (a)(1) found in the possession of a person within the Sanctuary have been used, collected, or removed within or from the Sanctuary.

(2)(i) Operating a vessel closer than 200 feet (60.96 meters) from another vessel displaying a dive flag at a speed exceeding three knots.

(ii) Operating a vessel in a manner which causes the vessel to strike or otherwise cause damage to the natural features of the Sanctuary.

(3) Diving or conducting diving operations from a vessel not flying in a conspicuous manner the international code flag alpha ''A.''

(4) Littering, depositing, or discharging, into the waters of the Sanctuary, any material or other matter.

(5) Disturbing the benthic community by dredging, filling, dynamiting, bottom trawling, or otherwise altering the seabed.

(6) Removing, damaging, or tampering with any historical or cultural resource within the boundary of the Sanctuary.

(7) Ensnaring, entrapping, or fishing for any sea turtle listed as a threatened or endangered species under the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 *et seq.*

(8) Except for law enforcement purposes, using or discharging explosives or weapons of any description. Distress signaling devices, necessary and proper for safe vessel operation, and knives generally used by fishermen and swimmers shall not be considered weapons for purposes of this section.

(9) Marking, defacing, or damaging in any way, or displacing or removing or tampering with any signs, notices, or placards, whether temporary or permanent, or with any monuments, stakes, posts, or other boundary markers related to the Sanctuary.

(b) In addition to those activities prohibited or otherwise regulated under paragraph (a) of this section, the following activities are prohibited and thus are unlawful for any person to conduct or to cause to be conducted landward of the straight line connecting Fagatele Point (14°22′15″ S, 170°46′5″ W) and Matautuloa Benchmark (14°22′18″ S, 170°45′35″ W).

(1) Possessing or using fishing poles, handlines, or trawls.

(2) Fishing commercially.

§ 922.103 Management and enforcement.

The National Oceanic and Atmospheric Administration (NOAA) has primary responsibility for the

management of the Sanctuary pursuant to the Act. The American Samoa Economic and Development Planning Office (EDPO) will assist NOAA in the administration of the Sanctuary, and act as the lead agency, in conformance with the Designation Document, these regulations, and the terms and provisions of any grant or cooperative agreement. NOAA may act to deputize enforcement agents of the American Samoa Government (ASG) to enforce the regulations in this subpart in accordance with existing law. If NOAA chooses to exercise this provision, a memorandum of understanding shall be executed between NOAA and the ASG or the person(s) or entity authorized to act on their behalf.

§ 922.104 Permit procedures and criteria.

(a) Any person in possession of a valid permit issued by the Director, in consultation with the EDPO, in accordance with this section and § 922.48, may conduct an activity otherwise prohibited by § 922.102 in the Sanctuary if such activity is judged not to cause long-term or irreparable harm to the resources of the Sanctuary, and is:

(1) Related to research involving Sanctuary resources designed to enhance understanding of the Sanctuary environment or to improve resource management decisionmaking;

(2) Intended to further the educational value of the Sanctuary and thereby enhance understanding of the Sanctuary environmental or improve resource management decisionmaking; or

(3) For salvage or recovery operations.

(b) Permit applications shall be addressed to the Director, Office of Ocean and Coastal Resource Management; ATTN: Sanctuary Coordinator, Fagatele Bay National Marine Sanctuary, P.O. Box 4318, Pago Pago, AS 96799.

(c) In considering whether to grant a permit, the Director shall evaluate such matters as:

(1) The general professional and financial responsibility of the applicant;

(2) The appropriateness of the methods being proposed for the purpose(s) of the activity;

(3) The extent to which the conduct of any permitted activity may diminish or enhance the value of the Sanctuary as a source of recreation, education, or scientific information; and

(4) The end value of the activity.

(d) In addition to meeting the criteria in this section and § 922.48, the applicant also must demonstrate to the Director that:

(1) The activity shall be conducted with adequate safeguards for the environment; and

(2) The environment shall be returned to, or will regenerate to, the condition which existed before the activity occurred.

(e) The Director may, at his or her discretion, grant a permit which has been applied for pursuant to this section, in whole or in part, and subject the permit to such condition(s) as he or she deems necessary. A permit granted for research related to the Sanctuary may include, but is not limited to, the following conditions:

(1) The Director may observe any activity permitted by this section;

(2) any information obtained in the research site shall be made available to the public; and

(3) The submission of one or more reports of the status of such research activity may be required.

Subpart K—Cordell Bank National Marine Sanctuary

§ 922.110 Boundary

The Cordell Bank National Marine Sanctuary (Sanctuary) consists of a 397.05 square nautical mile (NM) area of marine waters approximately 50 miles west-northwest of San Francisco, California extending at 180° from the northernmost boundary of the Point Reyes-Farallon Islands National Marine Sanctuary (PRNMS) to the 1,000 fathom isobath northwest of the Bank, then south along this isobath to the PRNMS boundary and back to the northwest along this boundary to the beginning point. The boundary coordinates are listed in appendix A to this subpart.

§ 922.111 Prohibited or otherwise regulated activities.

(a) Except as necessary for national defense or to respond to an emergency threatening life, property or the environment, or except as permitted in accordance with § 922.48 and § 922.112 or certified in accordance with § 922.47, the following activities are prohibited and thus are unlawful for any person to conduct or to cause to be conducted:

(1) (1) Depositing or discharging, from any location within the boundary of the Sanctuary, material or other matter of any kind except:

(A) Fish, fish parts, chumming materials (bait) produced and discarded during routine fishing activities conducted in the Sanctuary; and

(B) Water (including cooling water) and other biodegradable effluents incidental to use of a vessel in the Sanctuary and generated by: Marine sanitation devices approved by the United States Coast Guard; routine vessel maintenance, e.g., deck wash down; engine exhaust; or meals on board vessels.

(ii) Depositing or discharging, from any location beyond the boundaries of the Sanctuary, material or other matter of any kind, except for the exclusions listed in paragraph (a)(1)(i) of this section, which enter the Sanctuary and injure a Sanctuary resource.

(2) Removing, taking, or injuring or attempting to remove, take, or injure benthic invertebrates or algae located on Cordell Bank or within the 50 fathom isobath surrounding the Bank. There is a rebuttable presumption that any such resource found in the possession of a person within the Sanctuary was taken or removed by that person. This prohibition does not apply to accidental removal, injury, or takings during normal fishing operations.

(3) Exploring for, or developing or producing, oil, gas, or minerals in any area of the Sanctuary.

(b) All activities being carried out by the Department of Defense (DOD) within the Sanctuary on the effective date of designation that are necessary for national defense are exempt from the prohibitions contained in the regulations in this subpart. Additional DOD activities initiated after the effective date of designation that are necessary for national defense will be exempted by the Director after consultation between the Department of Commerce and DOD. DOD activities not necessary for national defense, such as routine exercises and vessel operations, are subject to all prohibitions contained in the regulations in this subpart.

(c) Where necessary to prevent immediate, serious, and irreversible damage to a Sanctuary resource, any activity may be regulated within the limits of the Act on an emergency basis for no more than 120 days.

§ 922.112 Permit procedures and criteria.

(a) If a person wishes to conduct an activity prohibited under § 922.111, that person must apply for, receive, and have in possession on board any vessel used a valid permit issued pursuant to this section and § 922.48 authorizing that person to conduct that activity.

(b) Permit applications shall be addressed to the Director, Office of Ocean and Coastal Resource Management; ATTN: Manager, Cordell Bank National Marine Sanctuary, Fort Mason, Building #201, San Francisco, CA 94123.

(c) The Director, at his or her discretion, may issue a permit subject to such terms and conditions as deemed appropriate, to conduct an activity otherwise prohibited by § 922.111, if the Director finds that the activity will further research related to Sanctuary resources; further the educational or

historical value of the Sanctuary; further salvage or recovery operations in or near the Sanctuary in connection with a recent air or marine casualty; or assist in the management of the Sanctuary. In deciding whether to issue a permit, the Director may consider such factors as the professional qualifications and financial ability of the applicant as related to the proposed activity; the appropriateness of the methods and procedures proposed by the applicant for the conduct of the activity; the extent to which the conduct of the activity may diminish or enhance the values for which the Sanctuary was designated; and the end value of the applicant's overall activity.

Appendix A to subpart K of Part 922—Cordell Bank National Marine Sanctuary Boundary Coordinates

Point No.	Latitude	Longitude
1	38°15′51.72″	123°10′52.44″
2	38°07′55.88″	123°38′33.53″
3	38°06′45.21″	123°38′00.40″
4	38°04′58.41″	123°37′14.34″
5	38°04′28.22″	123°37′17.83″
6	38°03′42.75″	123°36′55.66″
7	38°03′11.10″	123°36′19.78″
8	38°02′46.12″	123°36′21.98″
9	38°02′02.74″	123°35′56.56″
10	38°01′27.10″	123°35′55.12″
11	38°01′22.28″	123°36′55.13″
12	38°01′11.54″	123°37′28.21″
13	38°00′49.16″	123°37′29.77″
14	37°59′54.49″	123°36′47.90″
15	37°59′12.39″	123°35′59.55″
16	37°58′39.40″	123°35′14.85″
17	37°58′00.57″	123°34′42.93″
18	37°57′18.99″	123°33′43.15″
19	37°56′56.42″	123°32′51.97″
20	37°56′18.90″	123°32′49.24″
21	37°55′22.37″	123°32′36.96″
22	37°54′26.10″	123°32′21.73″
23	37°53′07.46″	123°31′46.81″
24	37°52′34.93″	123°31′18.90″
25	37°51′42.81″	123°31′19.10″
26	37°50′59.58″	123°31′02.96″
27	37°48′49.14″	123°28′44.61″
28	37°49′22.64″	123°29′34.07″
29	37°48′49.14″	123°28′44.61″
30	37°48′36.95″	123°28′08.29″
31	37°48′03.37″	123°28′23.27″
32	37°47′41.54″	123°28′01.97″
33	37°47′01.78″	123°27′16.78″
34	37°46′51.92″	123°26′48.98″
35	37°46′13.20″	123°26′04.79″
36	37°46′00.73″	123°25′36.99″
37	37°50′25.31″	123°25′26.53″
38	37°54′32.28″	123°23′16.49″
39	37°57′45.71″	123°19′17.72″
40	37°59′29.27″	123°14′12.16″
41	37°59′43.71″	123°08′27.55″
42	38°03′10.20″	123°07′44.35″
43	38°04′01.64″	123°06′58.92″
44	38°08′33.32″	123°04′56.24″
45	38°12′42.06″	123°07′10.21″

Subpart L—Flower Garden Banks National Marine Sanctuary

§ 922.120 Boundary.

The Flower Garden Banks National Marine Sanctuary (the Sanctuary) consists of two separate areas of ocean waters over and surrounding the East and West Flower Garden Banks, and the submerged lands thereunder including the Banks, in the northwestern Gulf of Mexico. The area designated at the East Bank is located approximately 120 nautical miles (NM) south-southwest of Cameron, Louisiana, and encompasses 19.20 NM^2, and the area designated at the West Bank is located approximately 110 NM southeast of Galveston, Texas, and encompasses 22.50 NM^2. The two areas encompass a total of 41.70 NM^2 (143.21 square kilometers). The boundary coordinates for each area are listed in appendix A to this subpart.

§ 922.121 Definitions.

In addition to those definitions found at § 922.3, the following definition applies to this subpart:

No-activity zone means one of the two geographic areas delineated by the Department of the Interior in stipulations for OCS lease sale 112 over and surrounding the East and West Flower Garden Banks as areas in which activities associated with exploration for, development of, or production of hydrocarbons are prohibited. The precise coordinates of these areas are provided in appendix B of this subpart. These particular coordinates define the geographic scope of the ''no-activity zones'' for purposes of the regulations in this subpart. These coordinates are based on the ''¼ ¼ ¼'' system formerly used by the Department of the Interior, a method that delineates a specific portion of a block rather than the actual underlying isobath.

§ 922.122 Prohibited or otherwise regulated activities.

(a) Except as specified in paragraphs (c) through (h) of this section, the following activities are prohibited and thus are unlawful for any person to conduct or to cause to be conducted:

(1) Exploring for, developing, or producing oil, gas or minerals except outside of all no-activity zones and provided all drilling cuttings and drilling fluids are shunted to the seabed through a downpipe that terminates an appropriate distance, but no more than ten meters, from the seabed.

(2)(i) Anchoring or otherwise mooring within the Sanctuary a vessel greater than 100 feet (30.48 meters) in registered length.

(ii) Anchoring a vessel of less than or equal to 100 feet (30.48 meters) in registered length within an area of the Sanctuary where a mooring buoy is available.

(iii) Anchoring a vessel within the Sanctuary using more than fifteen feet (4.57 meters) of chain or wire rope attached to the anchor.

(iv) Anchoring a vessel within the Sanctuary using anchor lines (exclusive of the anchor chain or wire rope permitted by paragraph (a)(4) of this section) other than those of a soft fiber or nylon, polypropylene, or similar material.

(3)(i) Discharging or depositing, from within the boundaries of the Sanctuary, any material or other matter except:

(A) Fish, fish parts, chumming materials or bait used in or resulting from fishing with conventional hook and line gear in the Sanctuary;

(B) Biodegradable effluents incidental to vessel use and generated by marine sanitation devices approved in accordance with section 312 of the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1322;

(C) Water generated by routine vessel operations (e.g., cooling water, deck wash down, and graywater as defined by section 312 of the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1322) excluding oily wastes from bilge pumping;

(D) Engine exhaust; or

(E) In areas of the Sanctuary outside the no-activity zones, drilling cuttings and drilling fluids necessarily discharged incidental to the exploration for, development of, or production of oil or gas in those areas and in accordance with the shunting requirements of paragraph (a)(1) unless such discharge injures a Sanctuary resource or quality.

(ii) Discharging or depositing, from beyond the boundaries of the Sanctuary, any material or other matter, except those listed in paragraphs (a)(3)(i) (A) through (D) of this section, that subsequently enters the Sanctuary and injures a Sanctuary resource or quality.

(4) Drilling into, dredging or otherwise altering the seabed of the Sanctuary (except by anchoring); or constructing, placing or abandoning any structure, material or other matter on the seabed of the Sanctuary.

(5) Injuring or removing, or attempting to injure or remove, any coral or other bottom formation, coralline algae or other plant, marine invertebrate, brine-seep biota or carbonate rock within the Sanctuary.

(6) Taking any marine mammal or turtle within the Sanctuary, except as permitted by regulations, as amended, promulgated under the Marine Mammal

Protection Act, as amended, 16 U.S.C. 1361 *et seq.*, and the Endangered Species Act, as amended, 16 U.S.C. 1531 *et seq.*

(7) Injuring, catching, harvesting, collecting or feeding, or attempting to injure, catch, harvest, collect or feed, any fish within the Sanctuary by use of bottom longlines, traps, nets, bottom trawls or any other gear, device, equipment or means except by use of conventional hook and line gear.

(8) Possessing within the Sanctuary (regardless of where collected, caught, harvested or removed), except for valid law enforcement purposes, any carbonate rock, coral or other bottom formation, coralline algae or other plant, marine invertebrate, brine-seep biota or fish (except for fish caught by use of conventional hook and line gear).

(9) Possessing or using within the Sanctuary, except possessing while passing without interruption through it or for valid law enforcement purposes, any fishing gear, device, equipment or means except conventional hook and line gear.

(10) Possessing, except for valid law enforcement purposes, or using explosives or releasing electrical charges within the Sanctuary.

(b) If any valid regulation issued by any Federal authority of competent jurisdiction, regardless of when issued, conflicts with a Sanctuary regulation, the regulation deemed by the Director as more protective of Sanctuary resources and qualities shall govern.

(c) The prohibitions in paragraphs (a)(2)(i), (iii), and (iv), (4) and (10) of this section do not apply to necessary activities conducted in areas of the Sanctuary outside the no-activity zones and incidental to exploration for, development of, or production of oil or gas in those areas.

(d) The prohibitions in paragraphs (a)(2) through (10) of this section do not apply to activities necessary to respond to emergencies threatening life, property, or the environment.

(e)(1) The prohibitions in paragraphs (a)(2) through (10) of this section do not apply to activities being carried out by the Department of Defense as of the effective date of Sanctuary designation (January 18, 1994). Such activities shall be carried out in a manner that minimizes any adverse impact on Sanctuary resources and qualities. The prohibitions in paragraphs (a)(2) through (10) of this section do not apply to any new activities carried out by the Department of Defense that do not have the potential for any significant adverse impacts on Sanctuary resources or qualities. Such activities shall be carried out in a manner that minimizes any adverse impact on Sanctuary resources and qualities. New activities with the potential for significant adverse impacts on Sanctuary resources or qualities may be exempted from the prohibitions in paragraphs (a)(2) through (10) of this section by the Director after consultation between the Director and the Department of Defense. If it is determined that an activity may be carried out, such activity shall be carried out in a manner that minimizes any adverse impact on Sanctuary resources and qualities.

(2) In the event of threatened or actual destruction of, loss of, or injury to a Sanctuary resource or quality resulting from an untoward incident, including but not limited to spills and groundings, caused by a component of the Department of Defense, the cognizant component shall promptly coordinate with the Director for the purpose of taking appropriate actions to respond to and mitigate the harm and, if possible, restore or replace the Sanctuary resource or quality.

(f) The prohibitions in paragraphs (a)(2) through (10) of this section do not apply to any activity executed in accordance with the scope, purpose, terms, and conditions of a National Marine Sanctuary permit issued pursuant to § 922.48 and § 922.123 or a Special Use permit issued pursuant to section 310 of the Act.

(g) The prohibitions in paragraphs (a)(2) through (10) of this section do not apply to any activity authorized by any lease, permit, license, approval or other authorization issued after January 18, 1994, provided that the applicant complies with § 922.49, the Director notifies the applicant and authorizing agency that he or she does not object to issuance of the authorization, and the applicant complies with any terms and conditions the Director deems necessary to protect Sanctuary resources and qualities.

(h) Notwithstanding paragraphs (f) and (g) of this section, in no event may the Director issue a National Marine Sanctuary permit under § 922.48 and § 922.123 or a Special Use permit under section 10 of the Act authorizing, or otherwise approve, the exploration for, development of, or production of oil, gas or minerals in a no-activity zone. Any leases, permits, approvals, or other authorizations authorizing the exploration for, development of, or production of oil, gas or minerals in a no-activity zone and issued after the January 18, 1994 shall be invalid.

§ 922.123 Permit procedures and criteria.

(a) A person may conduct an activity prohibited by § 922.122(a)(2) through (10) if conducted in accordance with the scope, purpose, terms, and conditions of a permit issued under this section and § 922.48.

(b) Applications for such permits should be addressed to the Director, Office of Ocean and Coastal Resource Management; ATTN: Manager, Flower Garden Banks National Marine Sanctuary, 1716 Briarcrest Drive, Suite 702, Bryan, TX 77802.

(c) The Director, at his or her discretion, may issue a permit, subject to such terms and conditions as he or she deems appropriate, to conduct an activity prohibited by § 922.122(a)(2) through (10), if the Director finds that the activity will: further research related to Sanctuary resources; further the educational, natural or historical resource value of the Sanctuary; further salvage or recovery operations in or near the Sanctuary in connection with a recent air or marine casualty; or assist in managing the Sanctuary. In deciding whether to issue a permit, the Director shall consider such factors as: the professional qualifications and financial ability of the applicant as related to the proposed activity; the duration of the activity and the duration of its effects; the appropriateness of the methods and procedures proposed by the applicant for the conduct of the activity; the extent to which the conduct of the activity may diminish or enhance Sanctuary resources and qualities; the cumulative effects of the activity; and the end value of the activity. In addition, the Director may consider such other factors as he or she deems appropriate.

(d) It shall be a condition of any permit issued that the permit or a copy thereof be displayed on board all vessels or aircraft used in the conduct of the activity.

(e) The Director may, *inter alia*, make it a condition of any permit issued that any information obtained under the permit be made available to the public.

(f) The Director may, *inter alia*, make it a condition of any permit issued that a NOAA official be allowed to observe any activity conducted under the permit and/or that the permit holder submit one or more reports on the status, progress, or results of any activity authorized by the permit.

Appendix A to Subpart L of Part 922—Flower Garden Banks National Marine Sanctuary Boundary Coordinates

The boundary coordinates are based on geographic positions of the North American Datum of 1927 (NAD 27).

Point No.	Latitude	Longitude
	East Flower Garden Bank	
E–1 ...	27°52′52.13″	93°37′40.52″
E–2 ...	27°53′33.81″	93°38′22.33″
E–3 ...	27°55′13.31″	93°38′39.07″
E–4 ...	27°57′30.14″	93°38′32.26″
E–5 ...	27°58′27.79″	93°37′42.93″
E–6 ...	27°59′00.29″	93°35′29.56″
E–7 ...	27°58′59.23″	93°35′09.91″
E–8 ...	27°55′20.23″	93°34′13.75″
E–9 ...	27°54′03.35″	93°34′18.42″
E–10 .	27°53′25.95″	93°35′03.79″
E–11 .	27°52′51.14″	93°36′57.59″
	West Flower Garden Bank	
W–1 ..	27°49′09.24″	93°50′43.35″
W–2 ..	27°50′10.23″	93°52′07.96″
W–3 ..	27°51′13.14″	93°52′50.68″
W–4 ..	27°51′31.24″	93°52′49.79″
W–5 ..	27°52′49.55″	93°52′21.89″
W–6 ..	27°54′59.08″	93°49′41.87″
W–7 ..	27°54′57.08″	93°48′38.52″
W–8 ..	27°54′33.46″	93°47′10.36″
W–9 ..	27°54′13.51″	93°46′48.96″
W–10	27°53′7.67″	93°46′50.67″
W–11	27°52′56.44″	93°47′14.10″
W–12	27°50′38.31″	93°47′22.86″
W–13	27°49′11.23″	93°48′42.59″

Appendix B to Subpart L of Part 922—Coordinates for the Department of the Interior Topographic Lease Stipulations for OCS Lease Sale 112

East Flower Garden Bank

Block A–366
SE¼, SW¼; S½, NE¼, SE¼; SE¼, NW¼, SE¼; S½, SE¼;
Block A–367
W½, NW¼, SW¼; SW¼, W¼, SW¼.
Block A–374
W½, NW¼, NW¼; W½, SW¼, NW¼; SE¼, SW¼, NW¼; SW¼, NE¼, SW¼; W½, SW¼; W½, SE¼, SW¼; SE¼, SE¼, SW¼.
Block A–375
E½; E½, NW¼, NW¼, SW¼, NW¼, NW¼; E½, SW¼, NW¼; NW¼, SW¼, NW¼, SW¼;
Block A–388
NE¼; E½, NW¼; E½, NW¼, NW¼; NE¼, SW¼, NW¼; E½, SW¼; E½, NE¼, SW¼; NW¼, NE¼, SW¼; NE¼, NW¼, SW¼; NE¼, SE¼, SW¼; NE¼; NE¼, SE¼; W½, NE¼, SE¼; NW¼, SE¼; NE¼, SW¼, SE¼;
Block A–389
NE¼, NW¼; NW¼, NW¼; SW¼, NW¼; NE¼, SE¼, NW¼; W½, SE¼, NW¼; N½, NW¼, SW¼.

West Flower Garden Bank

Block A–383
E½, SE¼, SE¼; SW½, SE¼, SE¼.
Block A–384
W½, SW¼, NE¼; SE¼, SW¼, NE¼; S½, SE¼, NE¼; SE¼, NW¼; E½, SW¼; E½, NW¼, SW¼; SW¼, NW¼, SW¼; SW¼, SW¼; SE¼.
Block A–385
SW¼, SW¼, NW¼; N¼, SW¼; NW¼, SW¼, SW¼.
Block A–397
W½, W½, NW¼; W½, NW¼, SW¼; NW¼, SW¼, SW¼.
Block A–398
Entire block
Block A–399
E½; SE¼, NE¼, NW¼; E½, SE¼, NW¼; E½, NE¼, SW¼; SW¼, NE¼, SW¼; NE¼, SE¼, SW¼.
Block A–401
NE¼, NE¼; N½, NW¼, NE¼; NE¼, SE¼, NE¼.
Block A–Block 134
That portion of the block north of a line connecting points 17 and 18, defined under the universal transverse mercator grid system as follows: Point 17; X=1,378,080.00′; Y=10,096,183.00′; Point 18: X=1,376,079.41′; Y=10,096,183.00′; Block A–135
That portion of the block northwest of a line connecting points 16 and 17, defined under the universal transverse mercator grid system as follows: Point 16: X=1,383,293.84′; Y=10,103,281.93′; Point 17: X=1,378,080.00′; Y=10,096,183.00′.

Subpart M—Monterey Bay National Marine Sanctuary

§ 922.130 Boundary.

(a) The Monterey Bay National Marine Sanctuary (Sanctuary) consists of an area of approximately 4,024 square nautical miles of coastal and ocean waters, and the submerged lands thereunder, in and surrounding Monterey Bay, off the central coast of California.

(b) The northern terminus of the boundary is located along the southern boundary of the Point Reyes-Farallon Islands National Marine Sanctuary (PRNMS) and runs westward to approximately 123°07′W. The boundary then extends south in an arc which generally follows the 500 fathom isobath. At approximately 37°03′N, the boundary arcs south to 122°25′W, 36°10′N, due west of Partington Point. The boundary again follows the 500 fathom isobath south to 121°41′W, 35°33′N, due west of Cambria. The boundary then extends shoreward towards the mean high-water line. The landward boundary is defined by the mean high-water line between the PRNMS and Cambria, exclusive of a small area off the north coast of San Mateo County and the City and County of San Francisco between Point Bonita and Point San Pedro. Pillar Point, Santa Cruz, Moss Landing and Monterey harbors are excluded from the Sanctuary boundary shoreward from their respective International Collision at Sea regulation (Colreg.) demarcation lines except for Moss Landing Harbor, where all of Elkhorn Slough east of the Highway One bridge is included within the Sanctuary boundary. The boundary coordinates are listed in appendix A to this subpart.

§ 922.131 Definitions.

In addition to those definitions found at § 922.3, the following definitions apply to this subpart:

Federal Project means any water resources development project conducted by the U.S. Army Corps of Engineers or operating under a permit or other authorization issued by the Corps of Engineers and authorized by Federal law.

Motorized personal water craft means any motorized vessel that is less than fifteen feet in length as manufactured, is capable of exceeding a speed of fifteen knots, and has the capacity to carry not more than the operator and one other person while in operation. The term includes, but is not limited to, jet skis, wet bikes, surf jets, miniature speed boats, air boats, and hovercraft.

§ 922.132 Prohibited or otherwise regulated activities.

(a) Except as specified in paragraphs (b) through (f) of this section, the following activities are prohibited and thus are unlawful for any person to conduct or to cause to be conducted:

(1) Exploring for, developing or producing oil, gas or minerals within the Sanctuary.

(2)(i) Discharging or depositing, from within the boundary of the Sanctuary, any material or other matter except:

(A) Fish, fish parts, chumming materials or bait used in or resulting from traditional fishing operations in the Sanctuary;

(B) Biodegradable effluent incidental to vessel use and generated by marine sanitation devices approved in accordance with section 312 of the Federal Water Pollution Control Act, as amended, (FWPCA), 33 U.S.C. 1322 *et seq.*;

(C) Water generated by routine vessel operations (e.g., cooling water, deck wash down and graywater as defined by section 312 of the FWPCA) excluding oily wastes from bilge pumping;

(D) Engine exhaust; or

(E) Dredged material deposited at disposal sites authorized by the U.S. Environmental Protection Agency (EPA) (in consultation with the U.S. Army Corps of Engineers (COE)) prior to the effective date of Sanctuary designation

(January 1, 1993), provided that the activity is pursuant to, and complies with the terms and conditions of, a valid Federal permit or approval existing on January 1, 1993.

(ii) Discharging or depositing, from beyond the boundary of the Sanctuary, any material or other matter that subsequently enters the Sanctuary and injures a Sanctuary resource or quality, except those listed in paragraphs (a)(2)(i) (A) through (D) of this section and dredged material deposited at the authorized disposal sites described in appendix B to this subpart, provided that the dredged material disposal is pursuant to, and complies with the terms and conditions of, a valid Federal permit or approval.

(3) Moving, removing or injuring, or attempting to move, remove or injure, a Sanctuary historical resource. This prohibition does not apply to moving, removing or injury resulting incidentally from kelp harvesting, aquaculture or traditional fishing operations.

(4) Drilling into, dredging or otherwise altering the seabed of the Sanctuary; or constructing, placing or abandoning any structure, material or other matter on the seabed of the Sanctuary, except as an incidental result of:

(i) Anchoring vessels;

(ii) Aquaculture, kelp harvesting or traditional fishing operations;

(iii) Installation of navigation aids;

(iv) Harbor maintenance in the areas necessarily associated with Federal Projects in existence on January 1, 1993, including dredging of entrance channels and repair, replacement or rehabilitation of breakwaters and jetties; or

(v) Construction, repair, replacement or rehabilitation of docks or piers.

(5) Taking any marine mammal, sea turtle or seabird in or above the Sanctuary, except as permitted by regulations, as amended, promulgated under the Marine Mammal Protection Act, as amended, (MMPA), 16 U.S.C. 1361 *et seq.*, the Endangered Species Act, as amended, (ESA), 16 U.S.C. 1531 *et seq.*, and the Migratory Bird Treaty Act, as amended, (MBTA), 16 U.S.C. 703 *et seq.*

(6) Flying motorized aircraft, except as necessary for valid law enforcement purposes, at less than 1000 feet above any of the four zones within the Sanctuary described in appendix C to this subpart.

(7) Operating motorized personal water craft within the Sanctuary except within the four designated zones and access routes within the Sanctuary described in appendix D to this subpart.

(8) Possessing within the Sanctuary (regardless of where taken, moved or removed from), except as necessary for valid law enforcement purposes, any historical resource, or any marine mammal, sea turtle or seabird taken in violation of regulations, as amended, promulgated under the MMPA, ESA or MBTA.

(9) Interfering with, obstructing, delaying or preventing an investigation, search, seizure or disposition of seized property in connection with enforcement of the Act or any regulation or permit issued under the Act.

(b) The prohibitions in paragraphs (a)(2) through (9) of this section do not apply to activities necessary to respond to emergencies threatening life, property or the environment.

(c) (1) All Department of Defense activities shall be carried out in a manner that avoids to the maximum extent practicable any adverse impacts on Sanctuary resources and qualities. The prohibitions in paragraphs (a)(2) through (9) of this section do not apply to existing military activities carried out by the Department of Defense, as specifically identified in the Final environmental Impact Statement and Management Plan for the Proposed Monterey Bay National Marine Sanctuary (NOAA, 1992). (Copies of the FEIS/MP are available from the Monterey Bay National Marine Sanctuary, 299 Foam Street, Suite D, Monterey, CA 93940). New activities may be exempted from the prohibitions in paragraphs (a)(2) through (9) of this section by the Director after consultation between the Director and the Department of Defense.

(2) In the event of threatened or actual destruction of, loss of, or injury to a Sanctuary resource or quality resulting from an untoward incident, including but not limited to spills and groundings, caused by the Department of Defense, the cognizant component shall promptly coordinate with the Director for the purpose of taking appropriate actions to respond to and mitigate the harm and, if possible, restore or replace the Sanctuary resource or quality.

(d) The prohibitions in paragraphs (a)(2) through (8) of this section do not apply to any activity executed in accordance with the scope, purpose, terms and conditions of a National Marine Sanctuary permit issued pursuant to § 922.48 and § 922.133 or a Special Use permit issued pursuant to section 310 of the Act.

(e) The prohibitions in paragraphs (a)(2) through (8) of this section do not apply to any activity authorized by any lease, permit, license, approval or other authorization issued after January 1, 1993 and issued by any Federal, State or local authority of competent jurisdiction, provided that the applicant complies with § 922.49, the Director notifies the applicant and authorizing agency that he or she does not object to issuance of the authorization, and the applicant complies with any terms and conditions the Director deems necessary to protect Sanctuary resources and qualities. Amendments, renewals and extensions of authorizations in existence on the effective date of designation constitute authorizations issued after the effective date.

(f) Notwithstanding paragraphs (d) and (e) of this section, in no event may the Director issue a National Marine Sanctuary permit under § 922.48 and § 922.133 or a Special Use permit under section 310 of the Act authorizing, or otherwise approve: the exploration for, development or production of oil, gas or minerals within the Sanctuary; the discharge of primary-treated sewage within the Sanctuary (except by certification, pursuant to § 922.47, of valid authorizations in existence on January 1, 1993 and issued by other authorities of competent jurisdiction); or the disposal of dredged material within the Sanctuary other than at sites authorized by EPA (in consultation with COE) prior to January 1, 1993. Any purported authorizations issued by other authorities after January 1, 1993 for any of these activities within the Sanctuary shall be invalid.

§ 922.113 Permit procedures and criteria.

(a) A person may conduct an activity prohibited by § 922.132 (a)(2) through (8) if conducted in accordance with the scope, purpose, terms and conditions of a permit issued under this section and § 922.48.

(b) Applications for such permits should be addressed to the Director, Office of Ocean and Coastal Resource Management; ATTN: Manager, Monterey Bay National Marine Sanctuary, 299 Foam Street, Suite D, Monterey, CA 93940.

(c) The Director, at his or her discretion, may issue a permit, subject to such terms and conditions as he or she deems appropriate, to conduct an activity prohibited by § 922.132 (a)(2) through (8) if the Director finds that the activity will have only negligible short-term adverse effects on Sanctuary resources and qualities and will: Further research related to Sanctuary resources and qualities; further the educational, natural or historical resource value of the Sanctuary; further salvage or recovery operations in or near the Sanctuary in connection with a recent air or marine casualty; assist in

managing the Sanctuary; or further salvage or recovery operations in connection with an abandoned shipwreck in the Sanctuary title to which is held by the State of California. In deciding whether to issue a permit, the Director shall consider such factors as: the professional qualifications and financial ability of the applicant as related to the proposed activity; the duration of the activity and the duration of its effects; the appropriateness of the methods and procedures proposed by the applicant for the conduct of the activity; the extent to which the conduct of the activity may diminish or enhance Sanctuary resources and qualities; the cumulative effects of the activity; and the end value of the activity. In addition, the Director may consider such other factors as he or she deems appropriate.

(d) It shall be a condition of any permit issued that the permit or a copy thereof be displayed on board all vessels or aircraft used in the conduct of the activity.

(e) The Director may, *inter alia,* make it a condition of any permit issued that any data or information obtained under the permit be made available to the public.

(f) The Director may, *inter alia,* make it a condition of any permit issued that a NOAA official be allowed to observe any activity conducted under the permit and/or that the permit holder submit one or more reports on the status, progress or results of any activity authorized by the permit.

§ 922.134 Notification and review.

(a) The authority granted the Director under § 922.49 to object to or impose terms or conditions on the exercise of any valid lease, permit, license, approval or other authorization issued after January 1, 1993 may not be delegated or otherwise assigned to other Federal officials below the Director's level.

(b)(1) NOAA has entered into a Memorandum of Agreement (MOA) with the State of California, EPA and the Association of Monterey Bay Area Governments regarding the Sanctuary regulations relating to water quality within State waters within the Sanctuary. With regard to permits, the MOA encompasses:

(i) National Pollutant Discharge Elimination System (NPDES) permits issued by the State of California under § 13377 of the California Water Code; and

(ii) Waste Discharge Requirements issued by the State of California under § 13263 of the California Water Code.

(2) The MOA specifies how the process of § 922.49 will be administered within State waters within the Sanctuary in coordination with the State permit program.

Appendix A to Subpart M of Part 922—Monterey Bay National Marine Sanctuary Boundary Coordinates

[Appendix based on North American datum of 1983.]

Point	Latitude	Longitude
1	37°52′56.09055″	122°37′39.12564″
2	37°39′59.06176″	122°45′ 3.79307″
3	37°36′58.39164″	122°46′ 9.73871″
4	37°34′17.30224″	122°48′14.38141″
5	37°31′47.55649″	122°51′35.56769″
6	37°30′34.11030″	122°54′22.12170″
7	37°29′39.05866″	123°00′27.70792″
8	37°30′29.47603″	123°05′46.22767″
9	37°31′17.66945″	123°07′47.63363″
10	37°27′10.93594″	123°08′24.32210″
11	37°20′35.37491″	123°07′54.12763″
12	37°13′50.21805″	123°06′15.50600″
13	37°07′48.76810″	123°01′43.10994″
14	37°03′46.60999″	122°54′45.39513″
15	37°02′06.30955″	122°46′35.02125″
16	36°55′17.56782″	122°48′21.41121″
17	36°48′22.74244″	122°48′56.29007″
18	36°41′30.91516″	122°48′19.40739″
19	36°34′45.76070″	122°46′26.96772″
20	36°28′24.18076″	122°43′32.43527″
21	36°22′20.70312″	122°39′28.42026″
22	36°16′43.93588″	122°34′26.77255″
23	36°11′44.53838″	122°28′37.16141″
24	36°07′26.88988″	122°21′54.97541″
25	36°04′07.08898″	122°14′39.75924″
26	36°01′28.22233″	122°07′00.19068″
27	35°59′45.46381″	121°58′56.36189″
28	35°58′59.12170″	121°50′26.47931″
29	35°58′53.63866″	121°45′22.82363″
30	35°55′45.60623″	121°42′40.28540″
31	35°50′15.84256″	121°43′09.20193″
32	35°43′14.26690″	121°42′43.79121″
33	35°35′41.88635″	121°41′25.07414″
34	35°33′11.75999″	121°37′49.74192″
35	35°33′17.45869″	121°05′52.89891″
36	37°35′39.73180″	122°31′14.96033″
37	37°36′49.21739″	122°37′00.22577″
38	37°46′00.98983″	122°39′00.40466″
39	37°49′05.69080″	122°31′46.30542″

Appendix B to Subpart M of Part 922—Dredged Material Disposal Sites Adjacent to the Monterey Bay National Marine Sanctuary

(Appendix based on North American Datum of 1983.)

As of January 1, 1993, the U.S. Army Corps of Engineers operates the following dredged material disposal site adjacent to the Sanctuary off of the Golden Gate:

Point	Latitude	Longitude
1	37°45.875′	122°34.140′
2	37°44.978′	122°37.369′
3	37°44.491′	122°37.159′
4	37°45.406′	122°33.889′
5	37°45.875′	122°34.140′

In addition, the U.S. Environmental Protection Agency, as of January 1, 1993, is (in consultation with the U.S. Army Corps of Engineers) in the process of establishing a dredged material disposal site outside the northern boundary of the Monterey Bay National Marine Sanctuary and within one of three study areas described in 57 FR 43310, Sept. 18, 1992. When that disposal site is authorized, this appendix will be updated to incorporate its precise location.

Appendix C to Subpart M of Part 992—Zones Within the Sanctuary Where Overflights Below 1000 Feet Are Prohibited

The four zones are:

(1) From mean high water out to three nautical miles (NM) between a line extending from Point Santa Cruz on a southwesterly heading of 220° and a line extending from 2.0 NM north of Pescadero Point on a southwesterly heading of 240°;

(2) From mean high water out to three NM between a line extending from the Carmel River mouth on a westerly heading of 270° and a line extending due west along latitude 35° 33′17.5612″ off of Cambria;

(3) From mean high water and within a five NM arc drawn from a center point at the end of Moss Landing Pier; and

(4) Over the waters of Elkhorn Slough east of the Highway On bridge to Elkhorn Road.

Appendix D to Subpart M of Part 922—Zones and Access Routes Within the Sancturary Where the Operation of Motorized Personal Watercraft Is Allowed

The four zones and access routes are:

(1) The approximately one [1.0] NM^2 area off Pillar Point Harbor from launch ramp (37°30′ N, 122°29′ W) through harbor entrance to the northern boundary of Zone One bounded by (a) 37°29.6′ (breakwater buoy), 122°29′ W; (b) 37°28.8′ N (bell buoy), 122°28.9′ W; (c) 37°28.8′ N, 122°28′ W; and (d) 37°29.6′ N, 122°28′ W.

(2) The approximately three [3.0] NM^2 area off of Santa Cruz Small Craft Harbor ramp from 36°57.4′ N along a 100 yard wide access route due south along 122° W to the northern boundary of Zone Two (marked by the whistle buoy at 10 fathom curve) bounded by (a) 36°55′ N, 122°02′ W; (b) 36°55′ N, 121°58′ W; (c) 36°56.5′ N, 121°58′ W; and (d) 36°56.5′ N, 122°02′ W;

(3) The approximately five [5.0] NM^2 area off of Moss Landing Harbor/ Elkhorn Yacht Club Launch Ramp from 36°48.5′ N along a 100 yard wide access route due west along harbor entrance to the eastern boundary of Zone Three bounded by (a) 36°50′ N, 121°49.3′ W; (b) 36°50′ N, 121°50.8′ W; (c) 36°46.7′ N, 121°50.8′ W; (d) 36°46.7′ N, 121°49′ W; (e) 36°47.8′ N, 121°48.2′ W; and (f) 36°48.9′ N, 121°48.2′ W; and

(4) The approximately five [5.0] NM^2 area off of the U.S. Coast Guard Pier (Monterey Harbor) Launch Ramp from 36°36.5′ N, 121°53.5′ W along a 100 yard wide access route due north to the southern boundary of Zone Four bounded by (a) 36°38.7′ N, 121°55.4′ W; (b) 36°36.9′ N, 121°52.5′ W; (c) 36°38.3′ N, 121°51.3′ W; and (d) 36°40′ N, 121°54.4′ W.

Subpart N—Stellwagen Bank National Marine Sanctuary

§ 922.140 Boundary.

(a) The Stellwagen Bank National Marine Sanctuary (Sanctuary) consists of an area of approximately 638 square nautical miles (NM) of Federal marine waters and the submerged lands thereunder, over and around Stellwagen Bank and other submerged features off the coast of Massachusetts. The boundary encompasses the entirety of Stellwagen Bank; Tillies Bank, to the northeast of Stellwagen Bank; and portions of Jeffreys Ledge, to the north of Stellwagen Bank.

(b) The Sanctuary boundary is identified by the following coordinates, indicating the most northeast, southeast, southwest, west-northwest, and north-northwest points: 42°45′59.83″N×70°13′01.77″W (NE); 42°05′35.51″N×70°02′08.14″W (SE); 42°07′44.89″W×70°28′15.44″W (SW); 42°32′53.52″N×70°35′52.38″W (WNW); and 42°39′04.08″N×70°30′11.29″W (NNW). The western border is formed by a straight line connecting the most southwest and the west-northwest points of the Sanctuary. At the most west-northwest point, the Sanctuary border follows a line contiguous with the three-mile jurisdictional boundary of Massachusetts to the most north-northwest point. From this point, the northern border is formed by a straight line connecting the most north-northwest point and the most northeast point. The eastern border is formed by a straight line connecting the most northeast and the most southeast points of the Sanctuary. The southern border follows a straight line between the most southwest point and a point located at 42°06′54.57″N x 70°16′42.7″ W. From that point, the southern border then continues in a west-to-east direction along a line contiguous with the three-mile jurisdictional boundary of Massachusetts until reaching the most southeast point of the Sanctuary. The boundary coordinates are listed in appendix A to this subpart.

§ 922.141 Definitions.

In addition to those definitions found at § 922.3, the following definitions apply to this subpart:

Industrial material means mineral, as defined in § 922.3.

Traditional fishing means those commercial or recreational fishing methods which have been conducted in the past within the Sanctuary.

§ 922.142 Prohibited or otherwise regulated activities.

(a) Except as specified in paragraphs (b) through (f) of this section, the following activities are prohibited and thus are unlawful for any person to conduct or to cause to be conducted:

(1)(i) Discharging or depositing, from within the boundary of the Sanctuary, any material or other matter except:

(A) Fish, fish parts, chumming materials or bait used in or resulting from traditional fishing operations in the Sanctuary;

(B) Biodegradable effluent incidental to vessel use and generated by marine sanitation devices approved in accordance with section 312 of the Federal Water Pollution Control Act, as amended, (FWPCA), 33 U.S.C. 1322 *et seq.*;

(C) Water generated by routine vessel operations (e.g., cooling water, deck wash down and graywater as defined by section 312 of the FWPCA) excluding oily wastes from bilge pumping; or

(D) Engine exhaust.

(ii) Discharging or depositing, from beyond the boundary of the Sanctuary, any material or other matter, except those listed in paragraphs (a)(1)(l) (A) through (D) of this section, that subsequently enters the Sanctuary and injures a Sanctuary resource or quality.

(2) Exploring for, developing or producing industrial materials within the Sanctuary.

(3) Drilling into, dredging or otherwise altering the seabed of the Sanctuary; or constructing, placing or abandoning any structure, material or other matter on the seabed of the Sanctuary, except as an incidental result of:

(i) Anchoring vessels;

(ii) Traditional fishing operations; or

(iii) Installation of navigation aids.

(4) Moving, removing or injuring, or attempting to move, remove or injure, a Sanctuary historical resource. This prohibition does not apply to moving, removing or injury resulting incidentally from traditional fishing operations.

(5) Taking any marine reptile, marine mammal or seabird in or above the Sanctuary, except as permitted by the Marine Mammal Protection Act, as amended, (MMPA), 16 U.S.C. 1361 *et seq.*, the Endangered Species Act, as amended, (ESA), 16 U.S.C. 1531 *et seq.*, and the Migratory Bird Treaty Act, as amended, (MBTA), 16 U.S.C. 703 *et seq.*

(6) Lightering in the Sanctuary.

(7) Possessing within the Sanctuary (regardless of where taken, moved or removed from), except as necessary for valid law enforcement purposes, any historical resource, or any marine mammal, marine reptile or seabird taken in violation of the MMPA, ESA or MBTA.

(8) Interfering with, obstructing, delaying or preventing an investigation, search, seizure or disposition of seized property in connection with enforcement of the Act or any regulation or permit issued under the Act.

(b) The prohibitions in paragraphs (a)(1), and (3) through (8) of this section do not apply to any activity necessary to respond to an emergency threatening life, property or the environment.

(c)(1)(i) All Department of Defense military activities shall be carried out in a manner that avoids to the maximum extent practicable any adverse impacts on Sanctuary resources and qualities.

(ii) Department of Defense military activities may be exempted from the prohibitions in paragraphs (a)(1) and (3) through (7) of this section by the Director after consultation between the Director and the Department of Defense.

(iii) If it is determined that an activity may be carried out, such activity shall be carried out in a manner that avoids to the maximum extent practicable any advance impact on Sanctuary resources and qualities. Civil engineering and other civil works projects conducted by the U.S. Army Corps of Engineers are excluded from the scope of this paragraph(c).

(2) In the event of threatened or actual destruction of, loss of, or injury to a Sanctuary resource or quality resulting from an untoward incident, including but not limited to spills and groundings caused by the Department of Defense, the Department of Defense shall promptly coordinate with the Diretor for the purpose of taking appropriate actions to respond to and mitigate the harm and, if possible, restore or replace the Sanctuary resource or quality.

(d) The prohibitions in paragraphs (a)(1) and (3) through (7) of this section do not apply to any activity executed in accordance with the scope, purpose, terms and conditions of a National Marine Sanctuary permit issued pursuant to § 922.48 and § 922.143 or a Special Use permit issued pursuant to section 310 of the Act.

(e) The prohibitions in paragraphs (a)(1) and (3) through (7) of this section do not apply any activity authorized by any lease, permit, license, approval or other authorization issued after the effective date of Sanctuary designation (November 4, 1992) and issued by any Federal, State or local authority of competent jurisdiction, provided that the applicant compiles with § 922.49, the Director notifies the applicant and authorizing agency that he or she does not object to issuance of the authorization, and the applicant complies with any terms and conditions the Director deems necessary to protect Sanctuary resources and qualifies. Amendments, renewals and extensions of authorizations in existence on the effective date of designation constitute authorizations issued after the effective date.

(f) Notwithstanding paragraphs (d) and (e) of this section, in no event may the Director issue a permit under § 922.48 and § 922.143, or under section 310 of the act, authorizing, or otherwise approving, the exploration for, development or production of industrial materials within the Sanctuary, or the disposal of dredged materials within the Sanctuary (except by a certification, pursuant to § 922.47, of valid authorizations in existence on November 4, 1992) and any leases, licenses, permits, approvals or other authorizations authorizing the exploration for, development or production of industrial materials in the Sanctuary issued by other authorities after November 4, 1992, shall be invalid.

§ 922.143 Permit procedures and criteria.

(a) A person may conduct an activity prohibited by § 922.142 (a) (1) and (3) through (7) if conducted in accordance with scope, purpose, manner, terms and conditions of a permit issued under this section and § 922.48.

(b) Applications for such permits should be addressed to the Director, Office of Ocean and Coastal Resource Management; ATTN: Manager, Stellwagen Bank National Marine Sanctuary, 14 Union Street, Plymouth, MA 02360.

(c) The Director, at his or her discretion may issue a permit, subject to such terms and conditions as he or she deems appropriate, to conduct an activity prohibited by § 922.142(a) (1) and (3) through (7), if the Director finds that the activity will have only negligible short-term adverse effects on Sanctuary resources and qualities and will: further research related to Sanctuary resources and qualities; further the educational, natural or historical resource value of the Sanctuary; further salvage or recovery operations in or near the Sanctuary in connection with a recent air or marine casualty; or assist in managing the Sanctuary. In deciding whether to issue a permit, the Director may consider such factors as: the professional qualifications and financial ability of the applicant as related to the proposed activity; the duration of the activity and the duration of its effects; the appropriateness of the methods and procedures proposed by the applicant

for the conduct of the activity; the extent to which the conduct of the activity may diminish or enhance Sanctuary resources and qualities; the cumulative effects of the activity; and the end value of the activity. In addition, the Director may consider such other factors as he or she deems appropriate.

(d) It shall be a condition of any permit issued that the permit or a copy thereof be displayed on board all vessels or aircraft used in the conduct of the activity.

(e) The Director may, *inter alia,* make it a condition of any permit issued that any data or information obtained under the permit be made available to the public.

(f) The Director may, *inter alia,* make it a condition of any permit issued that a NOAA official be allowed to observe any activity conducted under the permit an/or that the permit holder submit one or more reports on the status, progress or results of any activity authorized by the permit.

Appendix A to Subpart N of Part 922—Stellwagen Bank National Marine Sanctuary Boundary Coordinates

[Appendix Based on North American Datum of 1927]

Pt.	Latitude	Longitude	Loran	
			9960W	9960X
E1	42°45′59.83″	70°13′01.77″	13,607.19	25,728.57
E2	42°05′35.51″	70°02′08.14″	13,753.39	25,401.78
E3	42°06′8.25″	70°03′17.55″	13,756.72	25,412.46
E4	42°06′2.53″	70°04′03.36″	13,760.30	25,417.53
E5	42°07′02.70″	70°05′13.61″	13,764.52	25,427.27
E6	42°07′13.0″	70°06′23.75″	13,770.54	25,434.45
E7	42°07′35.95″	70°07′27.89″	13,775.08	25,442.51
E8	42°07′42.33″	70°08′26.07″	13,780.35	25,448.27
E9	42°07′59.94″	70°09′19.78″	13,784.24	25,455.02
E10	42°08′04.95″	70°10′24.40″	13,790.27	25,461.28
E11	42°07′55.19″	70°11′47.67″	13,799.38	25,467.56
E12	42°07′59.84″	70°13′03.35″	13,806.58	25,474.95
E13	42°07′46.55″	70°14′21.91″	13,815.52	25,480.62
E14	42°07′27.29″	70°15′22.95″	13,823.21	25,484.05
E15	42°06′54.57″	70°16′42.71″	13,833.88	25,487.79
E16	42°07′44.89″	70°28′15.44″	13,900.14	25,563.22
E17	42°32′53.52″	70°35′52.38″	13,821.60	25,773.51
E18	42°33′30.24″	70°35′14.96″	13,814.43	25,773.54
E19	42°33′48.14″	70°35′03.81″	13,811.68	25,774.28
E20	42°34′30.45″	70°34′22.98″	13,803.64	25,774.59
E21	42°34′50.37″	70°33′21.93″	13,795.43	25,770.55
E22	42°35′16.08″	70°32′32.29″	13,787.92	25,768.31
E23	42°35′41.80″	70°31′44.20″	13,780.57	25,766.25
E24	42°36′23.08″	70°30′58.98″	13,772.14	25,766.14
E25	42°37′15.51″	70°30′23.01″	13,763.69	25,768.12
E26	42°37′58.88″	70°30′06.60″	13,758.09	25,771.07
E27	42°38′32.46″	70°30′06.54″	13,755.07	25,774.58
E28	42°39′04.08″	70°30′11.29″	13,752.75	25,778.35

Subpart O—Olympic Coast National Marine Sanctuary

§ 922.150 Boundary.

(a) The Olympic Coast National Marine Sanctuary (Sanctuary) consists of an area of approximately 2500 square nautical miles (NM) (approximately 8577 sq. kilometers) of coastal and ocean waters, and the submerged lands thereunder, off the central and northern coast of the State of Washington.

(b) The Sanctuary boundary extends from Koitlah Point due north to the United States/Canada international boundary. The Sanctuary boundary then follows the U.S./Canada international boundary seaward to the 100 fathom isobath. The seaward boundary of the Sanctuary approximates the 100 fathom isobath in a southerly direction from the U.S./Canada international boundary to a point due west of the mouth of the Copalis River cutting across the heads of Nitnat, Juan de Fuca and Quinault Canyons. The coastal boundary of the Sanctuary is the mean higher high water line when adjacent to Federally managed lands cutting across the mouths of all rivers and streams, except where adjacent to Indian reservations, State and county owned lands; in such case, the coastal boundary is the mean lower low water line. La Push harbor is excluded from the Sanctuary boundary shoreward of the International Collision at Sea regulation (Colreg.) demarcation lines. The boundary coordinates are listed in appendix A to this subpart.

§ 922.151 Definitions.

In addition to those definitions found at § 922.3, the following definitions apply to this subpart:

Federal Project means any water resources development project conducted by the U.S. Army Corps of Engineers or operating under a permit or other authorization issued by the Corps of Engineers and authorized by Federal law.

Indian reservation means a tract of land set aside by the Federal Government for use by a Federally recognized American Indian tribe and includes, but is not limited to, the Makah, Quileute, Hoh and Quinault Reservations.

Traditional fishing means fishing using a commercial or recreational fishing method that has been used in the Sanctuary before the effective date of Sanctuary designation (July 22, 1994), including the retrieval of fishing gear.

Treaty means a formal agreement between the United States Government and an Indian tribe.

§ 922.152 Prohibited or otherwise regulated activities.

(a) Except as specified in paragraphs (b) through (g) of this section, the

following activities are prohibited and thus are unlawful for any person to conduct or to cause to be conducted:

(1) Exploring for, developing or producing oil, gas or minerals within the Sanctuary.

(2)(i) Discharging or depositing, from within the boundary of the Sanctuary, any material or other matter except:

(A) Fish, fish parts, chumming materials or bait used in or resulting from traditional fishing operations in the Sanctuary;

(B) Biodegradable effluent incidental to vessel use and generated by marine sanitation devices approved in accordance with section 312 of the Federal Water Pollution Control Act, as amended, (FWPCA), 33 U.S.C. 1322 *et seq.*;

(C) Water generated by routine vessel operations (e.g., cooling water, deck wash down and graywater as defined by section 312 of the FWPCA) excluding oily wastes from bilge pumping;

(D) Engine exhaust; or

(E) Dredge spoil in connection with beach nourishment projects related to harbor maintenance activities.

(ii) Discharging or depositing, from beyond the boundary of the Sanctuary, any material or other matter, except those listed in paragraphs (a)(2)(i) (A) through (E) of this section, that subsequently enters the Sanctuary and injures a Sanctuary resource or quality.

(3) Moving, removing or injuring, or attempting to move, remove or injure, a Sanctuary historical resource. This prohibition does not apply to moving, removing or injury resulting incidentally from traditional fishing operations.

(4) Drilling into, dredging or otherwise altering the seabed of the Sanctuary; or constructing, placing or abandoning any structure, material or other matter on the seabed of the Sanctuary, except as an incidental result of:

(i) Anchoring vessels;

(ii) Traditional fishing operations;

(iii) Installation of navigation aids;

(iv) Harbor maintenance in the areas necessarily associated with Federal Projects in existence on July 22, 1994, including dredging of entrance channels and repair, replacement or rehabilitation of breakwaters and jetties;

(v) Construction, repair, replacement or rehabilitation of boat launches, docks or piers, and associated breakwaters and jetties; or

(vi) Beach nourishment projects related to harbor maintenance activities.

(5) Taking any marine mammal, sea turtle or seabird in or above the Sanctuary, except as authorized by the Marine Mammal Protection Act, as amended, (MMPA), 16 U.S.C. 1361 *et seq.*, the Endangered Species Act, as amended, (ESA), 16 U.S.C. 1531 *et seq.*, and the Migratory Bird Treaty Act, as amended, (MBTA), 16 U.S.C. 703 *et seq.*, or pursuant to any Indian treaty with an Indian tribe to which the United States is a party, provided that the Indian treaty right is exercised in accordance with the MMPA, ESA and MBTA, to the extent that they apply.

(6) Flying motorized aircraft at less than 2,000 feet both above the Sanctuary within one NM of the Flattery Rocks, Quillayute Needles, or Copalis National Wildlife Refuge, or within one NM seaward from the coastal boundary of the Sanctuary, except for activities related to tribal timber operations conducted on reservation lands, or to transport persons or supplies to or from reservation lands as authorized by a governing body of an Indian tribe.

(7) Possessing within the Sanctuary (regardless of where taken, moved or removed from) any historical resource, or any marine mammal, sea turtle, or seabird taken in violation of the MMPA, ESA or MBTA, to the extent that they apply.

(8) Interfering with, obstructing, delaying or preventing an investigation, search, seizure or disposition of seized property in connection with enforcement of the Act or any regulation or permit issued under the Act.

(b) The prohibitions in paragraph (a)(2) through (4), (6) and (7) of this section do not apply to activities necessary to respond to emergencies threatening life, property or the environment.

(c) The prohibitions in paragraphs (a)(2) through (4), (6) and (7) of this section do not apply to activities necessary for valid law enforcement purposes.

(d)(1) All Department of Defense military activities shall be carried out in a manner that avoids to the maximum extent practicable any adverse impacts on Sanctuary resources and qualities.

(i) Except as provided in paragraph (d)(2) of this section, the prohibitions in paragraphs (a) (2) through (7) of this section do not apply to the following military activities performed by the Department of Defense in W–237A, W–237B, and Military Operating Areas Olympic A and B in the Sanctuary:

(A) Hull integrity tests and other deep water tests;

(B) Live firing of guns, missiles, torpedoes, and chaff;

(C) Activities associated with the Quinault Range including the in-water testing of non-explosive torpedoes; and

(D) Anti-submarine warfare operations.

(ii) New activities may be exempted from the prohibitions in paragraphs (a) (2) through (7) of this section by the Director after consultation between the Director and the Department of Defense. If it is determined that an activity may be carried out, such activity shall be carried out in a manner that avoids to the maximum extent practicable any adverse impact on Sanctuary resources and qualities. Civil engineering and other civil works projects conducted by the U.S. Army Corps of Engineers are excluded from the scope of this paragraph (d).

(2) The Department of Defense is prohibited from conducting bombing activities within the Sanctuary.

(3) In the event of threatened or actual destruction of, loss of, or injury to a Sanctuary resource or quality resulting from an untoward incident, including but not limited to spills and groundings caused by the Department of Defense, the Department of Defense shall promptly coordinate with the Director for the purpose of taking appropriate actions to respond to and mitigate the harm and, if possible, restore or replace the Sanctuary resource or quality.

(e) The prohibitions in paragraphs (a) (2) through (7) of this section do not apply to any activity executed in accordance with the scope, purpose, terms and conditions of a National Marine Sanctuary permit issued pursuant to § 922.48 and § 922.153 or a Special Use permit issued pursuant to section 310 of the Act.

(f) Members of a federally recognized Indian tribe may exercise aboriginal and treaty-secured rights, subject to the requirements of other applicable law, without regard to the requirements of this part. The Director may consult with the governing body of a tribe regarding ways the tribe may exercise such rights consistent with the purposes of the Sanctuary.

(g) The prohibitions in paragraphs (a) (2) through (7) of this section do not apply to any activity authorized by any lease, permit, license, or other authorization issued after July 22, 1994 and issued by any Federal, State or local authority of competent jurisdiction, provided that the applicant complies with § 922.49, the Director notifies the applicant and authorizing agency that he or she does not object to issuance of the authorization, and the applicant complies with any terms and conditions the Director deems necessary to protect Sanctuary resources and qualities. Amendments, renewals and extensions of authorizations in existence on the effective date of designation constitute authorizations issued after the effective date.

(h) Notwithstanding paragraphs (e) and (g) of this section, in no event may the Director issue a National Marine Sanctuary permit under § 922.48 and § 922.153 or a Special Use permit under section 310 of the Act authorizing, or otherwise approve: The exploration for, development or production of oil, gas or minerals within the Sanctuary; the discharge of primary-treated sewage within the Sanctuary (except by certification, pursuant to § 922.47, of valid authorizations in existence on July 22, 1994 and issued by other authorities of competent jurisdiction); the disposal of dredged material within the Sanctuary other than in connection with beach nourishment projects related to harbor maintenance activities; or bombing activities within the Sanctuary. Any purported authorizations issued by other authorities after July 22, 1994 for any of these activities within the Sanctuary shall be invalid.

§ 922.153 Permit procedures and criteria.

(a) A person may conduct an activity prohibited by paragraphs (a) (2) through (7) of § 922.152 if conducted in accordance with the scope, purpose, terms and conditions of a permit issued under this section and § 922.48.

(b) Applications for such permits should be addressed to the Director, Office of Ocean and Coastal Resource Management; ATTN: Manager, Olympic Coast National Marine Sanctuary, 138 West First Street, Port Angeles, WA 98362.

(c) The Director, at his or her discretion, may issue a permit, subject to such terms and conditions as he or her deems appropriate, to conduct an activity prohibited by paragraphs (a) (2) through (7) of § 922.152, if the Director finds that the activity will not substantially injure Sanctuary resources and qualities and will: further research related to Sanctuary resources and qualities; further the educational, natural or historical resource value of the Sanctuary; further salvage or recovery operations in or near the Sanctuary in connection with a recent air or marine casualty; assist in managing the Sanctuary; further salvage or recovery operations in connection with an abandoned shipwreck in the Sanctuary title to which is held by the State of Washington; or promote the welfare of any Indian tribe adjacent to the Sanctuary. In deciding whether to issue a permit, the Director may consider such factors as: the professional qualifications and financial ability of the applicant as related to the proposed activity; the duration of the activity and the duration of its effects; the appropriateness of the methods and procedures proposed by the applicant for the conduct of the activity; the extent to which the conduct of the activity may diminish or enhance Sanctuary resources and qualities; the cumulative effects of the activity; the end value of the activity; and the impacts of the activity on adjacent Indian tribes. Where the issuance or denial of a permit is requested by the governing body of an Indian tribe, the Director shall consider and protect the interests of the tribe to the fullest extent practicable in keeping with the purposes of the Sanctuary and his or her fiduciary duties to the tribe. The Director may also deny a permit application pursuant to this section, in whole or in part, if it is determined that the permittee or applicant has acted in violation of the terms or conditions of a permit or of the regulations in this subpart. In addition, the Director may consider such other factors as he or she deems appropriate.

(d) It shall be a condition of any permit issued that the permit or a copy thereof be displayed on board all vessels or aircraft used in the conduct of the activity.

(e) The Director may, *inter alia,* make it a condition of any permit issued that any data or information obtained under the permit be made available to the public.

(f) The Director may, *inter alia,* make it a condition of any permit issued that a NOAA official be allowed to observe any activity conducted under the permit and/or that the permit holder submit one or more reports on the status, progress or results of any activity authorized by the permit.

(g) The Director shall obtain the express written consent of the governing body of an Indian tribe prior to issuing a permit, if the proposed activity involves or affects resources of cultural or historical significance to the tribe.

(h) Removal, or attempted removal of any Indian cultural resource or artifact may only occur with the express written consent of the governing body of the tribe or tribes to which such resource or artifact pertains, and certification by the Director that such activities occur in a manner that minimizes damage to the biological and archeological resources. Prior to permitting entry onto a significant cultural site designated by a tribal governing body, the Director shall require the express written consent of the governing body of the tribe or tribes to which such cultural site pertains.

§ 922.154 Consultation with the State of Washington, affected Indian tribes, and adjacent county governments.

(a) The Director shall regularly consult with the State of Washington, the governing bodies of tribes with reservations adjacent to the Sanctuary, and adjacent county governments regarding areas of mutual concern, including Sanctuary programs, permitting, activities, development, and threats to Sanctuary resources.

(b) The Director shall, when requested by such governments, enter into a memorandum of understanding regarding such consultations.

Appendix A to Subpart O of Part 922—Olympic Coast National Marine Sanctuary Boundary Coordinates

[Based on North American Datum of 1983]

Point	Latitude	Longitude
1	47°07′45″	124°11′02″
2	47°07′45″	124°58′12″
3	47°35′05″	125°00′00″
4	47°40′05″	125°04′44″
5	47°50′01″	125°05′42″
6	47°57′13″	125°29′13″
7	48°07′33″	125°38′20″
8	48°15′00″	125°40′54″
9	48°18′21.2″	125°30′02.9″
10	48°20′15.2″	125°22′52.9″
11	48°26′46.2″	125°09′16.9″
12	48°27′09.2″	125°08′29.9″
13	48°28′08.2″	125°05′51.9″
14	48°29′43.2″	125°00′10.9″
15	48°29′56.2″	124°59′19.9″
16	48°30′13.2″	124°54′56.9″
17	48°30′21.2″	124°50′25.9″
18	48°30′10.2″	124°47′17.9″
19	48°29′36.4″	124°43′38.1″
20	48°28′08″	124°38′13″
21	48°23′17″	124°38′13″

2. For the reasons set forth in the Preamble, and under the authority of 16 U.S.C. 1431 15 CFR Parts 924—Monitor Marine Sanctuary, 925—Olympic Coast National Marine Sanctuary, 935—Channel Islands National Marine Sanctuary Regulations, 936—The Point Reyes/Farallon Islands Marine Sanctuary Regulations, 938—The Gray's Reef National Marine Sanctuary Regulations, 941—Fagatele Bay National Marine Sanctuary Regulations, 942—Cordell Bank National Marine Sanctuary, 943—Flower Garden Banks National Marine Sanctuary, 940—Stellwagen Bank National Marine Sanctuary, and 944—Monterey Bay National Marine Sanctuary are removed.

[FR Doc. 30564 Filed 12–26–95; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 436

Tests and Methods of Assay of Antibiotic and Antibiotic-Containing Drugs

CFR Correction

In Title 21 CFR parts 300 to 499, revised as of April 1, 1995, on pages 372 and 375, the equations following the second table in both §§ 436.105 and 436.106 were misprinted. Both denominators in each equation should read ''5'' instead of ''—5''.

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 26, 301, and 602

[TD 8644]

RIN 1545–AJ11; 1545–AL75; 1545–AO89

Generation-Skipping Transfer Tax

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final generation-skipping transfer (GST) tax regulations under chapter 13 of the Internal Revenue Code (Code), as added by section 1431 of the Tax Reform Act of 1986. Changes to the applicable law were made by the Tax Reform Act of 1986, the Technical and Miscellaneous Revenue Act of 1988, and the Revenue Reconciliation Act of 1989. The regulations are necessary to provide guidance to taxpayers so that they may comply with chapter 13 of the Code.

EFFECTIVE DATE: December 27, 1995.

FOR FURTHER INFORMATION CONTACT: James F. Hogan, (202) 622–3090 (not a toll free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information requirements contained in these final regulations have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control numbers 1545–0985 (relating to §§ 26.2601–1 and 26.2662–2) and 1545–1358 (relating to §§ 26.2632–1, 26.2642–1, 26.2642–2, 26.2642–3, 26.2642–4 and 26.2652–2). All of these paperwork requirements will be consolidated under control number 1545–0985. Responses to this collection of information are required to ensure the proper collection of the generation-skipping transfer tax.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection unless the collection of information displays a valid control number.

The estimated burden per respondent is 1 hour under control number 1545–0985. The time estimates for the reporting and recordkeeping requirements under control number 1545–1358 are included in the estimates of burden applicable to Forms 706, 706NA, 706GS(T), 706GS(D), 706GS(D–1), and 709.

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

Books or records relating to this collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

On March 15, 1988, the IRS published in the Federal Register a notice of proposed rulemaking (53 FR 8469) by cross reference to Temporary Regulations published on the same date in the Federal Register (53 FR 8441) under §§ 2601 and 2662. Subsequently, on December 24, 1992, the IRS published a second notice of proposed rulemaking (57 FR 61353) amending the prior notice. Also, on December 24, 1992, the IRS published a notice of proposed rulemaking in the Federal Register (57 FR 61356) containing proposed regulations under §§ 2611, 2612, 2613, 2632, 2641, 2642, 2652, 2653, 2654, and 2663. The IRS received written and oral comments on the proposed regulations and, on April 21, 1993, a public hearing was held. These documents adopt final regulations with respect to these notices of proposed rulemaking.

The following is a discussion of the more significant revisions that were made.

Section 2601—Transitional Rules

Transfers After September 25, 1985 and Before October 23, 1986

Section 26.2601–1(a)(2)(i), relating to inter vivos transfers made after September 25, 1985, and before October 23, 1986, clarifies that chapter 13 applies to inter vivos transfers that are subject to chapter 12 even though a gift tax is not actually paid because of, for example, the marital deduction or the unified credit.

Section 26.2601–1(a)(2)(ii) (which treats inter vivos transfers made after September 25, 1985, and before October 23, 1986, as if made on October 23, 1986) clarifies that the value of the transferred property for purposes of chapter 13 is determined as of the actual transfer date rather than as of the deemed transfer date of October 23, 1986.

Section 26.2601–1(a)(4) adds an example illustrating that § 26.2601–1(a)(2) does not apply to transfers made under a revocable trust that becomes irrevocable by reason of the grantor's death after September 25, 1985, but before October 23, 1986. Those transfers are not subject to chapter 13 because they are in the nature of testamentary transfers that occurred prior to October 23, 1986.

Section 26.2601–1(b)(1)(ii)(C) clarifies that incidents of ownership in an insurance policy that are relinquished before September 25, 1985, are not to be taken into account in determining whether a trust is irrevocable for purposes of § 26.2601–1(b)(1), which exempts trusts that were irrevocable on September 25, 1985, from the provisions of chapter 13.

Under § 26.2601–1(b)(1)(iii)(A), a qualified terminable interest property (QTIP) trust that is grandfathered under § 26.2601–1(b)(1) is treated as if the reverse QTIP election had been made under section 2652(a)(3). Example 1 in § 26.2601–1(b)(1)(iii)(B) has been revised to illustrate that the initial QTIP election under section 2523(f) need not be made before September 25, 1985, provided that the trust was irrevocable on that date. Further, § 26.2601–1(b)(1)(v)(C) has been revised to provide that in the case of a trust with respect to which a reverse QTIP election is deemed to have been made, the failure to exercise the right of reimbursement under section 2207A will not be treated as a constructive addition to the trust. This conforms the treatment of trusts that are irrevocable on September 25, 1985, with the rule provided in § 26.2652–1(a)(3) which applies to trusts created after September 25, 1985.

In § 26.2601–1(b)(2)(iv)(B), the phrase ''or to a generation-skipping trust'' has been added to eliminate any implication that the provision is limited to situations involving direct skips. The provision applies to all generation-skipping transfers.

Section 26.2601–1(b)(3)(iii) applies the transitional rules where the decedent was under a mental disability but had not been adjudged a mental incompetent. This section has been clarified to provide that any evidence submitted to establish the decedent's state of incompetency is not conclusive and is subject to examination. In addition, an example has been added to illustrate the transitional rules applicable in the case of mental incompetency.

Uniform Statutory Rule Against Perpetuities

The notice of proposed rulemaking published on December 24, 1992, (57 FR 61353) contained a proposed modification to § 26.2601–1(b)(1)(v)(B)(*2*). Section 26.2601–1(b)(1)(v)(B)(*2*) provided that the exercise of a nongeneral power of appointment will not be treated as an addition to a grandfathered GST trust if the power is exercised in a manner that may not postpone or suspend the vesting, absolute ownership, or power of alienation of a interest in property for a period, measured from the date of creation of the trust, extending beyond any life in being at the date of creation of the trust plus a period of 21 years (perpetuities period).

The proposed modification to § 26.2601–1(b)(1)(v)(B)(*2*), which is finalized in this document, provides that the exercise of a nongeneral power of appointment that validly postpones or suspends the vesting, absolute ownership, or power of alienation of an interest in property for a term of years that will not exceed 90 years (measured from the date of creation of the trust) will not be considered an exercise that postpones vesting, etc., beyond the perpetuities period. The modification takes into account the fact that many states have adopted the Uniform Statutory Rule Against Perpetuities (USRAP) which allows either a 90 year perpetuities period or the common law perpetuities period. Under § 26.2601–1(b)(1)(v)(B)(*2*), as modified, the nongeneral power may not be exercised in a manner that postpones vesting, etc., for the longer of 90 years or the common law period (lives in being plus 21 years).

The discussion in the preamble published on December 24, 1992, indicates that USRAP has a ''wait and see'' aspect that is not appropriate for GST purposes because it will be necessary to determine the GST tax consequences of distributions and terminations at the time they occur. Thus, the preamble stated that, in order to comply with the regulation and avoid a constructive addition, it must be clear at the time the nongeneral power is exercised that the exercise may not postpone or suspend vesting, etc., beyond either lives in being plus 21 years or 90 years (but not the longer of the two periods). A commentator has pointed out that the USRAP invalidates any attempt to exercise a power for the longer of the two periods. Under the USRAP, it will be clear at the time the nongeneral power is exercised that the exercise may not postpone or suspend vesting, etc., beyond one of the two periods (but not both). Under the USRAP, the common law period (lives in being plus 21 years) is imposed in the event that the power holder exercises the power in a manner that attempts to suspend or postpone vesting, etc., for the longer of the two periods. Although the preamble published on December 24, 1992, may have been misleading in referring to a ''wait and see'' aspect of USRAP, the modification to § 26.2601–1(b)(1)(v)(B)(*2*) is not affected.

Section 2611 et. seq.—GST Substantive Rules

Definition of Generation-Skipping Transfers

Section 26.2611–1 has been revised to clarify that, in determining whether an event is subject to the GST tax, reference must be made to the most recent transfer that was subject to Federal estate or gift tax. This is because the most recent transfer that was subject to estate or gift tax establishes the identity of the transferor, which in turn determines the identity of the skip persons and non-skip persons.

Definitions

Section 26.2612–1(a)(2)(i) of the proposed regulations provides generally that, for purposes of determining whether a transfer constitutes a direct skip, the generation assignment of a person who would otherwise be a skip person is redetermined by disregarding the intervening generation, if certain individuals have died prior to the transfer (e.g., a predeceased child of the transferor). The section has been modified to provide that, if an individual who is a member of the intervening generation dies no later than 90 days after the transfer, the deceased individual is treated as having predeceased the transferor, if the governing instrument or applicable state law provides for such treatment.

Section 26.2612–1(a)(2)(ii) has been added to provide that, if a transferor makes an addition to an existing trust after the death of an individual described in paragraph (a)(2)(i) of that section (i.e., an individual in the intervening generation), the additional property is treated as being held in a separate trust for purposes of chapter 13.

Section 2612(a)(1) defines the term *taxable termination* to mean the termination of an interest in property held in trust unless, among other things, at no time after such termination may a distribution (including distributions on termination) be made from the trust to a skip person. Section 26.2612–1(b)(1)(iii), as proposed, has been revised to provide that, for purposes of applying this rule, potential distributions to skip persons are to be disregarded if the probability of occurrence is so remote as to be negligible. A similar rule has been applied to § 26.2612–1(d)(2), regarding when a trust is considered a skip person. The probability that a distribution will occur is so remote as to be negligible only if it can be ascertained by actuarial standards that there is less than a 5 percent probability that the distribution will occur.

Section 26.2612–1(c)(2) has been added to clarify that the look-through rule in section 2651(e)(2) does not apply for purposes of determining whether a transfer from one trust to another trust is a taxable distribution. Thus, the transfer is treated as having been made to the recipient trust rather than to the beneficiaries of that trust. Accordingly, a transfer is a taxable distribution only if the recipient trust itself is a skip person.

Section 26.2612–1(e)(3) has been added to provide that, in determining whether a trust is a skip person, trust interests disclaimed pursuant to a qualified disclaimer described in section 2518 are not taken into account.

Example 3 has been added to § 26.2612–1(f) to illustrate that a transfer to a trust pursuant to which a beneficiary who is a skip person has a withdrawal power is not a direct skip unless the trust is a skip person.

Example 9 has been added to § 26.2612–1(f) to illustrate that a taxable termination may occur upon the distribution of the entire trust property (less amounts retained to pay a resulting GST tax and administration expenses).

Example 14 contained in § 26.2612–1(f) of the proposed regulations illustrates that an individual is not treated as having an interest in a trust

for purposes of Chapter 13, if the individual's support obligation could be satisfied at the discretion of the trustee. This example has been renumbered as *Example 15* and has been clarified to provide that an individual will have an interest in the trust if the trustee is required to make distributions for the beneficiary's support, in satisfaction of the individual's support obligation.

Allocation of GST Exemption

Under § 26.2632–1(b)(2)(ii)(A) of the proposed regulations, a late allocation of GST exemption is effective on the date the Form 709 reporting the allocation is filed, and is deemed to precede in point of time any taxable event occurring on that date. This section has been revised to specify that the Form 709 is treated as filed on the date it is mailed to the appropriate IRS Service Center. Further, the late allocation may be made on a timely filed Form 709 reporting another transfer.

Section 26.2632–1(b)(2)(ii)(B) has been added to clarify how the GST exemption allocated on a Federal gift tax return (Form 709) is to be apportioned in the event that the amount allocated on the return exceeds the value of the transfers reported on the return.

Example 4 of § 26.2632–1(b)(2)(iii) of the proposed regulations has been revised to better illustrate the effective date of a late allocation of GST exemption.

Example 5 of § 26.2632–1(b)(2)(iii) has been added to illustrate the automatic allocation of GST exemption to inter vivos direct skips in situations where split gift treatment is elected on an initial gift tax return filed after its due date.

Section 26.2632–1(d)(1) has been revised to provide that a late allocation of GST exemption made by an executor with respect to an inter vivos transfer not included in the gross estate, is effective as of the date the allocation is filed. This rule does not apply to any automatic allocation under section 2632(b)(1). This revision conforms the regulation to section 2642(b)(3).

Estate Tax Inclusion Period

As proposed, § 26.2632–1(c)(2)(ii) provided that an estate tax inclusion period (ETIP) exists during the period in which the transferred property would have been includible in the transferor's gross estate had the transferor retained an interest held by the transferor's spouse, but only to the extent the spouse acquired the interest from the transferor in an inter vivos transfer that was not included in the transferor's taxable gifts or for which a deduction was allowed under section 2523. Commentators stated that there was no support in the statute for this spousal rule, and any such rule would require a legislative change. The final regulations eliminate this spousal rule and *Example 5* of § 26.2632–1(c)(5).

Section 26.2632–1(c)(2)(ii)(A) has been added to provide that the ETIP rules do not apply when the possibility that the property will be included in the gross estate of the transferor (or the transferor's spouse) is so remote as to be negligible.

Further, § 26.2632–1(c)(2)(ii)(B) has been added to provide that transferred property will not be treated as being subject to inclusion in the transferor's spouse's gross estate, and thus, subject to an ETIP, where the only power possessed by the spouse is a right to withdraw no more than the greater of 5 percent or $5,000 of the trust's corpus and the withdrawal right terminates within 60 days of the transfer to the trust.

Section 26.2632–1(c)(5) *Example 3*, of the proposed regulations illustrates that if a transferor's spouse elects gift-splitting treatment with respect to the transferor's gift that is subject to an ETIP, the spouse is treated as the transferor of one-half of the gift. The example has been expanded to illustrate that, since the spouse's deemed transfer is subject to an ETIP, if the spouse dies prior to the termination of the trust, the spouse's executor may allocate GST exemption to the trust. However, the allocation will not be effective until the ETIP terminates on the transferor's death.

Erroneous Allocations

Under the proposed regulations, allocations in excess of the amount of the property transferred are void. This treatment has been expanded under the final regulations. Thus, any allocation to a trust that has no GST potential at the time of the allocation, with respect to the transferor for whom the allocation is made, is also void. This provision is intended to prevent the wasting of GST exemption because of an erroneous allocation with respect to a testamentary or inter vivos transfer. A trust will have no GST potential only if there is no possibility that a GST will be made from the trust with respect to the transferor.

Determination of Applicable Fraction

Section 26.2642–1(b)(2) of the proposed regulations provided rules for determining the inclusion ratio with respect to a trust subject to an ETIP where GSTs are made from the trust during the ETIP. Comments were received that the rules were unclear regarding whether an ineffective allocation, i.e., an allocation made prior to any distributions or terminations, would apply in determining the amount of the transferor's unused GST exemption, or whether such an allocation could be modified prior to an ETIP termination. In response to the comments, § 26.2632–1(c)(1) (providing rules for the allocation of exemption with respect to a trust subject to an ETIP) and § 26.2642–1(b)(2) clarify that an allocation made to a trust subject to an ETIP prior to any distribution or termination is not subject to modification or revocation. However, the allocation will not be effective, i.e., the allocation does not operate to fix the inclusion ratio of the trust, at the time it is made. Rather, the allocation becomes effective as of the date of a subsequent distribution or termination. Section 26.2632–1(c)(5) *Example 2*, illustrates this point.

Section 26.2642–2 of the proposed regulations provides valuation rules for determining the denominator of the applicable fraction under section 2642. Section 26.2642–2(a)(1) of the final regulations specifies that, in the case of a timely allocation of GST exemption with respect to an inter vivos transfer, the denominator of the applicable fraction is the fair market value of the transferred property, as finally determined for gift tax purposes.

Section 26.2642–2(b)(1) of the proposed regulations provides special rules for determining the denominator of the applicable fraction in situations involving property subject to the special valuation rules contained in section 2032A. Under the proposed regulations, the special use value of the property could only be used in determining the applicable fraction if the property was transferred in a direct skip. Thus, a generation-skipping trust to which section 2032A property was transferred in a transfer that was not a direct skip would not receive the benefit of the favorable valuation rules of section 2032A in determining the applicable fraction with respect to the trust.

Comments stated that the proposed regulation was inconsistent with section 2642(b), which provides that the chapter 11 value must be used to determine the applicable fraction in the case of a testamentary transfer. Under the final regulations, the section 2032A value of property is to be used to determine the applicable fraction for a direct skip transfer and for a generation-skipping trust created in a transfer other than a direct skip.

In the event that additional estate tax is imposed under section 2032A(c) with respect to the property, then the

applicable fraction is redetermined as of the transferor's date of death. Thus, the GST tax liability with respect to any direct skip, taxable termination, or taxable distribution occurring prior to the recapture event would be recomputed based on the redetermined applicable fraction, and an additional GST tax would be due. The taxation of any future GST transfers would also be based on the redetermined applicable fraction.

Sections 26.2642–2(b) (2) and (3) of the proposed regulations contain special rules for determining the denominator of the applicable fraction in situations involving residuary and pecuniary payments. Generally, in the case of a residual GST after the payment of a pecuniary amount, the denominator of the applicable fraction will be the estate tax value of the total assets available to satisfy the pecuniary payment less the amount of the pecuniary payment, provided the pecuniary payment carries ''appropriate interest'' as defined in § 26.2642–2(b)(4). Under § 26.2642–2(b)(4)(ii), the payment need not carry appropriate interest if, *inter alia*, the payment is irrevocably ''set aside'' within 15 months of the transferor's death. The final regulations clarify that this exception to the appropriate interest requirement applies only if the entire payment is set aside. Further, the payment is treated as set aside if the amount is segregated and held in a separate account pending distribution. Finally, under the proposed regulation, the appropriate interest requirement can be satisfied if a pro rata share of estate income is allocated to the pecuniary bequest. The final regulations clarify that the payment of income may be allocated pursuant to the terms of the governing instrument or applicable local law.

Section 26.2642–4(a)(3) of the proposed regulations addresses a situation where a lifetime allocation is made with respect to a trust when the trust was not subject to an ETIP, and the trust is subsequently included in the transferor's gross estate. The regulation has been revised to provide that, if additional GST exemption is allocated to the trust, the nontax portion of the trust is determined immediately after the date of the transferor's death. Also, if additional GST exemption is not allocated to the trust by the transferor's executor, the applicable fraction does not change, if the trust was not otherwise subject to an ETIP at the time the previous allocation of GST exemption was made. Further, where such property is included in the gross estate, the denominator of the applicable fraction is reduced to reflect any federal or state estate or inheritance tax paid by the trust.

Definition of Transferor

Section 26.2652–1(a)(1) of the proposed regulations, defining *transferor,* has been revised to specify that a surviving spouse is treated as the transferor of a qualified domestic trust (QDOT) described in section 2056A that is included in the surviving spouse's gross estate for federal estate tax purposes, assuming the trust is not subject to a reverse QTIP election under section 2652(a)(3). The surviving spouse is also the transferor of any QDOT created by the surviving spouse under section 2056(d)(2)(B).

Section 26.2652–1(a)(4), as proposed, provided that the creator of a special power of appointment will be treated as making a transfer subject to estate or gift tax (and thus be considered a transferor) if the holder of the power exercised the power in a manner that may postpone vesting, etc., of the property subject to the power beyond the permissible perpetuities period. This result is inconsistent with section 2041(a)(3), which treats the holder of the power as making a transfer under these circumstances. Accordingly, the regulation has been revised to provide that the holder of the power will be treated as making a taxable transfer, if the holder exercises the power in the manner prescribed.

Section 26.2652–1(a)(5) has been added to specify that where a donor's spouse consents to have the donor's gift treated as made one-half by the spouse, then for purposes of chapter 13, the spouse is treated as the transferor of one-half of the property transferred by the donor. Thus, if a donor transfers property to a trust and retains a *qualified interest* as defined in section 2702(b), with the remainder to a grandchild, a consenting spouse would be treated as the transferor of one-half the entire property. It was suggested that the spouse should only be treated as the transferor of that portion of the trust corresponding to one-half of the actuarial value of the interest passing to the grandchild, since under section 2513, only one half the gift to the grandchild may be treated as made by the consenting spouse. However, treating the consenting spouse as the transferor of one-half of the entire trust is consistent with the general treatment accorded other split-interest transfers. For example, if a transferor transferred property in trust retaining an interest that qualified under section 2702(b), with the remainder to the transferor's grandchild, the transferor would be considered the transferor of the entire trust for purposes of chapter 13, notwithstanding that, from a technical standpoint, only the actuarial value of the gift to the grandchild is subject to gift tax at the time of the transfer.

Example 8 in § 26.2652–1(a)(6) has been added illustrating that a surviving spouse will not be treated as making a contribution to a QTIP trust that is included in the spouse's gross estate and is subject to a reverse QTIP election, where the spouse directs in the will that the estate tax generated by the inclusion of the trust is to be paid from the spouse's probate estate.

Separate Shares Treated as Separate Trusts

Section 26.2654–1 of the proposed regulations provides rules under which ''separate shares'' of a single trust that satisfy the requirements of the regulations will be recognized as separate trusts for GST purposes.

Under the proposed regulations, a mandatory payment of a pecuniary amount is treated as a separate share of a trust (and thus, a separate trust for GST purposes) if certain conditions are satisfied. The section is clarified to specify that a mandatory payment is a payment that is nondiscretionary and noncontingent; i.e., the payment must be made in all events.

A sentence was added to *Example 3,* now contained in § 26.2654–1(a)(5), to clarify that, where a decedent's probate estate pours over to a revocable trust, and then amounts are distributed pursuant to the terms of the trust, the distributions will be treated as separate shares for purposes of chapter 13.

Example 4, now contained in § 26.2654–1(a)(5), has been revised to specify that the bequest of a pecuniary amount payable in kind is not treated as a separate share of the trust, since, under the facts presented, neither the trust nor local law requires that the assets distributed in satisfaction of the bequest fairly reflect net appreciation and depreciation. This is the result regardless of whether the assets are distributed within 15 months of the transferor's death.

Comments received suggested that the regulations should allow separate trust treatment whenever a single inter vivos trust was recognized as separate trusts under local law. For example, an inter vivos trust provides income to child for life, but when each grandchild reaches age 35, a separate trust is to be established for the child, the grandchild, and the grandchild's issue. Comments suggested that the Service should recognize each trust established when a grandchild reaches age 35 as a separate trust, and allow a late allocation of GST

exemption specifically to that trust when severance occurs.

This suggestion was rejected. Generally, the adoption of this approach would effectively allow the allocation of GST exemption to specific distributions from a GST trust, rather than to the entire trust. This result would be contrary to the clear language of the statute. See, e.g., sections 2642(a)(1)(A) and (a)(2).

Division of a Single Trust Into Separate Trusts

Under § 26.2654–1(c) of the proposed regulations, a testamentary trust could be severed into several parts, provided the severance was commenced prior to the filing of the estate tax return. Further, the new trusts created pursuant to the severance had to be identical to the old trusts. For example, a testamentary trust providing for income to spouse, remainder to be divided equally between child and grandchild could only be severed into two trusts both providing income to spouse with the remainder to be divided between child and grandchild. Finally, an inter vivos trust could not be severed unless it consisted of separate shares, or different transferors had contributed to the trust.

The regulation has been clarified to specify that the division of a single trust that is included in the transferor's gross estate will be recognized if either: (1) The single trust consists of separate shares and is thus, treated as separate trusts; or (2) the single trust, although not consisting of separate shares, is severed into separate trusts pursuant to a direction in the governing instrument providing that the trust is to be divided into separate trusts on the transferor's death; or (3) the governing instrument does not require or direct severance but the trust is severed pursuant to the discretionary authority of the trustee granted under the governing instrument or local law.

The final regulations provide that the trusts resulting from the severance of a single testamentary trust need not be identical. Thus, if the trust provides income to spouse, remainder to child and grandchild, the trust may be severed to create two trusts, one with income to spouse, remainder to child and a second with income to spouse remainder to grandchild. This result could be achieved through proper estate planning in any event. However, the regulations make it clear that the resulting trusts must provide for the same succession of interests as provided for under the original trusts. Thus, a trust providing for an income interest to a child, with remainder to a grandchild, could not be divided into one trust for the child (equal in value to the child's income interest) and another for the grandchild.

The proposed regulations provided that the new trusts must be funded with a fractional share of each and every asset held by the original single trust. The provision has been revised to provide that the new trusts may also be funded on a nonpro rata basis, based on the fair market value of the assets selected on the date of severance. Thus, the executor or trustee may select the assets with which to fund each trust, and need not fractionalize each asset.

An example has been added to illustrate that, if a revocable trust included in the transferor's gross estate is, under the terms of the trust, divided into multiple trusts on the transferor's death, then each trust established will be treated as a separate trust for GST purposes.

Due Date of Return

New § 26.2662–1(d)(2) has been added to provide that the due date of the return with respect to a taxable termination subject to an election under section 2624(c) (relating to alternate valuation in accordance with section 2032) is April 15th of the following year in which the taxable termination occurred or on or before the 15th day of the tenth month following the month in which the death that resulted in the taxable termination occurred, whichever is later.

Application of Chapter 13 to Nonresident Aliens

Section 2663(2) requires that the Commissioner prescribe regulations, consistent with the provisions of chapters 11 and 12, providing for the application of the GST tax to a nonresident alien (NRA). In general, under § 26.2663–2(b) as proposed, the GST tax applied to inter vivos and testamentary direct skip transfers by a NRA, to the extent that the transferred property was U.S. situs property such that the transfer was subject to a gift tax (in the case of inter vivos transfers) or an estate tax (in the case of testamentary transfers). Similarly, in the case of transfers in trust, chapter 13 applied to taxable terminations and distributions to the extent the initial transfer to the trust (whether inter vivos or testamentary) consisted of U.S. situs property, such that the initial transfer was subject to the gift or estate tax. This was the case regardless of the situs of the property at the time of the actual distribution or termination and regardless of the residency or citizenship of the skip person receiving the beneficial interest or property.

Under § 26.2663–2(c) as proposed, if the property involved in a generation-skipping transfer was not situated in the U.S. at the time of the initial transfer, the generation-skipping transfer was still subject to the GST tax if: (1) At the time of the direct skip, taxable termination or distribution, the property passes to a skip person who is a U.S. resident or citizen; and (2) at the time of the initial transfer to the skip person or trust, a lineal descendant of the transferor, who is a lineal ancestor of the skip person, was a resident or citizen of the U.S. This rule applied regardless of the situs of the property at the time of the actual distribution or termination. Section 26.2663–2(f) of the proposed regulations provided for the automatic allocation of a NRA's $1,000,000 GST exemption regardless of whether the transfer was a direct skip.

Thus, the proposed regulations subjected non-U.S. situs property to the GST tax based on the status of the skip person/recipient of the property at the time the property was received, and the status of the generation that was skipped at the time of the initial transfer to the trust or skip person.

Many comments were critical of this approach. In general, these comments emphasized that the estate and gift tax provisions subject transfers by NRAs to transfer tax based on the situs of the property, not the status of the recipient. Therefore, the proposed regulations conflict with section 2663, which provides that the regulations should be consistent with the principles of chapters 11 and 12 of the Internal Revenue Code (Code). Further, the commentators argued that treating a NRA who transfers non-U.S. situs property as a transferor for GST tax purposes would conflict with the definition of *transferor* under section 2652, since the transfer would not be subject to estate or gift tax. Under section 2652, an individual is a transferor only to the extent the transfer is subject to U.S. gift tax or estate tax.

The proposed regulations have been revised to address these concerns. Thus, the rules in the proposed regulations applying chapter 13 to transfers of property that were not subject to estate or gift tax have been eliminated. Under the final regulations, the application of the GST tax will be limited to situations where an estate or gift tax is imposed on the property. Thus, the GST tax will apply to inter vivos and testamentary direct skip transfers by a NRA transferor to the extent a gift tax is imposed on the transfer (in the case of an inter vivos transfer) or the transferred property is

included in the transferor's gross estate (in the case of a testamentary direct skip). In the case of taxable terminations and taxable distributions, chapter 13 will apply to the extent a gift tax was imposed on the initial transfer to the trust, or the property was included in the transferor's gross estate. Accordingly, under the final regulations (in the absence of a situation involving an ETIP), the application of Chapter 13 is generally dependent on the situs of the property at the time of the initial transfer. The regulations contain special rules for determining the applicable fraction and inclusion ratio where a trust is funded with both U.S. and foreign situs property.

In general, the rules of § 26.2632–1 apply with respect to the allocation of the exemption. However, the ETIP rule provided in § 26.2632–1(c) applies only if the property transferred by the NRA is subsequently included in the transferor's gross estate. The final regulations provide transitional relief with respect to NRA's who made GST transfers and relied on the automatic allocation rules in the proposed regulations.

Special Analyses

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

Drafting Information. The principal author of these regulations is James F. Hogan, Office of the Chief Counsel, IRS. Other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 26

Estate taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

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

26 CFR part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 26, 301, and 602 are amended as follows:

Paragraph 1. Part 26 is revised to read as follows:

PART 26—GENERATION-SKIPPING TRANSFER TAX REGULATIONS UNDER THE TAX REFORM ACT OF 1986

Sec.

Authority: 26 U.S.C. 7805 and 26 U.S.C. 2663.

Section 26.2632–1 also issued under 26 U.S.C. 2632 and 2663.

Section 26.2642–4 also issued under 26 U.S.C. 2632 and 2663.

Section 26.2662–1 also issued under 26 U.S.C. 2662.

Section 26.2663–2 also issued under 26 U.S.C. 2632 and 2663.

§ 26.2600–1 Table of contents.

This section lists the captions that appear in the regulations under sections 2601 through 2663.

26.2601–1 Effective dates.

(a) *Transfers subject to the generation-skipping transfer tax*—(1) *In general.* Except as otherwise provided in this section, the provisions of chapter 13 of the Internal Revenue Code of 1986 (Code) apply to any generation-skipping transfer (as defined in section 2611) made after October 22, 1986.

(2) *Certain transfers treated as if made after October 22, 1986.* Solely for purposes of chapter 13, an inter vivos transfer is treated as if it were made on October 23, 1986, if it was—

(i) Subject to chapter 12 (regardless of whether a tax was actually incurred or paid); and

(ii) Made after September 25, 1985, but before October 23, 1986. For purposes of this paragraph, the value of the property transferred shall be the value of the property on the date the property was transferred.

(3) *Certain trust events treated as if occurring after October 22, 1986.* For purposes of chapter 13, if an inter vivos transfer is made to a trust after September 25, 1985, but before October 23, 1986, any subsequent distribution from the trust or termination of an interest in the trust that occurred before October 23, 1986, is treated as occurring immediately after the deemed transfer on October 23, 1986. If more than one distribution or termination occurs with respect to a trust, the events are treated as if they occurred on October 23, 1986, in the same order as they occurred. See paragraph (b)(1)(iv)(B) of this section for rules determining the portion of distributions and terminations subject to tax under chapter 13. This paragraph (a)(3) does not apply to transfers to trusts not subject to chapter 13 by reason of the transition rules in paragraphs (b) (2) and (3) of this section. The provisions of this paragraph (a)(3) do not apply in determining the value of the property under chapter 13.

(4) *Example.* The following example illustrates the principle that paragraph (a)(2) of this section is not applicable to transfers under a revocable trust that became irrevocable by reason of the transferor's death after September 25, 1985, but before October 23, 1986:

Example. T created a revocable trust on September 30, 1985, that became irrevocable when T died on October 10, 1986. Although the trust terminated in favor of a grandchild of T, the transfer to the grandchild is not treated as occurring on October 23, 1986, pursuant to paragraph (a)(2) of this section because it is not an inter vivos transfer subject to chapter 12. The transfer is not subject to chapter 13 because it is in the nature of a testamentary transfer that occurred prior to October 23, 1986.

(b) *Exceptions*—(1) *Irrevocable trusts*—(i) *In general.* The provisions of chapter 13 do not apply to any generation-skipping transfer under a trust (as defined in section 2652(b)) that was irrevocable on September 25, 1985. The rule of the preceding sentence does not apply to a pro rata portion of any generation-skipping transfer under an irrevocable trust if additions are made to the trust after September 25, 1985. See paragraph (b)(1)(iv) of this section for rules for determining the portion of the trust that is subject to the provisions of chapter 13.

(ii) *Irrevocable trust defined*—(A) *In general.* Unless otherwise provided in either paragraph (b)(1)(ii) (B) or (C) of this section, any trust (as defined in section 2652(b)) in existence on September 25, 1985, is considered an irrevocable trust.

(B) *Property includible in the gross estate under section 2038.* For purposes of this chapter a trust is not an irrevocable trust to the extent that, on September 25, 1985, the settlor held a power with respect to such trust that would have caused the value of the trust to be included in the settlor's gross estate for Federal estate tax purposes by reason of section 2038 (without regard to powers relinquished before September 25, 1985) if the settlor had died on September 25, 1985. A trust is considered subject to a power on September 25, 1985, even though the exercise of the power was subject to the precedent giving of notice, or even though the exercise could take effect only on the expiration of a stated period, whether or not on or before September 25, 1985, notice had been given or the power had been exercised.

A trust is not considered subject to a power if the power is, by its terms, exercisable only on the occurrence of an event or contingency not subject to the settlor's control (other than the death of the settlor) and if the event or contingency had not in fact taken place on September 25, 1985.

(C) *Property includible in the gross estate under section 2042.* A policy of insurance on an individual's life that is treated as a trust under section 2652(b) is not considered an irrevocable trust to the extent that, on September 25, 1985, the insured possessed any incident of ownership (as defined in § 20.2042–1(c) of this chapter, and without regard to any incidents of ownership relinquished before September 25, 1985), that would have caused the value of the trust, (i.e., the insurance proceeds) to be included in the insured's gross estate for Federal estate tax purposes by reason of section 2042, if the insured had died on September 25, 1985.

(D) *Examples.* The following examples illustrate the application of this paragraph (b)(1):

Example 1. *Section 2038 applicable.* On September 25, 1985, T, the settlor of a trust that was created before September 25, 1985, held a testamentary power to add new beneficiaries to the trust. T held no other powers over any portion of the trust. The testamentary power held by T would have caused the trust to be included in T's gross estate under section 2038 if T had died on September 25, 1985. Therefore, the trust is not an irrevocable trust for purposes of this section.

Example 2. *Section 2038 not applicable when power held by a person other than settlor.* On September 25, 1985, S, the spouse of the settlor of a trust in existence on that date, had an annual right to withdraw a portion of the principal of the trust. The trust was otherwise irrevocable on that date. Because the power was not held by the settlor of the trust, it is not a power described in section 2038. Thus, the trust is considered an irrevocable trust for purposes of this section.

Example 3. *Section 2038 not applicable.* In 1984, T created a trust and retained the right to expand the class of remaindermen to include any of T's afterborn grandchildren. As of September 25, 1985, all of T's grandchildren were named remaindermen of the trust. Since the exercise of T's power was dependent on there being afterborn grandchildren who were not members of the class of remaindermen, a contingency that did not exist on September 25, 1985, the trust is not considered subject to the power on September 25, 1985, and is an irrevocable trust for purposes of this section. The result is not changed even if grandchildren are born after September 25, 1985, whether or not T exercises the power to expand the class of remaindermen.

Example 4. *Section 2042 applicable.* On September 25, 1985, T purchased an insurance policy on T's own life and designated child, C, and grandchild, GC, as the beneficiaries. T retained the power to obtain from the insurer a loan against the surrender value of the policy. T's insurance policy is a trust (as defined in section 2652(b)) for chapter 13 purposes. The trust is not considered an irrevocable trust because, on September 25, 1985, T possessed an incident of ownership that would have caused the value of the policy to be included in T's gross estate under section 2042 if T had died on that date.

Example 5. *Trust partially irrevocable.* In 1984, T created a trust naming T's grandchildren as the income and remainder beneficiaries. T retained the power to revoke the trust as to one-half of the principal at any time prior to T's death. T retained no other powers over the trust principal. T did not die before September 25, 1985, and did not exercise or release the power before that date. The half of the trust not subject to T's power to revoke is an irrevocable trust for purposes of this section.

(iii) *Trust containing qualified terminable interest property*—(A) *In general.* For purposes of chapter 13, a trust described in paragraph (b)(1)(ii) of this section that holds qualified terminable interest property by reason of an election under section 2056(b)(7) or section 2523(f) (made either on, before or after September 25, 1985) is treated in the same manner as if the decedent spouse or the donor spouse (as the case may be) had made an election under section 2652(a)(3). Thus, transfers from such trusts are not subject to chapter 13, and the decedent spouse or the donor spouse (as the case may be) is treated as the transferor of such property. The rule of this paragraph (b)(1)(iii) does not apply to that portion of the trust that is subject to chapter 13 by reason of an addition to the trust occurring after September 25, 1985. See § 26.2652–2(a) for rules where an election under section 2652(a)(3) is made. See § 26.2652–2(c) for rules where a portion of a trust is subject to an election under section 2652(a)(3).

(B) *Examples.* The following examples illustrate the application of this paragraph (b)(1)(iii):

Example 1. *QTIP election made after September 25, 1985.* On March 28, 1985, T established a trust. The trust instrument provided that the trustee must distribute all income annually to T's spouse, S, during S's life. Upon S's death, the remainder is to be distributed to GC, the grandchild of T and S. On April 15, 1986, T elected under section 2523(f) to treat the property in the trust as qualified terminable interest property. On December 1, 1987, S died and soon thereafter the trust assets were distributed to GC. Because the trust was irrevocable on September 25, 1985, the transfer to GC is not subject to tax under chapter 13. T is treated as the transferor with respect to the transfer of the trust assets to GC in the same manner as if T had made an election under section 2652(a)(3) to reverse the effect of the section 2523(f) election for chapter 13 purposes.

Example 2. *Section 2652(a)(3) election deemed to have been made.* Assume the same facts as in *Example 1*, except the trust instrument provides that after S's death all income is to be paid annually to C, the child of T and S. Upon C's death, the remainder is to be distributed to GC. C died on October 1, 1992, and soon thereafter the trust assets are distributed to GC. Because the trust was irrevocable on September 25, 1985, the termination of C's interest is not subject to chapter 13.

(iv) *Additions to irrevocable trusts*—(A) *In general.* If an addition is made after September 25, 1985, to an irrevocable trust which is excluded from chapter 13 by reason of paragraph (b)(1) of this section, a pro rata portion of subsequent distributions from (and terminations of interests in property held in) the trust is subject to the provisions of chapter 13. If an addition is made, the trust is thereafter deemed to consist of two portions, a portion not subject to chapter 13 (the non-chapter 13 portion) and a portion subject to chapter 13 (the chapter 13 portion), each with a separate inclusion ratio (as defined in section 2642(a)). The non-chapter 13 portion represents the value of the assets of the trust as it existed on September 25, 1985. The applicable fraction (as defined in section 2642(a)(2)) for the non-chapter 13 portion is deemed to be 1 and the inclusion ratio for such portion is 0. The chapter 13 portion of the trust represents the value of all additions made to the trust after September 25, 1985. The inclusion ratio for the chapter 13 portion is determined under section 2642. This paragraph (b)(1)(iv)(A) requires separate portions of one trust only for purposes of determining inclusion ratios. For purposes of chapter 13, a constructive addition under paragraph (b)(1)(v) of this section is treated as an addition. See paragraph (b)(4) of this section for exceptions to the additions rule of this paragraph (b)(1)(iv). See § 26.2654–1(a)(2) for rules treating additions to a trust by an individual other than the initial transferor as a separate trust for purposes of chapter 13.

(B) *Terminations of interests in and distributions from trusts.* Where a termination or distribution described in section 2612 occurs with respect to a trust to which an addition has been made, the portion of such termination or distribution allocable to the chapter 13 portion is determined by reference to the allocation fraction, as defined in paragraph (b)(1)(iv)(C) of this section. In the case of a termination described in section 2612(a) with respect to a trust, the portion of such termination that is

subject to chapter 13 is the product of the allocation fraction and the value of the trust (to the extent of the terminated interest therein). In the case of a distribution described in section 2612(b) from a trust, the portion of such distribution that is subject to chapter 13 is the product of the allocation fraction and the value of the property distributed.

(C) *Allocation fraction*—(1) *In general.* The allocation fraction allocates appreciation and accumulated income between the chapter 13 and non-chapter 13 portions of a trust. The numerator of the allocation fraction is the amount of the addition (valued as of the date the addition is made), determined without regard to whether any part of the transfer is subject to tax under chapter 11 or chapter 12, but reduced by the amount of any Federal or state estate or gift tax imposed and subsequently paid by the recipient trust with respect to the addition. The denominator of the allocation fraction is the total value of the entire trust immediately after the addition. For purposes of this paragraph (b)(1)(iv)(C), the total value of the entire trust is the fair market value of the property held in trust (determined under the rules of section 2031), reduced by any amount attributable to or paid by the trust and attributable to the transfer to the trust that is similar to an amount that would be allowable as a deduction under section 2053 if the addition had occurred at the death of the transferor, and further reduced by the same amount that the numerator was reduced to reflect Federal or state estate or gift tax incurred by and subsequently paid by the recipient trust with respect to the addition. Where there is more than one addition to principal after September 25, 1985, the portion of the trust subject to chapter 13 after each such addition is determined pursuant to a revised fraction. In each case, the numerator of the revised fraction is the sum of the value of the chapter 13 portion of the trust immediately before the latest addition, and the amount of the latest addition. The denominator of the revised fraction is the total value of the entire trust immediately after the addition. If the transfer to the trust is a generation-skipping transfer, the numerator and denominator are reduced by the amount of the generation-skipping transfer tax, if any, that is imposed by chapter 13 on the transfer and actually recovered from the trust. The allocation fraction is rounded off to five decimal places (.00001).

(*2*) *Examples.* The following examples illustrate the application of paragraph (b)(1)(iv) of this section. In each of the examples, assume that the recipient trust does not pay any Federal or state transfer tax by reason of the addition.

Example 1. *Post September 25, 1985, addition to trust.* (i) On August 16, 1980, T established an irrevocable trust. Under the trust instrument, the trustee is required to distribute the entire income annually to T's child, C, for life, then to T's grandchild, GC, for life. Upon GC's death, the remainder is to be paid to GC's issue. On October 1, 1986, when the total value of the entire trust is $400,000, T transfers $100,000 to the trust. The allocation fraction is computed as follows:

$$\frac{\text{Value of addition}}{\text{Total value of trust}} = \frac{\$100,000}{\$400,000 + \$100,000} = .2$$

(ii) Thus, immediately after the transfer, 20 percent of the value of future generation-skipping transfers under the trust will be subject to chapter 13.

Example 2. *Effect of expenses.* Assume the same facts as in *Example 1,* except immediately prior to the transfer on October 1, 1986, the fair market value of the individual assets in the trust totaled $400,000. Also, assume that the trust had accrued and unpaid debts, expenses, and taxes totaling $300,000. Assume further that the entire $300,000 represented amounts that would be deductible under section 2053 if the trust were includible in the transferor's gross estate. The numerator of the allocation fraction is $100,000 and the denominator of the allocation fraction is $200,000 (($400,000 − $300,000)+$100,000). Thus, the allocation fraction is .5 ($100,000/$200,000) and 50 percent of the value of future generation-skipping transfers will be subject to chapter 13.

Example 3. Multiple additions. (i) Assume the same facts as in *Example 1,* except on January 30, 1988, when the total value of the entire trust is $600,000, T transfers an additional $40,000 to the trust. Before the transfer, the value of the portion of the trust that was attributable to the prior addition was $120,000 ($600,000×.2). The new allocation fraction is computed as follows:

$$\frac{\text{Total value of additions}}{\text{Total value of trust}} = \frac{\$120,000 + \$40,000}{\$600,000 + \$40,000} = \frac{\$160,000}{\$640,000} = .25$$

(ii) Thus, immediately after the transfer, 25 percent of the value of future generation-skipping transfers under the trust will be subject to chapter 13.

Example 4. *Allocation fraction at time of generation-skipping transfer.* Assume the same facts as in *Example 3,* except on March 1, 1989, when the value of the trust is $800,000, C dies. A generation-skipping transfer occurs at C's death because of the termination of C's life estate. Therefore, $200,000 ($800,000×.25) is subject to tax under chapter 13.

(v) *Constructive additions*—(A) *Powers of Appointment.* Except as provided in paragraph (b)(1)(v)(B) of this section, where any portion of a trust remains in the trust after the post-September 25, 1985, release, exercise, or lapse of a power of appointment over that portion of the trust, and the release, exercise, or lapse is treated to any extent as a taxable transfer under chapter 11 or chapter 12, the value of the entire portion of the trust subject to the power that was released, exercised, or lapsed is treated as if that portion had been withdrawn and immediately retransferred to the trust at the time of the release, exercise, or lapse. The creator of the power will be considered the transferor of the addition except to the extent that the release, exercise, or lapse of the power is treated as a taxable transfer under chapter 11 or chapter 12. See § 26.2652–1 for rules for determining the identity of the transferor of property for purposes of chapter 13.

(B) *Special rule for certain powers of appointment.* The release, exercise, or lapse of a power of appointment (other than a general power of appointment as defined in section 2041(b)) is not treated as an addition to a trust if—

(*1*) Such power of appointment was created in an irrevocable trust that is not subject to chapter 13 under paragraph (b)(1) of this section; and

(*2*) In the case of an exercise, the power of appointment is not exercised in a manner that may postpone or

suspend the vesting, absolute ownership or power of alienation of an interest in property for a period, measured from the date of creation of the trust, extending beyond any life in being at the date of creation of the trust plus a period of 21 years plus, if necessary, a reasonable period of gestation (the perpetuities period). For purposes of this paragraph (b)(1)(v)(B)(*2*), the exercise of a power of appointment that validly postpones or suspends the vesting, absolute ownership or power of alienation of an interest in property for a term of years that will not exceed 90 years (measured from the date of creation of the trust) will not be considered an exercise that postpones or suspends vesting, absolute ownership or the power of alienation beyond the perpetuities period. If a power is exercised by creating another power, it is deemed to be exercised to whatever extent the second power may be exercised.

(C) *Constructive addition if liability is not paid out of trust principal.* Where a trust described in paragraph (b)(1) of this section is relieved of any liability properly payable out of the assets of such trust, the person or entity who actually satisfies the liability is considered to have made a constructive addition to the trust in an amount equal to the liability. The constructive addition occurs when the trust is relieved of liability (e.g., when the right of recovery is no longer enforceable). But see § 26.2652–1(a)(3) for rules involving the application of section 2207A in the case of an election under section 2652(a)(3).

(D) *Examples.* The following examples illustrate the application of this paragraph (b)(1)(v):

Example 1. *Lapse of a power of appointment.* On June 19, 1980, T established an irrevocable trust with a corpus of $500,000. The trust instrument provides that the trustee shall distribute the entire income from the trust annually to T's spouse, S, during S's life. At S's death, the remainder is to be distributed to T and S's grandchild, GC. T also gave S a general power of appointment over one-half of the trust assets. On December 21, 1989, when the value of the trust corpus is $1,500,000, S died without having exercised the general power of appointment. The value of one-half of the trust corpus, $750,000 ($1,500,000 × .5) is included in S's gross estate under section 2041(a) and is subject to tax under Chapter 11. Because the value of one-half of the trust corpus is subject to tax under Chapter 11 with respect to S's estate, S is treated as the transferor of that property for purposes of Chapter 13 (see section 2652(a)(1)(A)). For purposes of the generation-skipping transfer tax, the lapse of S's power of appointment is treated as if $750,000 ($1,500,000 × .5) had been distributed to S and then transferred back to the trust. Thus, S is considered to have added $750,000 ($1,500,000 × .5) to the trust at the date of S's death. Because this constructive addition occurred after September 25, 1985, 50 percent of the corpus of the trust became subject to Chapter 13 at S's death.

Example 2. *Multiple actual additions.* On June 19, 1980, T established an irrevocable trust with a principal of $500,000. The trust instrument provides that the trustee shall distribute the entire income from the trust annually to T's spouse, S, during S's life. At S's death, the remainder is to be distributed to GC, the grandchild of T and S. On October 1, 1985, when the trust assets were valued at $800,000, T added $200,000 to the trust. After the transfer on October 1, 1985, the allocation fraction was .2 ($200,000/$1,000,000). On December 21, 1989, when the value of the trust principal is $1,000,000, T adds $1,000,000 to the trust. After this addition, the new allocation fraction is 0.6 ($1,200,000/$2,000,000). The numerator of the fraction is the value of that portion of trust assets that were subject to chapter 13 immediately prior to the addition (by reason of the first addition), $200,000 (.2 ÷ $1,000,000), plus the value of the second transfer, $1,000,000, which equals $1,200,000. The denominator of the fraction, $2,000,000, is the total value of the trust assets immediately after the second transfer. Thus, 60 percent of the principal of the trust becomes subject to chapter 13.

Example 3. *Entire portion of trust subject to lapsed power is treated as an addition.* On September 25, 1985, B possessed a general power of appointment over the assets of an irrevocable trust that had been created by T in 1980. Under the terms of the trust, B's power lapsed on July 20, 1987. For Federal gift tax purposes, B is treated as making a gift of ninety-five percent (100%—5%) of the value of the principal (see section 2514). However, because the entire trust was subject to the power of appointment, 100 percent (that portion of the trust subject to the power) of the assets of the trust are treated as a constructive addition. Thus, the entire amount of all generation-skipping transfers occurring pursuant to the trust instrument after July 20, 1987, are subject to chapter 13.

Example 4. *Exercise of power of appointment in favor of another trust.* On March 1, 1985, T established an irrevocable trust as defined in paragraph (b)(1)(ii) of this section. Under the terms of the trust instrument, the trustee is required to distribute the entire income annually to T's child, C, for life, then to T's grandchild, GC, for life. GC has the power to appoint any or all of the trust assets to Trust 2 which is an irrevocable trust (as defined in paragraph (b)(1)(ii) of this section) that was established on August 1, 1985. The terms of Trust 2's governing instrument provide that the trustee shall pay income to T's great grandchild, GGC, for life. Upon GGC's death the remainder is to be paid to GGC's issue. GGC was alive on March 1, 1985, when Trust 1 was created. C died on April 1, 1986. On July 1, 1987, GC exercised the power of appointment. The exercise of GC's power does not subject future transfers from Trust 2 to tax under chapter 13 because the exercise of the power in favor of Trust 2 does not suspend the vesting, absolute ownership, or power of alienation of an interest in property for a period, measured from the date of creation of Trust 1, extending beyond the life of GGC (a beneficiary under Trust 2 who was in being at the date of creation of Trust 1) plus a period of 21 years. The result would be the same if Trust 2 had been created after the effective date of chapter 13.

Example 5. *Exercise of power of appointment in favor of another trust.* Assume the same facts as in *Example 3*, except that GGC was born on March 28, 1986. The valid exercise of GC's power in favor of Trust 2 causes the principal of Trust 1 to be subject to chapter 13, because GGC was not born until after the creation of Trust 1. Thus, such exercise may suspend the vesting, absolute ownership, or power of alienation of an interest in the trust principal for a period, measured from the date of creation of Trust 1, extending beyond the life of GGC (a beneficiary under Trust 2 who was not a life in being at the date of creation of Trust 1).

Example 6. *Extension for the longer of two periods.* Prior to the effective date of chapter 13, GP established an irrevocable trust under which the trust income was to be paid to GP's child, C, for life. C was given a testamentary power to appoint the remainder in further trust for the benefit of C's issue. In default of C's exercise of the power, the remainder was to pass to charity. C died on February 3, 1995, survived by a child who was alive when GP established the trust. C exercised the power in a manner that validly extends the trust in favor of C's issue until the latter of May 15, 2064 (80 years from the date the trust was created), or the death of C's child plus 21 years. C's exercise of the power is a constructive addition to the trust because the exercise may extend the trust for a period longer than the permissible periods of either the life of C's child (a life in being at the creation of the trust) plus 21 years or a term not more than 90 years measured from the creation of the trust. On the other hand, if C's exercise of the power could extend the trust based only on the life of C's child plus 21 years or only for a term of 80 years from the creation of the trust (but not the later of the two periods) then the exercise of the power would not have been a constructive addition to the trust.

Example 7. *Extension for the longer of two periods.* The facts are the same as in *Example 6* except local law provides that the effect of C's exercise is to extend the term of the trust until May 15, 2064, whether or not C's child predeceases that date by more than 21 years. C's exercise is not a constructive addition to the trust because C exercised the power in a manner that cannot postpone or suspend vesting, absolute ownership, or power of alienation for a term of years that will exceed 90 years. The result would be the same if the effect of C's exercise is either to extend the term of the trust until 21 years after the death of C's child or to extend the term of the trust until the first to occur of May 15, 2064 or 21 years after the death of C's child.

(vi) *Appreciation and income.* Except to the extent that the provisions of paragraphs (b)(1)(iv) and (v) of this

section allocate subsequent appreciation and accumulated income between the original trust and additions thereto, appreciation in the value of the trust and undistributed income added thereto are not considered an addition to the principal of a trust.

(2) *Transition rule for wills or revocable trusts executed before October 22, 1986*—(i) *In general.* The provisions of chapter 13 do not apply to any generation-skipping transfer under a will or revocable trust executed before October 22, 1986, provided that—

(A) The document in existence on October 21, 1986, is not amended at any time after October 21, 1986, in any respect which results in the creation of, or an increase in the amount of, a generation-skipping transfer;

(B) In the case of a revocable trust, no addition is made to the revocable trust after October 21, 1986, that results in the creation of, or an increase in the amount of, a generation-skipping transfer; and

(C) The decedent dies before January 1, 1987.

(ii) *Revocable trust defined.* For purposes of this section, the term *revocable trust* means any trust (as defined in section 2652(b)) except to the extent that, on October 22, 1986, the trust—

(A) Was an irrevocable trust described in paragraph (b)(1) of this section; or

(B) Would have been an irrevocable trust described in paragraph (b)(1) of this section had it not been created or become irrevocable after September 25, 1985, and before October 22, 1986.

(iii) *Will or revocable trust containing qualified terminable interest property.* The rules contained in paragraph (b)(1)(iii) of this section apply to any will or revocable trust within the scope of the transition rule of this paragraph (b)(2).

(iv) *Amendments to will or revocable trust.* For purposes of this paragraph (b)(2), an amendment to a will or a revocable trust in existence on October 21, 1986, is not considered to result in the creation of, or an increase in the amount of, a generation-skipping transfer where the amendment is—

(A) Basically administrative or clarifying in nature and only incidentally increases the amount transferred; or

(B) Designed to ensure that an existing bequest or transfer qualifies for the applicable marital or charitable deduction for estate, gift, or generation-skipping transfer tax purposes and only incidentally increases the amount transferred to a skip person or to a generation-skipping trust.

(v) *Creation of, or increase in the amount of, a GST.* In determining whether a particular amendment to a will or revocable trust creates, or increases the amount of, a generation-skipping transfer for purposes of this paragraph (b)(2), the effect of the instrument(s) in existence on October 21, 1986, is measured against the effect of the instrument(s) in existence on the date of death of the decedent or on the date of any prior generation-skipping transfer. If the effect of an amendment cannot be immediately determined, it is deemed to create, or increase the amount of, a generation-skipping transfer until a determination can be made.

(vi) *Additions to revocable trusts.* Any addition made after October 21, 1986, but before the death of the settlor, to a revocable trust subjects all subsequent generation-skipping transfers under the trust to the provisions of chapter 13. Any addition made to a revocable trust after the death of the settlor (if the settlor dies before January 1, 1987) is treated as an addition to an irrevocable trust. See paragraph (b)(1)(v) of this section for rules involving constructive additions to trusts. See paragraph (b)(1)(v)(B) of this section for rules providing that certain transfers to trusts are not treated as additions for purposes of this section.

(vii) *Examples.* The following examples illustrate the application of paragraph (b)(2)(iv) of this section:

(A) *Facts applicable to Examples 1 through 5.* In each of *Examples 1* through *5* assume that T executed a will prior to October 22, 1986, and that T dies on December 31, 1986.

Example 1. *Administrative change.* On November 1, 1986, T executes a codicil to T's will removing one of the co-executors named in the will. Although the codicil may have the effect of lowering administrative costs and thus increasing the amount transferred, it is considered administrative in nature and thus does not cause generation-skipping transfers under the will to be subject to chapter 13.

Example 2. *Effect of amendment not immediately determinable.* On November 1, 1986, T executes a codicil to T's will revoking a bequest of $100,000 to C, a non-skip person (as defined under section 2613(b)) and causing that amount to be added to a residuary trust held for a skip person. The amendment is deemed to increase the amount of a generation-skipping transfer and prevents any transfers under the will from qualifying under paragraph (b)(2)(i) of this section. If, however, C dies before T and under local law the property would have been added to the residue in any event because the bequest would have lapsed, the codicil is not considered an amendment that increases the amount of a generation-skipping transfer.

Example 3. *Refund of tax paid because of amendment.* T's will provided that an amount equal to the maximum allowable marital deduction would pass to T's spouse with the residue of the estate passing to a trust established for the benefit of skip persons. On October 23, 1986, the will is amended to provide that the marital share passing to T's spouse shall be the lesser of the maximum allowable marital deduction or the minimum amount that will result in no estate tax liability for T's estate. The amendment may increase the amount of a generation-skipping transfer. Therefore, any generation-skipping transfers under the will are subject to tax under chapter 13. If it becomes apparent that the amendment does not increase the amount of a generation-skipping transfer, a claim for refund may be filed with respect to any generation-skipping transfer tax that was paid within the period set forth in section 6511. For example, it would become apparent that the amendment did not result in an increase in the residue if it is subsequently determined that the maximum marital deduction and the minimum amount that will result in no estate tax liability are equal in amount.

Example 4. *An amendment that increases a generation-skipping transfer causes complete loss of exempt status.* T's will provided for the creation of two trusts for the benefit of skip persons. On November 1, 1986, T executed a codicil to the will specifically increasing the amount of a generation-skipping transfer under the will. All transfers made pursuant to the will or either of the trusts created thereunder are precluded from qualifying under the transition rule of paragraph (b)(2)(i) of this section and are subject to tax under chapter 13.

Example 5. *Corrective action effective.* Assume that T in *Example 4* later executes a second codicil deleting the increase to the generation-skipping transfer. Because the provision increasing a generation-skipping transfer does not become effective, it is not considered an amendment to a will in existence on October 22, 1986.

(B) *Facts applicable to Examples 6 through 9.* T created a trust on September 30, 1985, in which T retained the power to revoke the transfer at any time prior to T's death. The trust provided that, upon the death of T, the income was to be paid to T's spouse, W, for life and then to A, B, and C, the children of T's sibling, S, in equal shares for life, with one-third of the principal to be distributed per stirpes to each child's surviving issue upon the death of the child. The trustee has the power to make discretionary distributions of trust principal to T's sibling, S.

Example 6. *Amendment that affects only a person who is not a skip person.* A became disabled, and T modified the trust on December 1, 1986, to increase A's share of the income. Since the amendment does not result in the creation of, or increase in the amount of, a generation-skipping transfer,

transfers pursuant to the trust are not subject to chapter 13.

Example 7. *Amendment increasing skip person's share.* Assume that A, B, and C are the grandchildren of S rather than the children (and thus are skip persons as defined in section 2613). T's amendment of the trust increasing A's share of the income subjects the trust to the provisions of chapter 13 because the amendment increases the amount of the generation-skipping transfers to be made to A.

Example 8. *Amendment that adds a skip person.* Assume that T amends the trust to add T's grandchild, D, as an income beneficiary. The trust will be subject to the provisions of chapter 13 because the amendment creates a generation-skipping transfer.

Example 9. *Refund of tax paid during interim period when effect of amendment is not determinable.* Assume that T amends the trust to provide that the issue of S are to take a one-fourth share of the principal per stirpes upon S's death. Because the distribution to be made upon S's death may involve skip persons, the amendment is considered an amendment that creates or increases the amount of a generation-skipping transfer until a determination can be made. Accordingly, any distributions from (or terminations of interests in) such trust are subject to chapter 13 until it is determined that no skip person has been added to the trust. At that time, a claim for refund may be filed within the period set forth in section 6511 with respect to any generation-skipping transfer tax that was paid.

(3) *Transition rule in the case of mental incompetency*—(i) *In general.* If an individual was under a mental disability to change the disposition of his or her property continuously from October 22, 1986, until the date of his or her death, the provisions of chapter 13 do not apply to any generation-skipping transfer-(A) Under a trust (as defined in section 2652(b)) to the extent such trust consists of property, or the proceeds of property, the value of which was included in the gross estate of the individual (other than property transferred by or on behalf of the individual during the individual's life after October 22, 1986); or

(B) Which is a direct skip (other than a direct skip from a trust) that occurs by reason of the death of the individual.

(ii) *Mental disability defined.* For purposes of this paragraph (b)(2), *the term mental disability* means mental incompetence to execute an instrument governing the disposition of the individual's property, whether or not there was an adjudication of incompetence and regardless of whether there has been an appointment of a guardian, fiduciary, or other person charged with either the care of the individual or the care of the individual's property.

(iii) *Decedent who has not been adjudged mentally incompetent.* If there has not been a court adjudication that the decedent was mentally incompetent on or before October 22, 1986, the executor must file, with Form 706, either—

(A) A certification from a qualified physician stating that the decedent was—

(*1*) mentally incompetent at all times on and after October 22, 1986; and

(*2*) did not regain competence to modify or revoke the terms of the trust or will prior to his or her death; or

(B) Sufficient other evidence demonstrating that the decedent was mentally incompetent at all times on and after October 22, 1986, as well as a statement explaining why no certification is available from a physician; and

(C) Any judgment or decree relating to the decedent's incompetency that was made after October 22, 1986. Such items will be considered relevant, but not determinative, in establishing the decedent's state of competency.

(iv) *Decedent who has been adjudged mentally incompetent.* If the decedent has been adjudged mentally incompetent on or before October 22, 1986, a copy of the judgment or decree, and any modification thereof, must be filed with the Form 706.

(v) *Rule applies even if another person has power to change trust terms.* In the case of a transfer from a trust, this paragraph (b)(3) applies even though a person charged with the care of the decedent or the decedent's property has the power to revoke or modify the terms of the trust, provided that the power is not exercised after October 22, 1986, in a manner that creates, or increases the amount of, a generation-skipping transfer. See paragraph (b)(2)(iv) of this section for rules concerning amendments that create or increase the amount of a generation-skipping transfer.

(vi) *Example.* The following example illustrates the application of paragraph (b)(3)(v) of this section:

Example. T was mentally incompetent on October 22, 1986, and remained so until death in 1993. Prior to becoming incompetent, T created a revocable generation-skipping trust that was includible in T's gross estate. Prior to October 22, 1986, the appropriate court issued an order under which P, who was thereby charged with the care of T's property, had the power to modify or revoke the revocable trust. Although P exercised the power after October 22, 1986, and while T was incompetent, the power was not exercised in a manner that created, or increased the amount of, a generation-skipping transfer. Thus, the existence and exercise of P's power did not cause the trust to lose its exempt status under paragraph (b)(3) of this section. The result would be the same if the court order was issued after October 22, 1986.

(4) *Exceptions to additions rule*—(i) *In general.* Any addition to a trust made pursuant to an instrument or arrangement covered by the transition rules in paragraph (b) (2) or (3) of this section is not treated as an addition for purposes of this section. Moreover, any property transferred inter vivos to a trust is not treated as an addition if the same property would have been added to the trust pursuant to an instrument covered by the transition rules in paragraph (b) (2) or (3) of this section.

(ii) *Examples.* The following examples illustrate the application of paragraph (b)(4)(i) of this section:

Example 1. *Addition pursuant to terms of exempt instrument.* On December 31, 1980, T created an irrevocable trust having a principal of $100,000. Under the terms of the trust, the principal was to be held for the benefit of T's grandchild, GC. Pursuant to the terms of T's will, a document entitled to relief under the transition rule of paragraph (b)(2) of this section, the residue of the estate was paid to the trust. Because the addition to the trust was paid pursuant to the terms of an instrument (T's will) that is not subject to the provisions of chapter 13 because of paragraph (b)(2) of this section, the payment to the trust is not considered an addition to the principal of the trust. Thus, distributions to or for the benefit of GC, are not subject to the provisions of chapter 13.

Example 2. *Property transferred inter vivos that would have been transferred to the same trust by the transferor's will.* T is the grantor of a trust that was irrevocable on September 25, 1985. T's will, which was executed before October 22, 1986, and not amended thereafter, provides that, upon T's death, the entire estate will pour over into T's trust. On October 1, 1985, T transfers $100,000 to the trust. While T's will otherwise qualifies for relief under the transition rule in paragraph (b)(2) of this section, the transition rule is not applicable unless T dies prior to January 1, 1987. Thus, if T dies after December 31, 1986, the transfer is treated as an addition to the trust for purposes of any distribution made from the trust after the transfer to the trust on October 1, 1985. If T dies before January 1, 1987, the entire trust (as well as any distributions from or terminations of interests in the trust prior to T's death) is exempt, under paragraph (b)(2) of this section, from chapter 13 because the $100,000 would have been added to the trust under a will that would have qualified under paragraph (b)(2) of this section. In either case, for any generation-skipping transfers made after the transfer to the trust on October 1, 1985, but before T's death, the $100,000 is treated as an addition to the trust and a proportionate amount of the trust is subject to chapter 13.

Example 3. *Pour over to a revocable trust.* T and S are the settlors of separate revocable trusts with equal values. Both trusts were established for the benefit of skip persons (as

defined in section 2613). S dies on December 1, 1985, and under the provisions of S's trust, the principal pours over into T's trust. If T dies before January 1, 1987, the entire trust is excluded under paragraph (b)(2) of this section from the operation of chapter 13. If T dies after December 31, 1986, the entire trust is subject to the generation-skipping transfer tax provisions because T's trust is not a trust described in paragraph (b)(1) or (2) of this section. In the latter case, the fact that S died before January 1, 1987, is irrelevant because the principal of S's trust was added to a trust that never qualified under the transition rules of paragraph (b)(1) or (2) of this section.

Example 4. *Pour over to exempt trust.* Assume the same facts as in *Example 3,* except upon the death of S on December 1, 1985, S's trust continues as an irrevocable trust and that the principal of T's trust is to be paid over upon T's death to S's trust. Again, if T dies before January 1, 1987, S's entire trust falls within the provisions of paragraph (b)(2) of this section. However, if T dies after December 31, 1986, the pour-over is considered an addition to the trust. Therefore, S's trust is not a trust excluded under paragraph (b)(2) of this section because an addition is made to the trust.

Example 5. *Lapse of a general power of appointment.* S, the spouse of the settlor of an irrevocable trust that was created in 1980, had, on September 25, 1985, a general power of appointment over the trust assets. The trust provides that should S fail to exercise the power of appointment the property is to remain in the trust. On October 21, 1986, S executed a will under which S failed to exercise the power of appointment. If S dies before January 1, 1987, without having exercised the power in a manner which results in the creation of, or increase in the amount of, a generation-skipping transfer (or amended the will in a manner that results in the creation of, or increase in the amount of, a generation-skipping transfer), transfers pursuant to the trust or the will are not subject to chapter 13 because the trust is an irrevocable trust and the will qualifies under paragraph (b)(2) of this section.

Example 6. *Lapse of general power of appointment held by intestate decedent.* Assume the same facts as in *Example 5,* except on October 22, 1986, S did not have a will and that S dies after that date. Upon S's death, or upon the prior exercise or release of the power, the value of the entire trust is treated as having been distributed to S, and S is treated as having made an addition to the trust in the amount of the entire principal. Any distribution or termination pursuant to the trust occurring after S's death is subject to chapter 13. It is immaterial whether S's death occurs before January 1, 1987, since paragraph (b)(2) of this section is only applicable where a will or revocable trust was executed before October 22, 1986.

(c) *Additional effective dates.* Except as otherwise provided, the regulations under §§ 26.2611–1, 26.2612–1, 26.2613–1, 26.2632–1, 26.2641–1, 26.2642–1, 26.2642–2, 26.2642–3, 26.2642–4, 26.2642–5, 26.2652–1, 26.2652–2, 26.2653–1, 26.2654–1, 26.2663–1, and 26.2663–2 are effective with respect to generation-skipping transfers as defined in § 26.2611–1 made on or after [December 27, 1995]. However, taxpayers may, at their option, rely on these regulations in the case of generation-skipping transfers made, and trusts that became irrevocable, after December 23, 1992, and before December 27, 1995.

§ 26.2611–1 Generation-skipping transfer defined.

A generation-skipping transfer (GST) is an event that is either a direct skip, a taxable distribution, or a taxable termination. See § 26.2612–1 for the definition of these terms. The determination as to whether an event is a GST is made by reference to the most recent transfer subject to the estate or gift tax. See § 26.2652–1(a)(2) for determining whether a transfer is subject to Federal estate or gift tax.

§ 26.2612–1 Definitions.

(a) *Direct skip*—(1) *In general.* A direct skip is a transfer to a skip person that is subject to Federal estate or gift tax. If property is transferred to a trust, the transfer is a direct skip only if the trust is a skip person. Only one direct skip occurs when a single transfer of property skips two or more generations. See paragraph (d) of this section for the definition of skip person. See § 26.2652–1(b) for the definition of trust. See § 26.2632–1(c)(4) for the time that a direct skip occurs if the transferred property is subject to an estate tax inclusion period.

(2) *Special rule for certain lineal descendants*—(i) In *general.* Solely for the purpose of determining whether a transfer to or for the benefit of a lineal descendant of the transferor, the transferor's spouse, or a former spouse of the transferor is a direct skip, the generation assignment of the descendant is determined by disregarding the generation of a predeceased individual who was both an ancestor of the descendant and a lineal descendant of the transferor, the transferor's spouse, or a former spouse of the transferor (a predeceased child). If a transfer to a trust would be a direct skip but for this paragraph, any generation assignment determined under this paragraph continues to apply in determining whether any subsequent distribution from (or termination of an interest in) the portion of the trust attributable to that transfer is a GST. A living descendant who dies no later than 90 days after the subject transfer is treated as having predeceased the transferor to the extent that either the governing instrument or applicable local law provides that such individual shall be treated as predeceasing the transferor. Except as provided in this paragraph (a)(2), a living descendant is not treated as a predeceased child solely by reason of applicable local law; e.g., an individual is not treated as a predeceased child solely because state law treats an individual executing a disclaimer as having predeceased the transferor of the disclaimed property. See § 26.2652–1(a)(1) for the definition of *transferor.* See paragraph (e) of this section for the definition of *interest in trust.*

(ii) *Special rule.* If a transferor makes an addition to an existing trust after the death of an individual described in paragraph (a)(2)(i) of this section (so that the transferor would be assigned to a lower generation by reason of that death), the additional property is treated as being held in a separate trust for purposes of chapter 13 and the provisions of § 26.2654–1(a)(2) apply as if the portions of the single trust had separate transferors. Subsequent additions are treated as additions to the appropriate portion of the single trust.

(b) *Taxable termination*—(1) *In general.* Except as otherwise provided in this paragraph (b), a taxable termination is a termination (occurring for any reason) of an interest in trust unless—

(i) A transfer subject to Federal estate or gift tax occurs with respect to the property held in the trust at the time of the termination (i.e., a new transferor is determined with respect to the property);

(ii) Immediately after the termination, a person who is not a skip person has an interest in the trust; or

(iii) At no time after the termination may a distribution, other than a distribution the probability of which occurring is so remote as to be negligible (including a distribution at the termination of the trust) be made from the trust to a skip person. For this purpose, the probability that a distribution will occur is so remote as to be negligible only if it can be ascertained by actuarial standards that there is less than a 5 percent probability that the distribution will occur.

(2) *Partial termination.* If a distribution of a portion of trust property is made to a skip person by reason of a termination occurring on the death of a lineal descendant of the transferor, the termination is a taxable termination with respect to the distributed property.

(3) *Simultaneous terminations.* A simultaneous termination of two or

more interests creates only one taxable termination.

(c) *Taxable distribution*—(1) *In general.* A taxable distribution is a distribution of income or principal from a trust to a skip person unless the distribution is a taxable termination or a direct skip. If any portion of GST tax (including penalties and interest thereon) imposed on a distributee is paid from the distributing trust, the payment is an additional taxable distribution to the distributee. For purposes of chapter 13, the additional distribution is treated as having been made on the last day of the calendar year in which the original taxable distribution is made. If Federal estate or gift tax is imposed on any individual with respect to an interest in property held by a trust, the interest in property is treated as having been distributed to the individual to the extent that the value of the interest is subject to Federal estate or gift tax. See § 26.2652–1(a)(6) *Example 5,* regarding the treatment of the lapse of a power of appointment as a transfer to a trust.

(2) *Look-through rule not to apply.* Solely for purposes of determining whether any transfer from a trust to another trust is a taxable distribution, the rules of section 2651(e)(2) do not apply. If the transferring trust and the recipient trust have the same transferor, see § 26.2642–4(a) (1) and (2) for rules for recomputing the applicable fraction of the recipient trust.

(d) *Skip person.* A skip person is—

(1) An individual assigned to a generation more than one generation below that of the transferor (determined under the rules of section 2651); or

(2) A trust if—

(i) All interests in the trust are held by skip persons; or

(ii) No person holds an interest in the trust and no distributions, other than a distribution the probability of which occurring is so remote as to be negligible (including distributions at the termination of the trust), may be made after the transfer to a person other than a skip person. For this purpose, the probability that a distribution will occur is so remote as to be negligible only if it can be ascertained by actuarial standards that there is less than a 5 percent probability that the distribution will occur.

(e) *Interest in trust*—(1) *In general.* An interest in trust is an interest in property held in trust as defined in section 2652(c) and these regulations. An interest in trust exists if a person—

(i) Has a present right to receive trust principal or income;

(ii) Is a permissible current recipient of trust principal or income and is not described in section 2055(a); or

(iii) Is described in section 2055(a) and the trust is a charitable remainder annuity trust or unitrust (as defined in section 664(d)) or a pooled income fund (as defined in section 642(c)(5)).

(2) *Exceptions*—(i) *Support obligations.* In general, an individual has a present right to receive trust income or principal if trust income or principal may be used to satisfy the individual's support obligations. However, an individual does not have an interest in a trust merely because a support obligation of that individual may be satisfied by a distribution that is either within the discretion of a fiduciary or pursuant to provisions of local law substantially equivalent to the Uniform Gifts (Transfers) to Minors Act.

(ii) *Certain interests disregarded.* An interest which is used primarily to postpone or avoid the GST tax is disregarded for purposes of chapter 13. An interest is considered as used primarily to postpone or avoid the GST tax if a significant purpose for the creation of the interest is to postpone or avoid the tax.

(3) *Disclaimers.* An interest does not exist to the extent it is disclaimed pursuant to a disclaimer that constitutes a qualified disclaimer under section 2518.

(f) *Examples.* The following examples illustrate the provisions of this section. Unless stated otherwise, paragraph (a)(2) of this section, which assigns descendants to a higher generation when there is a predeceased ancestor, does not apply.

Example 1. *Direct skip.* T gratuitously conveys Blackacre to T's grandchild. Because the transfer is a transfer to a skip person of property subject to Federal gift tax, it is a direct skip.

Example 2. *Direct skip of more than one generation.* T gratuitously conveys Blackacre to T's great-grandchild. The transfer is a direct skip. Only one GST tax is imposed on the direct skip although two generations are skipped by the transfer.

Example 3. *Withdrawal power in trust.* T transfers $50,000 to a new trust providing that trust income is to be paid to T's child, C, for life and, on C's death, the trust principal is to be paid to T's descendants. Under the terms of the trust, T grants four grandchildren the right to withdraw $10,000 from the trust for a 60 day period following the transfer. Since C, who is not a skip person, has an interest in the trust, the trust is not a skip person. T's transfer to the trust is not a direct skip.

Example 4. *Taxable termination.* T establishes an irrevocable trust under which the income is to be paid to T's child, C, for life. On the death of C, the trust principal is to be paid to T's grandchild, GC. Since C has an interest in the trust, the trust is not a skip person and the transfer to the trust is not a direct skip. If C dies survived by GC, a taxable termination occurs at C's death because C's interest in the trust terminates and thereafter the trust property is held by a skip person who occupies a lower generation than C.

Example 5. *Direct skip of property held in trust.* T establishes a testamentary trust under which the income is to be paid to T's surviving spouse, S, for life and the remainder is to be paid to a grandchild of T and S. T's executor elects to treat the trust as qualified terminable interest property under section 2056(b)(7). The transfer to the trust is not a direct skip because S, a person who is not a skip person, holds a present right to receive income from the trust. Upon S's death, the trust property is included in S's gross estate under section 2044 and passes directly to a skip person. The GST occurring at that time is a direct skip because it is a transfer subject to chapter 11. The fact that the interest created by T is terminated at S's death is immaterial because S becomes the transferor at the time of the transfer subject to chapter 11.

Example 6. *Predeceased ancestor exception.* T establishes an irrevocable trust providing that trust income is to be paid to T's grandchild, GC, for 5 years. At the end of the 5-year period, the trust is to terminate and the principal is to be distributed to GC. T's child, C, a parent of GC, is deceased at the time T establishes the trust. Therefore, GC is treated as a child of T rather than as a grandchild. As a result, GC is not a skip person, and the initial transfer to the trust is not a direct skip. Similarly, distributions to GC during the term of the trust and at the termination of the trust will not be GSTs.

Example 7. *Predeceased ancestor exception not applicable.* The facts are the same as in *Example 6,* except the trust income is to be paid to T's spouse, S, during the first two years of the trust. Since S has an interest in the trust, the trust is not a skip person and the transfer by T is not a direct skip. Since the transfer is not a direct skip, the predeceased ancestor rule does not apply and GC is not treated as the child of T. A taxable termination occurs at the expiration of S's interest.

Example 8. *Taxable termination.* T establishes an irrevocable trust for the benefit of T's child, C, T's grandchild, GC, and T's great-grandchild, GGC. Under the terms of the trust, income and principal may be distributed to any or all of the living beneficiaries at the discretion of the trustee. Upon the death of the second beneficiary to die, the trust principal is to be paid to the survivor. C dies first. A taxable termination occurs at that time because, immediately after C's interest terminates, all interests in the trust are held by skip persons (GC and GGC).

Example 9. *Taxable termination resulting from distribution.* The facts are the same as in *Example 8,* except twenty years after C's death the trustee exercises its discretionary power and distributes the entire principal to GGC. The distribution results in a taxable termination because GC's interest in the trust terminates as a result of the distribution of

the entire trust property to GGC, a skip person. The result would be the same if the trustee retained sufficient funds to pay the GST tax due by reason of the taxable termination, as well as any expenses of winding up the trust.

Example 10. *Simultaneous termination of interests of more than one beneficiary.* T establishes an irrevocable trust for the benefit of T's child, C, T's grandchild, GC, and T's great-grandchild, GGC. Under the terms of the trust, income and principal may be distributed to any or all of the living beneficiaries at the discretion of the trustee. Upon the death of C, the trust property is to be distributed to GGC if then living. If C is survived by both GC and GGC, both C's and GC's interests in the trust will terminate on C's death. However, because both interests will terminate at the same time and as a result of one event, only one taxable termination occurs.

Example 11. *Partial taxable termination.* T creates an irrevocable trust providing that trust income is to be paid to T's children, A and B, in such proportions as the trustee determines for their joint lives. On the death of the first child to die, one-half of the trust principal is to be paid to T's then living grandchildren. The balance of the trust principal is to be paid to T's grandchildren on the death of the survivor of A and B. If A predeceases B, the distribution occurring on the termination of A's interest in the trust is a taxable termination and not a taxable distribution. It is a taxable termination because the distribution is a distribution of a portion of the trust that occurs as a result of the death of A, a lineal descendant of T. It is immaterial that a portion of the trust continues and that B, a person other than a skip person, thereafter holds an interest in the trust.

Example 12. *Taxable distribution.* T establishes an irrevocable trust under which the trust income is payable to T's child, C, for life. When T's grandchild, GC, attains 35 years of age, GC is to receive one-half of the principal. The remaining one-half of the principal is to be distributed to GC on C's death. Assume that C survives until GC attains age 35. When the trustee distributes one-half of the principal to GC on GC's 35th birthday, the distribution is a taxable distribution because it is a distribution to a skip person and is neither a taxable termination nor a direct skip.

Example 13. *Exercise of withdrawal right as taxable distribution.* The facts are the same as in *Example 12*, except GC holds a continuing right to withdraw trust principal and after one year GC withdraws $10,000. The withdrawal by GC is not a taxable termination because the withdrawal does not terminate C's interest in the trust. The withdrawal by GC is a taxable distribution to GC.

Example 14. *Interest in trust.* T establishes an irrevocable trust under which the income is to be paid to T's child, C, for life. On the death of C, the trust principal is to be paid to T's grandchild, GC. Because C has a present right to receive income from the trust, C has an interest in the trust. Because GC cannot currently receive distributions from the trust, GC does not have an interest in the trust.

Example 15. *Support obligation.* T establishes an irrevocable trust for the benefit of T's grandchild, GC. The trustee has discretion to distribute property for GC's support without regard to the duty or ability of GC's parent, C, to support GC. Because GC is a permissible current recipient of trust property, GC has an interest in the trust. C does not have an interest in the trust because the potential use of the trust property to satisfy C's support obligation is within the discretion of a fiduciary. C would be treated as having an interest in the trust if the trustee was required to distribute trust property for GC's support.

§ 26.2613–1 Skip person.

For the definition of *skip person* see § 26.2612–1(d).

§ 26.2632–1 Allocation of GST exemption.

(a) *General rule.* Except as otherwise provided in this section, an individual or the individual's executor may allocate the individual's $1 million GST exemption at any time from the date of the transfer through the date for filing the individual's Federal estate tax return (including any extensions for filing that have been actually granted). If no estate tax return is required to be filed, the GST exemption may be allocated at any time through the date a Federal estate tax return would be due if a return were required to be filed (including any extensions actually granted). If property is held in trust, the allocation of GST exemption is made to the entire trust rather than to specific trust assets. If a transfer is a direct skip to a trust, the allocation of GST exemption to the transferred property is also treated as an allocation of GST exemption to the trust for purposes of future GSTs with respect to the trust by the same transferor.

(b) *Lifetime allocations*—(1) *Automatic allocation to direct skips*—(i) *In general.* If a direct skip occurs during the transferor's lifetime, the transferor's GST exemption not previously allocated (unused GST exemption) is automatically allocated to the transferred property (but not in excess of the fair market value of the property on the date of the transfer). The transferor may prevent the automatic allocation of GST exemption by describing on a timely-filed United States Gift (and Generation-Skipping Transfer) Tax Return (Form 709) the transfer and the extent to which the automatic allocation is not to apply. In addition, a timely-filed Form 709 accompanied by payment of the GST tax (as shown on the return with respect to the direct skip) is sufficient to prevent an automatic allocation of GST exemption with respect to the transferred property. See paragraph (c)(4) of this section for special rules in the case of direct skips treated as occurring at the termination of an estate tax inclusion period.

(ii) *Time for filing Form 709.* A Form 709 is timely filed if it is filed on or before the date required for reporting the transfer if it were a taxable gift (i.e., the date prescribed by section 6075(b), including any extensions to file actually granted (the due date)). Except as provided in paragraph (b)(1)(iii) of this section, the automatic allocation of GST exemption (or the election to prevent the allocation, if made) is irrevocable after the due date. An automatic allocation of GST exemption is effective as of the date of the transfer to which it relates. Except as provided above, a Form 709 need not be filed to report an automatic allocation.

(iii) *Transitional rule.* An election to prevent an automatic allocation of GST exemption filed on or before January 26, 1996, becomes irrevocable on July 24, 1996.

(2) *Allocation to other transfers*—(i) *In general.* An allocation of GST exemption to property transferred during the transferor's lifetime, other than in a direct skip, is made on Form 709. The allocation must clearly identify the trust to which the allocation is being made, the amount of GST exemption allocated to it, and if the allocation is late or if an inclusion ratio greater than zero is claimed, the value of the trust assets at the effective date of the allocation. See paragraph (b)(2)(ii) of this section. The allocation should also state the inclusion ratio of the trust after the allocation. Except as otherwise provided in this paragraph, an allocation of GST exemption may be made by a formula; e.g., the allocation may be expressed in terms of the amount necessary to produce an inclusion ratio of zero. However, formula allocations made with respect to charitable lead annuity trusts are not valid except to the extent they are dependent on values as finally determined for Federal estate or gift tax purposes. With respect to a timely allocation, an allocation of GST exemption becomes irrevocable after the due date of the return. Except as provided in § 26.2642–3 (relating to charitable lead annuity trusts), an allocation of GST exemption to a trust is void to the extent the amount allocated exceeds the amount necessary to obtain an inclusion ratio of zero with respect to the trust. See § 26.2642–1 for the definition of inclusion ratio. An allocation is also void if the allocation is made with respect to a trust that has no GST potential with respect to the transferor making the allocation, at the time of the allocation. For this purpose, a trust has GST potential even if the

possibility of a GST is so remote as to be negligible.

(ii) *Effective date of allocation*—(A) *In general.* (*1*) Except as otherwise provided, an allocation of GST exemption is effective as of the date of any transfer as to which the Form 709 on which it is made is a timely filed return (a timely allocation). If more than one timely allocation is made, the earlier allocation is modified only if the later allocation clearly identifies the transfer and the nature and extent of the modification. Except as provided in paragraph (d)(1) of this section, an allocation to a trust made on a Form 709 filed after the due date for reporting a transfer to the trust (a late allocation) is effective on the date the Form 709 is filed and is deemed to precede in point of time any taxable event occurring on such date. For purposes of this paragraph (b)(2)(ii), the Form 709 is deemed filed on the date it is postmarked to the Internal Revenue Service Center. See § 26.2642–2 regarding the effect of a late allocation in determining the inclusion ratio, etc. See paragraph (c)(1) of this section regarding allocation of GST exemption to property subject to an estate tax inclusion period. If it is unclear whether an allocation of GST exemption on a Form 709 is a late or a timely allocation to a trust, the allocation is effective in the following order—

(*i*) To any transfer to the trust disclosed on the return as to which the return is a timely return;

(*ii*) As a late allocation; and

(*iii*) To any transfer to the trust not disclosed on the return as to which the return would be a timely return.

(*2*) A late allocation to a trust may be made on a Form 709 that is timely filed with respect to another transfer. A late allocation is irrevocable when made.

(B) *Amount of allocation.* If other transfers exist with respect to which GST exemption could be allocated under paragraphs (b)(2)(ii)(A)(*1*) (*ii*) and (*iii*), any GST exemption allocated under paragraph (b)(2)(ii)(A)(*1*)(*i*) of this section is allocated in an amount equal to the value of the transferred property as reported on the Form 709. Thus, if the GST exemption allocated on the Form 709 exceeds the value of the transfers reported on that return that have generation-skipping potential, the initial allocation under paragraph (b)(2)(ii)(A)(*1*)(*i*) of this section is in the amount of the value of those transfers as reported on that return. Any remaining amount of GST exemption allocated on that return is then allocated pursuant to paragraphs (b)(2)(ii)(A)(*1*) (*ii*) and (*iii*) of this section, notwithstanding any subsequent upward adjustment in value of the transfers reported on the return.

(iii) *Examples.* The following examples illustrate the provisions of this paragraph (b):

Example 1. *Modification of allocation of GST exemption.* T transfers $100,000 to an irrevocable generation-skipping trust on December 1, 1996. The transfer to the trust is not a direct skip. The date prescribed for filing the gift tax return reporting the taxable gift is April 15, 1997. On February 10, 1997, T files a Form 709 allocating $50,000 of GST exemption to the trust. On April 10 of the same year, T files an amended Form 709 allocating $100,000 of GST exemption to the trust in a manner that clearly indicates the intention to modify and supersede the prior allocation with respect to the 1996 transfer. The allocation made on the April 10 return supersedes the prior allocation because it is made on a timely-filed Form 709 that clearly identifies the trust and the nature and extent of the modification of GST exemption allocation. The allocation of $100,000 of GST exemption to the trust is effective as of December 1, 1996. The result would be the same if the amended Form 709 decreased the amount of the GST exemption allocated to the trust.

Example 2. *Modification of allocation of GST exemption.* The facts are the same as in *Example 1,* except on July 10, 1997, T files a Form 709 attempting to reduce the earlier allocation. The return is not a timely-filed return. The $100,000 GST exemption allocated to the trust, as amended on April 10, 1997, remains in effect because an allocation, once made, is irrevocable and may not be modified after the last date on which a timely-filed Form 709 can be filed.

Example 3. *Effective date of late allocation of GST exemption.* T transfers $100,000 to an irrevocable generation-skipping trust on December 1, 1996. The transfer to the trust is not a direct skip. The date prescribed for filing the gift tax return reporting the taxable gift is April 15, 1997. On December 1, 1997, T files a Form 709 and allocates $50,000 to the trust. The allocation is effective as of December 1, 1997.

Example 4. *Effective date of late allocation of GST exemption.* T transfers $100,000 to a generation-skipping trust on December 1, 1996, in a transfer that is not a direct skip. T does not make an allocation of GST exemption on a timely-filed Form 709. On July 1, 1997, the trustee makes a taxable distribution from the trust to T's grandchild in the amount of $30,000. Immediately prior to the distribution, the value of the trust assets was $150,000. On the same date, T allocates GST exemption to the trust in the amount of $50,000. The allocation of GST exemption on the date of the transfer is treated as preceding in point of time the taxable distribution. At the time of the GST, the trust has an inclusion ratio of .6667 (1 − (50,000/150,000)).

Example 5. *Automatic allocation to split-gift direct skip.* On May 15, 1996, T transfers $50,000 to a trust in a direct skip. T does not file a timely gift tax return electing out of the automatic allocation. On April 30, 1998, T and T's spouse, S, file an initial gift tax return for 1996 on which they consent, pursuant to section 2513, to have the gift treated as if one-half had been made by each. As a result of the election under section 2513, which is retroactive to the date of T's transfer, T and S are each treated as the transferor of one-half of the property transferred in the direct skip. Thus, $25,000 of T's unused GST exemption and $25,000 of S's unused GST exemption is automatically allocated to the trust. Both allocations are effective on and after the date that T made the transfer.

(c) *Special rules during an estate tax inclusion period*—(1) *In general.* An allocation of GST exemption (including an automatic allocation) to property subject to an estate tax inclusion period (ETIP) that is made prior to termination of the ETIP cannot be revoked, but becomes effective no earlier than the date of any termination of the ETIP with respect to the trust. Where an allocation has not been made prior to the termination of the ETIP, an allocation is effective at the termination of the ETIP during the transferor's lifetime if made by the due date for filing a Form 709 that would apply to a taxable gift occurring at the time the ETIP terminates (timely ETIP return). An allocation is effective in the case of the termination of the ETIP on the death of the transferor as provided in paragraph (d) of this section. If any part of a trust is subject to an ETIP, the entire trust is subject to the ETIP. See § 26.2642–1(b)(2) for rules determining the inclusion ratio applicable in the case of GSTs during an ETIP.

(2) *Estate tax inclusion period defined*—(i) *In general.* An ETIP is the period during which, should death occur, the value of transferred property would be includible (other than by reason of section 2035) in the gross estate of—

(A) The transferor; or

(B) The spouse of the transferor.

(ii) *Exceptions*—(A) For purposes of paragraph (c)(2) of this section, the value of transferred property is not considered as being subject to inclusion in the gross estate of the transferor or the spouse of the transferor if the possibility that the property will be included is so remote as to be negligible. A possibility is so remote as to be negligible if it can be ascertained by actuarial standards that there is less than a 5 percent probability that the property will be included in the gross estate.

(B) For purposes of paragraph (c)(2) of this section, the value of transferred property is not considered as being subject to inclusion in the gross estate of the spouse of the transferor, if the spouse possesses with respect to any transfer to the trust, a right to withdraw

no more than the greater of $5,000 or 5 percent of the trust corpus, and such withdrawal right terminates no later than 60 days after the transfer to the trust.

(C) The rules of this paragraph (c)(2) do not apply to qualified terminable interest property with respect to which the special election under § 26.2652–2 has been made.

(3) *Termination of an ETIP.* An ETIP terminates on the first to occur of—

(i) The death of the transferor;

(ii) The time at which no portion of the property is includible in the transferor's gross estate (other than by reason of section 2035) or, in the case of an individual who is a transferor solely by reason of an election under section 2513, the time at which no portion would be includible in the gross estate of the individual's spouse (other than by reason of section 2035);

(iii) The time of a GST, but only with respect to the property involved in the GST; or

(iv) In the case of an ETIP arising by reason of an interest or power held by the transferor's spouse under subsection (c)(2)(i)(B) of this section, at the first to occur of—

(A) The death of the spouse; or

(B) The time at which no portion of the property would be includible in the spouse's gross estate (other than by reason of section 2035).

(4) *Treatment of direct skips.* If property transferred to a skip person is subject to an ETIP, the direct skip is treated as occurring on the termination of the ETIP.

(5) *Examples.* The following examples illustrate the rules of this section as they apply to the termination of an ETIP during the lifetime of the transferor. In each example assume that T transfers $100,000 to an irrevocable trust:

Example 1. *Allocation of GST exemption during ETIP.* The trust instrument provides that trust income is to be paid to T for 9 years or until T's prior death. The trust principal is to be paid to T's grandchild on the termination of T's income interest. If T dies within the 9-year period, the value of the trust principal is includible in T's gross estate under section 2036(a). Thus, the trust is subject to an ETIP. T files a timely Form 709 reporting the transfer and allocating $100,000 of GST exemption to the trust. The allocation of GST exemption to the trust is not effective until the termination of the ETIP.

Example 2. *Effect of prior allocation on termination of ETIP.* The facts are the same as in *Example 1,* except the trustee has the power to invade trust principal on behalf of T's grandchild, GC, during the term of T's income interest. In year 4, when the value of the trust is $200,000, the trustee distributes $15,000 to GC. The distribution is a taxable distribution. The ETIP with respect to the property distributed to GC terminates at the time of the taxable distribution. See paragraph (c)(3)(iii) of this section. Solely for purposes of determining the trust's inclusion ratio with respect to the taxable distribution, the prior $100,000 allocation of GST exemption (as well as any additional allocation made on a timely ETIP return) is effective immediately prior to the taxable distribution. See § 26.2642–1(b)(2). The trust's inclusion ratio with respect to the taxable distribution is therefore .50 (1−(100,000/200,000)).

Example 3. *Split-gift transfers subject to ETIP.* The trust instrument provides that trust income is to be paid to T for 9 years or until T's prior death. The trust principal is to be paid to T's grandchild on the termination of T's income interest. T files a timely Form 709 reporting the transfer. T's spouse, S, consents to have the gift treated as made one-half by S under section 2513. Because S is treated as transferring one-half of the property to T's grandchild, S becomes the transferor of one-half of the trust for purposes of chapter 13. Because the value of the trust would be includible in T's gross estate if T died immediately after the transfer, S's transfer is subject to an ETIP. If S should die prior to the termination of the trust, S's executor may allocate S's GST exemption to the trust, but only to the portion of the trust for which S is treated as the transferor. However, the allocation does not become effective until the earlier of the expiration of T's income interest or T's death.

Example 4. *Transfer of retained interest as ETIP termination.* The trust instrument provides that trust income is to be paid to T for 9 years or until T's prior death. The trust principal is to be paid to T's grandchild on the termination of T's income interest. Four years after the initial transfer, T transfers the income interest to T's sibling. The ETIP with respect to the trust terminates on T's transfer of the income interest because, after the transfer, the trust property would not be includible in T's gross estate (other than by reason of section 2035) if T died at that time.

(d) *Allocations after the transferor's death*—(1) *Allocation by executor.* Except as otherwise provided in this paragraph (d), an allocation of a decedent's unused GST exemption by the executor of the decedent's estate is made on the appropriate United States Estate (and Generation-Skipping Transfer) Tax Return (Form 706 or Form 706NA) filed on or before the date prescribed for filing the return by section 6075(a) (including any extensions actually granted (the due date)). An allocation of GST exemption with respect to property included in the gross estate of a decedent is effective as of the date of death. A timely allocation of GST exemption by an executor with respect to a lifetime transfer of property that is not included in the transferor's gross estate is made on a Form 709. A late allocation of GST exemption by an executor, other than an allocation that is deemed to be made under section 2632(b)(1), with respect to a lifetime transfer of property is made on Form 706 or Form 706NA and is effective as of the date the allocation is filed. An allocation of GST exemption to a trust (whether or not funded at the time the Form 706 or Form 706NA is filed) is effective if the notice of allocation clearly identifies the trust and the amount of the decedent's GST exemption allocated to the trust. An executor may allocate the decedent's GST exemption by use of a formula. For purposes of this section, an allocation is void if the allocation is made for a trust that has no GST potential with respect to the transferor for whom the allocation is being made, as of the date of the transferor's death. For this purpose, a trust has GST potential even if the possibility of a GST is so remote as to be negligible.

(2) *Automatic allocation after death.* A decedent's unused GST exemption is automatically allocated on the due date for filing Form 706 or Form 706NA to the extent not otherwise allocated by the decedent's executor on or before that date. The automatic allocation occurs whether or not a return is actually required to be filed. Unused GST exemption is allocated pro rata (subject to the rules of § 26.2642–2(b)), on the basis of the value of the property as finally determined for purposes of chapter 11 (chapter 11 value), first to direct skips treated as occurring at the transferor's death. The balance, if any, of unused GST exemption is allocated pro rata (subject to the rules of § 26.2642–2(b)) on the basis of the chapter 11 value of the nonexempt portion of the trust property (or in the case of trusts that are not included in the gross estate, on the basis of the date of death value of the trust) to trusts with respect to which a taxable termination may occur or from which a taxable distribution may be made. The automatic allocation of GST exemption is irrevocable, and an allocation made by the executor after the automatic allocation is made is ineffective. No automatic allocation of GST exemption is made to a trust that will have a new transferor with respect to the entire trust prior to the occurrence of any GST with respect to the trust. In addition, no automatic allocation of GST exemption is made to a trust if, during the nine month period ending immediately after the death of the transferor—

(i) No GST has occurred with respect to the trust; and

(ii) At the end of such period no future GST can occur with respect to the trust.

§ 26.2641–1 Applicable rate of tax.

The rate of tax applicable to any GST (applicable rate) is determined by multiplying the maximum Federal estate tax rate in effect at the time of the GST by the inclusion ratio (as defined in § 26.2642–1). For this purpose, the maximum Federal estate tax rate is the maximum rate set forth under section 2001(c) (without regard to section 2001(c)(2)).

§ 26.2642–1 Inclusion ratio.

(a) *In general.* Except as otherwise provided in this section, the inclusion ratio is determined by subtracting the applicable fraction (rounded to the nearest one-thousandth (.001)) from 1. In rounding the applicable fraction to the nearest one-thousandth, any amount that is midway between one one-thousandth and another one-thousandth is rounded up to the higher of those two amounts.

(b) *Numerator of applicable fraction*—(1) *In general.* Except as otherwise provided in this paragraph (b), and in §§ 26.2642–3 (providing a special rule for charitable lead annuity trusts) and 26.2642–4 (providing rules for the redetermination of the applicable fraction), the numerator of the applicable fraction is the amount of GST exemption allocated to the trust (or to the transferred property in the case of a direct skip not in trust).

(2) *GSTs occurring during an ETIP*—(i) *In general.* For purposes of determining the inclusion ratio with respect to a taxable termination or a taxable distribution that occurs during an ETIP, the numerator of the applicable fraction is the sum of—

(A) The GST exemption previously allocated to the trust (including any allocation made to the trust prior to any taxable termination or distribution) reduced (but not below zero) by the nontax amount of any prior GSTs with respect to the trust; and

(B) Any GST exemption allocated to the trust on a timely ETIP return filed after the termination of the ETIP. See § 26.2632–1(c)(5) *Example 2.*

(ii) *Nontax amount of a prior GST.* (*1*) The nontax amount of a prior GST with respect to the trust is the amount of the GST multiplied by the applicable fraction attributable to the trust at the time of the prior GST.

(*2*) For rules regarding the allocation of GST exemption to property during an ETIP, see § 26.2632–1(c).

(c) *Denominator of applicable fraction*—(1) *In general.* Except as otherwise provided in this paragraph (c) and in §§ 26.2642–3 and 26.2642–4, the denominator of the applicable fraction is the value of the property transferred to the trust (or transferred in a direct skip not in trust) (as determined under § 26.2642–2) reduced by the sum of—

(i) Any Federal estate tax and any State death tax incurred by reason of the transfer that is chargeable to the trust and is actually recovered from the trust;

(ii) The amount of any charitable deduction allowed under section 2055, 2106, or 2522 with respect to the transfer; and

(iii) In the case of a direct skip, the value of the portion of the transfer that is a nontaxable gift. See paragraph (c)(3) of this section for the definition of nontaxable gift.

(2) *Zero denominator.* If the denominator of the applicable fraction is zero, the inclusion ratio is zero.

(3) *Nontaxable gifts.* Generally, for purposes of chapter 13, a transfer is a nontaxable gift to the extent the transfer is excluded from taxable gifts by reason of section 2503(b) (after application of section 2513) or section 2503(e). However, a transfer to a trust for the benefit of an individual is not a nontaxable gift for purposes of this section unless—

(i) Trust principal or income may, during the individual's lifetime, be distributed only to or for the benefit of the individual; and

(ii) The assets of the trust will be includible in the gross estate of the individual if the individual dies before the trust terminates.

(d) *Examples.* The following examples illustrate the provisions of this section. See § 26.2652–2(d) *Examples 2* and *3* for illustrations of the computation of the inclusion ratio where the special (reverse QTIP) election may be applicable.

Example 1. *Computation of the inclusion ratio.* T transfers $100,000 to a newly-created irrevocable trust providing that income is to be accumulated for 10 years. At the end of 10 years, the accumulated income is to be distributed to T's child, C, and the trust principal is to be paid to T's grandchild. T allocates $40,000 of T's GST exemption to the trust on a timely-filed gift tax return. The applicable fraction with respect to the trust is .40 ($40,000 (the amount of GST exemption allocated to the trust) over $100,000 (the value of the property transferred to the trust)). The inclusion ratio is .60 (1 − .40). If the maximum Federal estate tax rate is 55 percent at the time of a GST, the rate of tax applicable to the transfer (applicable rate) will be .333 (55 percent (the maximum estate tax rate) × .60 (the inclusion ratio)).

Example 2. *Gift entirely nontaxable.* On December 1, 1996, T transfers $10,000 to an irrevocable trust for the benefit of T's grandchild, GC. GC possesses a right to withdraw any contributions to the trust such that the entire transfer qualifies for the annual exclusion under section 2503(b). Under the terms of the trust, the income is to be paid to GC for 10 years or until GC's prior death. Upon the expiration of GC's income interest, the trust principal is payable to GC or GC's estate. The transfer to the trust is a direct skip. T made no prior gifts to or for the benefit of GC during 1996. The entire $10,000 transfer is a nontaxable transfer. For purposes of computing the tax on the direct skip, the denominator of the applicable fraction is zero, and thus, the inclusion ratio is zero.

Example 3. *Gift nontaxable in part.* T transfers $12,000 to an irrevocable trust for the benefit of T's grandchild, GC. Under the terms of the trust, the income is to be paid to GC for 10 years or until GC's prior death. Upon the expiration of GC's income interest, the trust principal is payable to GC or GC's estate. Further, GC has the right to withdraw $10,000 of any contribution to the trust such that $10,000 of the transfer qualifies for the annual exclusion under section 2503(b). The amount of the nontaxable transfer is $10,000. Solely for purposes of computing the tax on the direct skip, T's transfer is divided into two portions. One portion is equal to the amount of the nontaxable transfer ($10,000) and has a zero inclusion ratio; the other portion is $2,000 ($12,000 − $10,000). With respect to the $2,000 portion, the denominator of the applicable fraction is $2,000. Assuming that T has sufficient GST exemption available, the numerator of the applicable fraction is $2,000 (unless T elects to have the automatic allocation provisions not apply). Thus, assuming T does not elect to have the automatic allocation not apply, the applicable fraction is one ($2,000/$2,000 = 1) and the inclusion ratio is zero (1 − 1 = 0).

Example 4. *Gift nontaxable in part.* Assume the same facts as in *Example 3,* except T files a timely Form 709 electing that the automatic allocation of GST exemption not apply to the $12,000 transferred in the direct skip. T's transfer is divided into two portions, a $10,000 portion with a zero inclusion ratio and a $2,000 portion with an applicable fraction of zero (0/$2,000 = 0) and an inclusion ratio of one (1 − 0 = 1).

§ 26.2642–2 Valuation.

(a) *Lifetime transfers*—(1) *In general.* For purposes of determining the denominator of the applicable fraction, the value of property transferred during life is its fair market value on the effective date of the allocation of GST exemption. In the case of a timely allocation under § 26.2632–1(b)(2)(ii), the denominator of the applicable fraction is the fair market value of the property as finally determined for purposes of chapter 12.

(2) *Special rule for late allocations during life.* If a transferor makes a late allocation of GST exemption to a trust, the value of the property transferred to the trust is the fair market value of the trust assets determined on the effective date of the allocation of GST exemption. Except as otherwise provided in this paragraph (a)(2), if a transferor makes a

late allocation of GST exemption to a trust, the transferor may, solely for purposes of determining the fair market value of the trust assets, elect to treat the allocation as having been made on the first day of the month during which the late allocation is made (valuation date). An election under this paragraph (a)(2) is not effective with respect to a life insurance policy or a trust holding a life insurance policy, if the insured individual has died. An allocation subject to the election contained in this paragraph (a)(2) is not effective until it is actually filed with the Internal Revenue Service. The election is made by stating on the Form 709 on which the allocation is made—

(i) That the election is being made;

(ii) The applicable valuation date; and

(iii) The fair market value of the trust assets on the valuation date.

(b) *Transfers at death*—(1) *In general.* Except as provided in paragraphs (b) (2) and (3) of this section, in determining the denominator of the applicable fraction, the value of property included in the decedent's gross estate is its value for purposes of chapter 11. In the case of qualified real property with respect to which the election under section 2032A is made, the value of the property is the value determined under section 2032A provided the recapture agreement described in section 2032A(d)(2) filed with the Internal Revenue Service specifically provides for the signatories' consent to the imposition of, and personal liability for, additional GST tax in the event an additional estate tax is imposed under section 2032A(c). See § 26.2642–4(a)(4). If the recapture agreement does not contain these provisions, the value of qualified real property as to which the election under section 2032A is made is the fair market value of the property determined without regard to the provisions of section 2032A.

(2) *Special rule for pecuniary payments*—(i) *In general.* If a pecuniary payment is satisfied with cash, the denominator of the applicable fraction is the pecuniary amount. If property other than cash is used to satisfy a pecuniary payment, the denominator of the applicable fraction is the pecuniary amount only if payment must be made with property on the basis of the value of the property on—

(A) The date of distribution; or

(B) A date other than the date of distribution, but only if the pecuniary payment must be satisfied on a basis that fairly reflects net appreciation and depreciation (occurring between the valuation date and the date of distribution) in all of the assets from which the distribution could have been made.

(ii) *Other pecuniary amounts payable in kind.* The denominator of the applicable fraction with respect to any property used to satisfy any other pecuniary payment payable in kind is the date of distribution value of the property.

(3) *Special rule for residual transfers after payment of a pecuniary payment*—(i) *In general.* Except as otherwise provided in this paragraph (b)(3), the denominator of the applicable fraction with respect to a residual transfer of property after the satisfaction of a pecuniary payment is the estate tax value of the assets available to satisfy the pecuniary payment reduced, if the pecuniary payment carries appropriate interest (as defined in paragraph (b)(4) of this section), by the pecuniary amount. The denominator of the applicable fraction with respect to a residual transfer of property after the satisfaction of a pecuniary payment that does not carry appropriate interest is the estate tax value of the assets available to satisfy the pecuniary payment reduced by the present value of the pecuniary payment. For purposes of this paragraph (b)(3)(i), the present value of the pecuniary payment is determined by using—

(A) The interest rate applicable under section 7520 at the death of the transferor; and

(B) The period between the date of the transferor's death and the date the pecuniary amount is paid.

(ii) *Special rule for residual transfers after pecuniary payments payable in kind.* The denominator of the applicable fraction with respect to any residual transfer after satisfaction of a pecuniary payment payable in kind is the date of distribution value of the property distributed in satisfaction of the residual transfer, unless the pecuniary payment must be satisfied on the basis of the value of the property on—

(A) The date of distribution; or

(B) A date other than the date of distribution, but only if the pecuniary payment must be satisfied on a basis that fairly reflects net appreciation and depreciation (occurring between the date of death and the date of distribution) in all of the assets from which the distribution could have been made.

(4) *Appropriate interest*—(i) *In general.* For purposes of this section and § 26.2654–1 (relating to certain trusts treated as separate trusts), appropriate interest means that interest must be payable from the date of death of the transferor (or from the date specified under applicable State law requiring the payment of interest) to the date of payment at a rate—

(A) At least equal to—

(*1*) The statutory rate of interest, if any, applicable to pecuniary bequests under the law of the State whose law governs the administration of the estate or trust; or

(*2*) If no such rate is indicated under applicable State law, 80 percent of the rate that is applicable under section 7520 at the death of the transferor; and

(B) Not in excess of the greater of—

(*1*) The statutory rate of interest, if any, applicable to pecuniary bequests under the law of the State whose law governs the administration of the trust; or

(*2*) 120 percent of the rate that is applicable under section 7520 at the death of the transferor.

(ii) *Pecuniary payments deemed to carry appropriate interest.* For purposes of this paragraph (b)(4), if a pecuniary payment does not carry appropriate interest, the pecuniary payment is considered to carry appropriate interest to the extent—

(A) The entire payment is made or property is irrevocably set aside to satisfy the entire pecuniary payment within 15 months of the transferor's death; or

(B) The governing instrument or applicable local law specifically requires the executor or trustee to allocate to the pecuniary payment a pro rata share of the income earned by the fund from which the pecuniary payment is to be made between the date of death of the transferor and the date of payment. For purposes of paragraph (b)(4)(ii)(A) of this section, property is irrevocably set aside if it is segregated and held in a separate account pending distribution.

(c) *Examples.* The following examples illustrate the provisions of this section:

Example 1. T transfers $100,000 to a newly-created irrevocable trust on December 15, 1996. The trust provides that income is to be paid to T's child for 10 years. At the end of the 10-year period, the trust principal is to be paid to T's grandchild. T does not allocate any GST exemption to the trust on the gift tax return reporting the transfer. On November 15, 1997, T files a Form 709 allocating $50,000 of GST exemption to the trust. Because the allocation was made on a late filed return, the value of the property transferred to the trust is determined on the date the allocation is filed (unless an election is made pursuant to paragraph (a)(2) of this section to value the trust property as of the first day of the month in which the allocation document is filed with the Internal Revenue Service). On November 15, 1997, the value of the trust property is $150,000. Effective as of November 15, 1997, the applicable fraction with respect to the trust is .333 ($50,000 (the

amount of GST exemption allocated to the trust) over $150,000 (the value of the trust principal on the effective date of the GST exemption allocation)), and the inclusion ratio is .667 (1.0 − .333).

Example 2. The facts are the same as in *Example 1,* except the value of the trust property is $80,000 on November 15, 1997. The applicable fraction is .625 ($50,000 over $80,000) and the inclusion ratio is .375 (1.0 − .625).

Example 3. T transfers $100,000 to a newly-created irrevocable trust on December 15, 1996. The trust provides that income is to be paid to T's child for 10 years. At the end of the 10-year period, the trust principal is to be paid to T's grandchild. T does not allocate any GST exemption to the trust on the gift tax return reporting the transfer. On November 15, 1997, T files a Form 709 allocating $50,000 of GST exemption to the trust. T elects to value the trust principal on the first day of the month in which the allocation is made pursuant to the election provided in paragraph (a)(2) of this section. Because the late allocation is made in November, the value of the trust is determined as of November 1, 1997.

§ 26.2642–3 Special rule for charitable lead annuity trusts.

(a) *In general.* In determining the applicable fraction with respect to a charitable lead annuity trust—

(1) The numerator is the adjusted generation-skipping transfer tax exemption (adjusted GST exemption); and

(2) The denominator is the value of all property in the trust immediately after the termination of the charitable lead annuity.

(b) *Adjusted GST exemption defined.* The adjusted GST exemption is the amount of GST exemption allocated to the trust increased by an amount equal to the interest that would accrue if an amount equal to the allocated GST exemption were invested at the rate used to determine the amount of the estate or gift tax charitable deduction, compounded annually, for the actual period of the charitable lead annuity. If a late allocation is made to a charitable lead annuity trust, the adjusted GST exemption is the amount of GST exemption allocated to the trust increased by the interest that would accrue if invested at such rate for the period beginning on the date of the late allocation and extending for the balance of the actual period of the charitable lead annuity. The amount of GST exemption allocated to a charitable lead annuity trust is not reduced even though it is ultimately determined that the allocation of a lesser amount of GST exemption would have resulted in an inclusion ratio of zero. For purposes of chapter 13, a charitable lead annuity trust is any trust providing an interest in the form of a guaranteed annuity described in § 25.2522(c)-3(c)(2)(vi) of this chapter for which the transferor is allowed a charitable deduction for Federal estate or gift tax purposes.

(c) *Example.* The following example illustrates the provisions of this section:

Example. T creates a charitable lead annuity trust for a 10-year term with the remainder payable to T's grandchild. T timely allocates an amount of GST exemption to the trust which T expects will ultimately result in a zero inclusion ratio. However, at the end of the charitable lead interest, because the property has not appreciated to the extent T anticipated, the numerator of the applicable fraction is greater than the denominator. The inclusion ratio for the trust is zero. No portion of the GST exemption allocated to the trust is restored to T or to T's estate.

§ 26.2642–4 Redetermination of applicable fraction.

(a) *In general.* The applicable fraction for a trust is redetermined whenever additional exemption is allocated to the trust or when certain changes occur with respect to the principal of the trust. Except as otherwise provided in this paragraph (a), the numerator of the redetermined applicable fraction is the sum of the amount of GST exemption currently being allocated to the trust (if any) plus the value of the nontax portion of the trust, and the denominator of the redetermined applicable fraction is the value of the trust principal immediately after the event occurs. The nontax portion of a trust is determined by multiplying the value of the trust assets, determined immediately prior to the event, by the then applicable fraction.

(1) *Multiple transfers to a single trust.* If property is added to an existing trust, the denominator of the redetermined applicable fraction is the value of the trust immediately after the addition reduced as provided in § 26.2642–1(c).

(2) *Consolidation of separate trusts.* If separate trusts created by one transferor are consolidated, a single applicable fraction for the consolidated trust is determined. The numerator of the redetermined applicable fraction is the sum of the nontax portions of each trust immediately prior to the consolidation.

(3) *Property included in transferor's gross estate.* If the value of property held in a trust created by the transferor, with respect to which an allocation was made at a time that the trust was not subject to an ETIP, is included in the transferor's gross estate, the applicable fraction is redetermined if additional GST exemption is allocated to the property. The numerator of the redetermined applicable fraction is an amount equal to the nontax portion of the property immediately after the death of the transferor increased by the amount of GST exemption allocated by the executor of the transferor's estate to the trust. If additional GST exemption is not allocated to the trust, the applicable fraction immediately before death is not changed, if the trust was not subject to an ETIP at the time GST exemption was allocated to the trust. The denominator of the applicable fraction is reduced to reflect any federal or state, estate or inheritance taxes paid from the trust.

(4) *Imposition of recapture tax under section 2032A*—(i) If an additional estate tax is imposed under section 2032A and if the section 2032A election was effective (under § 26.2642–2(b)) for purposes of the GST tax, the applicable fraction with respect to the property is redetermined as of the date of death of the transferor. In making the redetermination, any available GST exemption not allocated at the death of the transferor (or at a prior recapture event) is automatically allocated to the property. The denominator of the applicable fraction is the fair market value of the property at the date of the transferor's death reduced as provided in § 26.2642–1(c) and further reduced by the amount of the additional GST tax actually recovered from the trust.

(ii) The GST tax imposed with respect to any taxable termination, taxable distribution, or direct skip occurring prior to the recapture event is recomputed based on the applicable fraction as redetermined. Any additional GST tax as recomputed is due and payable on the date that is six months after the event that causes the imposition of the additional estate tax under section 2032A. The additional GST tax is remitted with Form 706–A and is reported by attaching a statement to Form 706–A showing the computation of the additional GST tax.

(iii) The applicable fraction, as redetermined under this section, is also used in determining any GST tax imposed with respect to GSTs occurring after the date of the recapture event.

(b) *Examples.* The following examples illustrate the principles of this section:

Example 1. *Allocation of additional exemption.* T transfers $200,000 to an irrevocable trust under which the income is payable to T's child, C, for life. Upon the termination of the trust, the remainder is payable to T's grandchild, GC. At a time when no ETIP exists with respect to the trust property, T makes a timely allocation of $100,000 of GST exemption, resulting in an inclusion ratio of .50. Subsequently, when the entire trust property is valued at $500,000, T allocates an additional $100,000 of T's unused GST exemption to the trust. The inclusion ratio of the trust is recomputed at that time. The numerator of the applicable fraction is $350,000 ($250,000 (the nontax

portion as of the date of the allocation) plus $100,000 (the GST exemption currently being allocated)). The denominator is $500,000 (the date of allocation fair market value of the trust). The inclusion ratio is .30 (1 − .70).

Example 2. *Multiple transfers to a trust, allocation both timely and late.* On December 10, 1993, T transfers $10,000 to an irrevocable trust that does not satisfy the requirements of section 2642(c)(2). T makes identical transfers to the trust on December 10, 1994, 1995, 1996, and on January 15, 1997. Immediately after the transfer on January 15, 1997, the value of the trust principal is $40,000. On January 14, 1998, when the value of the trust principal is $50,000, T allocates $30,000 of GST exemption to the trust. T discloses the 1997 transfer on the Form 709 filed on January 14, 1998. Thus, T's allocation is a timely allocation with respect to the transfer in 1997, $10,000 of the allocation is effective as of the date of that transfer, and, on and after January 15, 1997, the inclusion ratio of the trust is .75 (1 − ($10,000/$40,000)). The balance of the allocation is a late allocation with respect to prior transfers to the trust and is effective as of January 14, 1998. In redetermining the inclusion ratio as of that date, the numerator of the redetermined applicable fraction is $32,500 ($12,500 (.25 × $50,000), the nontax portion of the trust on January 14, 1998) plus $20,000 (the amount of GST exemption allocated late to the trust). The denominator of the new applicable fraction is $50,000 (the value of the trust principal at the time of the late allocation).

Example 3. *Excess allocation.* (i) T creates an irrevocable trust for the benefit of T's child and grandchild in 1996 transferring $50,000 to the trust on the date of creation. T allocates no GST exemption to the trust on the Form 709 reporting the transfer. On July 1, 1997 (when the value of the trust property is $60,000), T transfers an additional $40,000 to the trust.

(ii) On April 15, 1998, when the value of the trust is $150,000, T files a Form 709 reporting the 1997 transfer and allocating $150,000 of GST exemption to the trust. The allocation is a timely allocation of $40,000 with respect to the 1997 transfer and is effective as of that date. Thus, the applicable fraction for the trust as of July 1, 1997 is .40 ($40,000/$100,000 ($40,000 + $60,000)).

(iii) The allocation is also a late allocation of $90,000, the amount necessary to attain a zero inclusion ratio on April 15, 1998, computed as follows: $60,000 (the nontax portion immediately prior to the allocation (.40 × $150,000)) plus $90,000 (the additional allocation necessary to produce a zero inclusion ratio based on a denominator of $150,000)/$150,000 equals one and, thus, an inclusion ratio of zero. The balance of the allocation, $20,000 ($150,000 less the timely allocation of $40,000 less the late allocation of $90,000) is void.

Example 4. *Undisclosed transfer.* (i) The facts are the same as in Example 3, except that on February 1, 1998 (when the value of the trust is $150,000), T transfers an additional $50,000 to the trust and the value of the entire trust corpus on April 15, 1998 is $220,000. The Form 709 filed on April 15, 1998 does not disclose the 1998 transfer. Under the rule in § 26.2632–1(b)(2)(ii), the allocation is effective first as a timely allocation to the 1997 transfer; second, as a late allocation to the trust as of April 15, 1998; and, finally as a timely allocation to the February 1, 1998 transfer. As of April 15, 1998, $55,000, a pro rata portion of the trust assets, is considered to be the property transferred to the trust on February 1, 1998 (($50,000/$200,000) × $220,000). The balance of the trust, $165,000, represents prior transfers to the trust.

(ii) As in Example 3, the allocation is a timely allocation as to the 1997 transfer (and the applicable fraction as of July 1, 1997 is .40) and a late allocation as of 1998. The amount of the late allocation is $99,000, computed as follows: (.40 × $165,000 plus $99,000)/$165,000 = one.

(iii) The balance of the allocation, $11,000 ($150,000 less the timely allocation of $40,000 less the late allocation of $99,000) is a timely allocation as of February 1, 1998. The applicable fraction with respect to the trust, as of February 1, 1998, is .355, computed as follows: $60,000 (the nontax portion of the trust immediately prior to the February 1, 1998 transfer (.40 × $150,000)) plus $11,000 (the amount of the timely allocation to the 1998 transfer)/$200,000 (the value of the trust on February 1, 1998, after the transfer on that date) = $71,000/$200,000 = .355.

(iv) The applicable fraction with respect to the trust, as of April 15, 1998, is .805 computed as follows: $78,100 (the nontax portion immediately prior to the allocation (.355 × $220,000)) plus $99,000 (the amount of the late allocation)/ $220,000 = $177,100/ $220,000 = .805.

Example 5. *Redetermination of inclusion ratio on ETIP termination.* (i) T transfers $100,000 to an irrevocable trust. The trust instrument provides that trust income is to be paid to T for 9 years or until T's prior death. The trust principal is to be paid to T's grandchild, GC, on the termination of T's income interest. The trustee has the power to invade trust principal for the benefit of GC during the term of T's income interest. The trust is subject to an ETIP while T holds the retained income interest. T files a timely Form 709 reporting the transfer and allocates $100,000 of GST exemption to the trust. In year 4, when the value of the trust is $200,000, the trustee distributes $15,000 to GC. The distribution is a taxable distribution. Because of the existence of the ETIP, the inclusion ratio with respect to the taxable distribution is determined immediately prior to the occurrence of the GST. Thus, the inclusion ratio applicable to the year 4 GST is .50 (1 − ($100,000/$200,000 = .50).

(ii) In year 5, when the value of the trust is again $200,000, the trustee distributes another $15,000 to GC. Because the trust is still subject to the ETIP in year 5, the inclusion ratio with respect to the year 5 GST is again computed immediately prior to the GST. In computing the new inclusion ratio, the numerator of the applicable fraction is reduced by the nontax portion of prior GSTs occurring during the ETIP. Thus, the numerator of the applicable fraction with respect to the GST in year 5 is $92,500 ($100,000 − (.50 × $15,000)) and the inclusion ratio applicable with respect to the GST in year 5 is .537 (1 − ($92,500/ $200,000) = .463). Any additional GST exemption allocated on a timely ETIP return with respect to the GST in year 5 is effective immediately prior to the transfer.

§ 26.2642–5 Finality of inclusion ratio.

(a) *Direct skips.* The inclusion ratio applicable to a direct skip becomes final when no additional GST tax (including additional GST tax payable as a result of a cessation, etc. of qualified use under section 2032A(c)) may be assessed with respect to the direct skip.

(b) *Other GSTs.* With respect to taxable distributions and taxable terminations, the inclusion ratio for a trust becomes final, on the later of—

(1) The expiration of the period for assessment with respect to the first GST tax return filed using that inclusion ratio; (unless the trust is subject to an election under section 2032A in which case the applicable date under this subsection is the expiration of the period of assessment of any additional GST tax due as a result of a cessation, etc. of qualified use under section 2032A); or

(2) The expiration of the period for assessment of Federal estate tax with respect to the estate of the transferor. For purposes of this paragraph (b)(2), if an estate tax return is not required to be filed, the period for assessment is determined as if a return were required to be filed and as if the return were timely filed within the period prescribed by section 6075(a).

§ 26.2652–1 Transferor defined; other definitions.

(a) *Transferor defined*—(1) *In general.* Except as otherwise provided in paragraph (a)(3) of this section, the individual with respect to whom property was most recently subject to Federal estate or gift tax is the transferor of that property for purposes of chapter 13. An individual is treated as transferring any property with respect to which the individual is the transferor. Thus, an individual may be a transferor even though there is no transfer of property under local law at the time the Federal estate or gift tax applies. For purposes of this paragraph, a surviving spouse is the transferor of a qualified domestic trust created by the deceased spouse that is included in the surviving spouse's gross estate, provided the trust is not subject to the election described in § 26.2652–2 (reverse QTIP election). A surviving spouse is also the transferor of a qualified domestic trust created by the surviving spouse pursuant to section 2056(d)(2)(B).

(2) *Transfers subject to Federal estate or gift tax.* For purposes of this section,

a transfer is subject to Federal gift tax if a gift tax is imposed under section 2501(a). A transfer is subject to Federal estate tax if the value of the property is includible in the decedent's gross estate as determined under section 2031 or section 2103.

(3) *Special rule for certain QTIP trusts.* Solely for purposes of chapter 13, if a transferor of qualified terminable interest property (QTIP) elects under § 26.2652–2(a) to treat the property as if the QTIP election had not been made (reverse QTIP election), the identity of the transferor of the property is determined without regard to the application of sections 2044, 2207A, and 2519.

(4) *Exercise of certain nongeneral powers of appointment.* The exercise of a power of appointment that is not a general power of appointment (as defined in section 2041(b)) is treated as a transfer subject to Federal estate or gift tax by the holder of the power if the power is exercised in a manner that may postpone or suspend the vesting, absolute ownership, or power of alienation of an interest in property for a period, measured from the date of creation of the trust, extending beyond any specified life in being at the date of creation of the trust plus a period of 21 years plus, if necessary, a reasonable period of gestation (perpetuities period). For purposes of this paragraph (a)(4), the exercise of a power of appointment that validly postpones or suspends the vesting, absolute ownership, or power of alienation of an interest in property for a term of years that will not exceed 90 years (measured from the date of creation of the trust) is not an exercise that may extend beyond the perpetuities period.

(5) *Split-gift transfers.* In the case of a transfer with respect to which the donor's spouse makes an election under section 2513 to treat the gift as made one-half by the spouse, the electing spouse is treated as the transferor of one-half of the entire value of the property transferred by the donor, regardless of the interest the electing spouse is actually deemed to have transferred under section 2513. The donor is treated as the transferor of one-half of the value of the entire property. See § 26.2632–1(c)(5) *Example 3,* regarding allocation of GST exemption with respect to split-gift transfers subject to an ETIP.

(6) *Examples.* The following examples illustrate the principles of this paragraph (a):

Example 1. *Identity of transferor.* T transfers $100,000 to a trust for the sole benefit of T's grandchild. The transfer is a completed gift under § 25.2511–2 of this chapter. Thus, for purposes of chapter 13, T is the transferor of the $100,000. It is immaterial that a portion of the transfer is excluded from the total amount of T's taxable gift by reason of section 2503(b).

Example 2. *Gift splitting and identity of transferor.* The facts are the same as in Example 1, except T's spouse, S, consents under section 2513 to split the gift with T. For purposes of chapter 13, S and T are each treated as a transferor of $50,000 to the trust.

Example 3. *Change of transferor on subsequent transfer tax event.* T transfers $100,000 to a trust providing that all the net trust income is to be paid to T's spouse, S, for S's lifetime. T elects under section 2523(f) to treat the transfer as a transfer of qualified terminable interest property, and T does not make the reverse QTIP election under section 2652(a)(3). On S's death, the trust property is included in S's gross estate under section 2044. Thus, S becomes the transferor at the time of S's death.

Example 4. *Effect of transfer of an interest in trust on identity of the transferor.* T transfers $100,000 to a trust providing that all of the net income is to be paid to T's child, C, for C's lifetime. At C's death, the trust property is to be paid to T's grandchild. C transfers the income interest to X, an unrelated party, in a transfer that is a completed transfer for Federal gift tax purposes. Because C's transfer is a transfer of a term interest in the trust that does not affect the rights of other parties with respect to the trust property, T remains the transferor with respect to the trust.

Example 5. *Effect of lapse of withdrawal right on identity of transferor.* T transfers $10,000 to a new trust providing that the trust income is to be paid to T's child, C, for C's life and, on the death of C, the trust principal is to be paid to T's grandchild, GC. The trustee has discretion to distribute principal for GC's benefit during C's lifetime. C has a right to withdraw $10,000 from the trust for a 60-day period following the transfer. Thereafter, the power lapses. C does not exercise the withdrawal right. The transfer by T is a completed transfer within the meaning of § 25.2511–2 of this chapter and, thus, T is treated as having transferred the entire $10,000 to the trust. On the lapse of the withdrawal right, C becomes a transferor to the extent C is treated as having made a completed transfer for purposes of chapter 12. Therefore, except to the extent that the amount with respect to which the power of withdrawal lapses exceeds the greater of $5,000 or 5% of the value of the trust property, T remains the transferor of the trust property for purposes of chapter 13.

Example 6. *Effect of reverse QTIP election on identity of the transferor.* T establishes a testamentary trust having a principal of $500,000. Under the terms of the trust, all trust income is payable to T's surviving spouse, S, during S's lifetime. T's executor makes an election to treat the trust property as qualified terminable interest property and also makes the reverse QTIP election. For purposes of chapter 13, T is the transferor with respect to the trust. On S's death, the then full fair market value of the trust is includible in S's gross estate under section 2044. However, because of the reverse QTIP election, S does not become the transferor with respect to the trust; T continues to be the transferor.

Example 7. *Effect of reverse QTIP election on constructive additions.* The facts are the same as in Example 6, except the inclusion of the QTIP trust in S's gross estate increased the Federal estate tax liability of S's estate by $200,000. The estate does not exercise the right of recovery from the trust granted under section 2207A. Under local law, the beneficiaries of S's residuary estate (which bears all estate taxes under the will) could compel the executor to exercise the right of recovery but do not do so. Solely for purposes of chapter 13, the beneficiaries of the residuary estate are not treated as having made an addition to the trust by reason of their failure to exercise their right of recovery. Because of the reverse QTIP election, for GST purposes, the trust property is not treated as includible in S's gross estate and, under those circumstances, no right of recovery exists.

Example 8. *Effect of reverse QTIP election on constructive additions.* S, the surviving spouse of T, dies testate. At the time of S's death, S was the beneficiary of a trust with respect to which T's executor made a QTIP election under section 2056(b)(7). Thus, the trust is includible in S's gross estate under section 2044. T's executor also made the reverse QTIP election with respect to the trust. S's will provides that all death taxes payable with respect to the trust are payable from S's residuary estate. Since the transferor of the property is determined without regard to section 2044 and section 2207A, S is not treated as making a constructive addition to the trust by reason of the tax apportionment clause in S's will.

Example 9. *Exercise of a nongeneral power of appointment.* On May 15, 1990, T established an irrevocable trust under which the trust income is to be paid to T's child, C, for life. C is given a testamentary power to appoint the remainder in further trust for the benefit of C's issue. In default of C's exercise of the power, the remainder is to pass to charity. C dies on February 3, 1997, survived by two children and a sibling, S (who was born prior to May 15, 1990). C exercises the power in a manner that validly extends the trust in favor of C's issue until the later of May 15, 2070 (80 years from the date the trust was created), or the death of S. C's exercise of the power is considered a transfer by C that is subject to the estate or gift tax because it may extend the term of the trust beyond the perpetuities period.

Example 10. *Exercise of a nongeneral power of appointment.* The facts are the same as in Example 9, except local law provides that the effect of C's exercise is to extend the term of the trust until May 15, 2070, whether or not S survives that date. C is not treated as having made a transfer to the trust as a result of the exercise of the power because the exercise of the power does not extend the term of the trust beyond a period of 90 years measured from the creation of the trust. The result would be the same if the effect of C's exercise is either to extend the term of the trust until the death of S or to extend the term of the trust until the first to occur of May 15, 2070, or the death of S.

Example 11. *Split-gift transfers.* T transfers $100,000 to an inter vivos trust that provides T with an annuity payable for ten years or until T's prior death. The annuity satisfies the definition of a qualified interest under section 2702(b). When the trust terminates, the corpus is to be paid to T's grandchild, GC. T's spouse, S, consents under section 2513 to have the gift treated as made one-half by S. Under section 2513, only the actuarial value of the gift to GC is eligible to be treated as made one-half by S. However, because S is treated as the donor of one-half of the gift to GC, S becomes the transferor of one-half of the entire trust ($50,000) for purposes of Chapter 13.

(b) *Trust defined*—(1) *In general.* A trust includes any arrangement (other than an estate) that has substantially the same effect as a trust. Thus, for example, arrangements involving life estates and remainders, estates for years, and insurance and annuity contracts are trusts. Generally, a transfer as to which the identity of the transferee is contingent upon the occurrence of an event is a transfer in trust; however, a transfer of property included in the transferor's gross estate, as to which the identity of the transferee is contingent upon an event that must occur within 6 months of the transferor's death, is not considered a transfer in trust solely by reason of the existence of the contingency.

(2) *Examples.* The following examples illustrate the provisions of this paragraph (b):

Example 1. *Uniform gifts to minors transfers.* T transfers cash to an account in the name of T's child, C, as custodian for C's child, GC (who is a minor), under a state statute substantially similar to the Uniform Gifts to Minors Act. For purposes of chapter 13, the transfer to the custodial account is treated as a transfer to a trust.

Example 2. *Contingent transfers.* T bequeaths $200,000 to T's child, C, provided that if C does not survive T by more than 6 months, the bequest is payable to T's grandchild, GC. C dies 4 months after T. The bequest is not a transfer in trust because the contingency that determines the recipient of the bequest must occur within 6 months of T's death. The bequest to GC is a direct skip.

Example 3. *Contingent transfers.* The facts are the same as in Example 2, except C must survive T by 18 months to take the bequest. The bequest is a transfer in trust for purposes of chapter 13, and the death of C is a taxable termination.

(c) *Trustee defined.* The trustee of a trust is the person designated as trustee under local law or, if no such person is so designated, the person in actual or constructive possession of property held in trust.

(d) *Executor defined.* For purposes of chapter 13, the executor is the executor or administrator of the decedent's estate. However, if no executor or administrator is appointed, qualified or acting within the United States, the executor is the fiduciary who is primarily responsible for payment of the decedent's debts and expenses. If there is no such executor, administrator or fiduciary, the executor is the person in actual or constructive possession of the largest portion of the value of the decedent's gross estate.

(e) *Interest in trust.* See § 26.2612–1(e) for the definition of *interest in trust.*

§ 26.2652–2 Special election for qualified terminable interest property.

(a) *In general.* If an election is made to treat property as qualified terminable interest property (QTIP) under section 2523(f) or section 2056(b)(7), the person making the election may, for purposes of chapter 13, elect to treat the property as if the QTIP election had not been made (reverse QTIP election). An election under this section is irrevocable. An election under this section is not effective unless it is made with respect to all of the property in the trust to which the QTIP election applies. See, however, § 26.2654–1(b)(1). Property that qualifies for a deduction under section 2056(b)(5) is not eligible for the election under this section.

(b) *Time and manner of making election.* An election under this section is made on the return on which the QTIP election is made. If a protective QTIP election is made, no election under this section is effective unless a protective reverse QTIP election is also made.

(c) *Transitional rule.* If a reverse QTIP election is made with respect to a trust prior to December 27, 1995, and GST exemption has been allocated to that trust, the transferor (or the transferor's executor) may elect to treat the trust as two separate trusts, one of which has a zero inclusion ratio by reason of the transferor's GST exemption previously allocated to the trust. The separate trust with the zero inclusion ratio consists of that fractional share of the value of the entire trust equal to the value of the nontax portion of the trust under § 26.2642–4(a). The reverse QTIP election is treated as applying only to the trust with the zero inclusion ratio. An election under this paragraph (c) is made by attaching a statement to a copy of the return on which the reverse QTIP election was made under section 2652(a)(3). The statement must indicate that an election is being made to treat the trust as two separate trusts and must identify the values of the two separate trusts. The statement is to be filed in the same place in which the original return was filed and must be filed before June 24, 1996. A trust subject to the election described in this paragraph is treated as a trust that was created by two transferors. See § 26.2654–1(a)(2) for special rules involving trusts with multiple transferors.

(d) *Examples.* The following examples illustrate the provisions of this section:

Example 1. *Special (reverse QTIP) election under section 2652(a)(3).* T transfers $1,000,000 to a trust providing that all trust income is to be paid to T's spouse, S, for S's lifetime. On S's death, the trust principal is payable to GC, a grandchild of S and T. T elects to treat all of the transfer as a transfer of QTIP and also makes the reverse QTIP election for all of the property. Because of the reverse QTIP election, T continues to be treated as the transferor of the property after S's death for purposes of chapter 13. A taxable termination rather than a direct skip occurs on S's death.

Example 2. *Election under transition rule.* In 1994, T died leaving $4 million in trust for the benefit of T's surviving spouse, S. On January 16, 1995, T's executor filed T's Form 706 on which the executor elects to treat the entire trust as qualified terminable interest property. The executor also makes a reverse QTIP election. The reverse QTIP election is effective with respect to the entire trust even though T's executor could allocate only $1 million of GST exemption to the trust. T's executor may elect to treat the trust as two separate trusts, one having a value of 25% of the value of the single trust and an inclusion ratio of zero, but only if the election is made prior to June 24, 1996. If the executor makes the transitional election, the other separate trust, having a value of 75% of the value of the single trust and an inclusion ratio of one, is not treated as subject to the reverse QTIP election.

Example 3. *Denominator of the applicable fraction of QTIP trust.* T bequeaths $1,500,000 to a trust in which T's surviving spouse, S, receives an income interest for life. Upon the death of S, the property is to remain in trust for the benefit of C, the child of T and S. Upon C's death, the trust is to terminate and the trust property paid to the descendants of C. The bequest qualifies for the estate tax marital deduction under section 2056(b)(7) as QTIP. The executor does not make the reverse QTIP election under section 2652(a)(3). As a result, S becomes the transferor of the trust at S's death when the value of the property in the QTIP trust is included in S's gross estate under section 2044. For purposes of computing the applicable fraction with respect to the QTIP trust upon S's death, the denominator of the fraction is reduced by any Federal estate tax (whether imposed under section 2001, 2101 or 2056A(b)) and State death tax attributable to the trust property that is actually recovered from the trust.

§ 26.2653–1 Taxation of multiple skips.

(a) *General rule.* If property is held in trust immediately after a GST, solely for purposes of determining whether future events involve a skip person, the transferor is thereafter deemed to occupy the generation immediately

above the highest generation of any person holding an interest in the trust immediately after the transfer. If no person holds an interest in the trust immediately after the GST, the transferor is treated as occupying the generation above the highest generation of any person in existence at the time of the GST who then occupies the highest generation level of any person who may subsequently hold an interest in the trust. See § 26.2612–1(e) for rules determining when a person has an interest in property held in trust.

(b) *Examples.* The following examples illustrate the provisions of this section:

Example 1. T transfers property to an irrevocable trust for the benefit of T's grandchild, GC, and great-grandchild, GGC. During GC's life, the trust income may be distributed to GC and GGC in the trustee's absolute discretion. At GC's death, the trust property passes to GGC. Both GC and GGC have an interest in the trust for purposes of chapter 13. The transfer by T to the trust is a direct skip, and the property is held in trust immediately after the transfer. After the direct skip, the transferor is treated as being one generation above GC, the highest generation individual having an interest in the trust. Therefore, GC is no longer a skip person and distributions to GC are not taxable distributions. However, because GGC occupies a generation that is two generations below the deemed generation of T, GGC is a skip person and distributions of trust income to GGC are taxable distributions.

Example 2. T transfers property to an irrevocable trust providing that the income is to be paid to T's child, C, for life. At C's death, the trust income is to be accumulated for 10 years and added to principal. At the end of the 10-year accumulation period, the trust income is to be paid to T's grandchild, GC, for life. Upon GC's death, the trust property is to be paid to T's great-grandchild, GGC, or to GGC's estate. A GST occurs at C's death. Immediately after C's death and during the 10-year accumulation period, no person has an interest in the trust within the meaning of section 2652(c) and § 26.2612–1(e) because no one can receive current distributions of income or principal. Immediately after C's death, T is treated as occupying the generation above the generation of GC (the trust beneficiary in existence at the time of the GST who then occupies the highest generation level of any person who may subsequently hold an interest in the trust). Thus, subsequent income distributions to GC are not taxable distributions.

§ 26.2654–1 Certain trusts treated as separate trusts.

(a) *Single trust treated as separate trusts*—(1) *Substantially separate and independent shares*—(i) *In general.* If a single trust consists solely of substantially separate and independent shares for different beneficiaries, the share attributable to each beneficiary (or group of beneficiaries) is treated as a separate trust for purposes of chapter 13. The phrase ''substantially separate and independent shares'' generally has the same meaning as provided in § 1.663(c)–3 of this chapter. However, a portion of a trust is not a separate share unless such share exists from and at all times after the creation of the trust. For purposes of this paragraph (a)(1), a trust is treated as created at the date of death of the grantor if the trust is includible in its entirety in the grantor's gross estate for Federal estate tax purposes. Further, treatment of a single trust as separate trusts under this paragraph (a)(1) does not permit treatment of those portions as separate trusts for purposes of filing returns and payment of tax or for purposes of computing any other tax imposed under the Internal Revenue Code. Also, additions to, and distributions from, such trusts are allocated pro rata among the separate trusts, unless the governing instrument expressly provides otherwise.

(ii) *Certain pecuniary amounts.* For purposes of this section, if a person holds the current right to receive a mandatory (i.e., nondiscretionary and noncontingent) payment of a pecuniary amount at the death of the transferor from an inter vivos trust that is includible in the transferor's gross estate, or a testamentary trust, the pecuniary amount is a separate and independent share if—

(A) The trustee is required to pay appropriate interest (as defined in § 26.2642–2(b)(4)(i) and (ii)) to the person; or

(B) If the pecuniary amount is payable in kind on the basis of value other than the date of distribution value of the assets, the trustee is required to allocate assets to the pecuniary payment in a manner that fairly reflects net appreciation or depreciation in the value of the assets in the fund available to pay the pecuniary amount measured from the date of death to the date of payment.

(2) *Multiple transferors with respect to single trust*—(i) *In general.* If there is more than one transferor with respect to a trust, the portions of the trust attributable to the different transferors are treated as separate trusts for purposes of chapter 13. Treatment of a single trust as separate trusts under this paragraph (a)(2) does not permit treatment of those portions as separate trusts for purposes of filing returns and payment of tax or for purposes of computing any other tax imposed under the Internal Revenue Code. Also, additions to, and distributions from, such trusts are allocated pro rata among the separate trusts unless otherwise expressly provided in the governing instrument.

(ii) *Addition by a transferor.* If an individual makes an addition to a trust of which the individual is not the sole transferor, the portion of the single trust attributable to each separate trust is determined by multiplying the fair market value of the single trust immediately after the contribution by a fraction. The numerator of the fraction is the value of the separate trust immediately after the contribution. The denominator of the fraction is the fair market value of all the property in the single trust immediately after the transfer.

(3) *Severance of a single trust.* A single trust treated as separate trusts under paragraphs (a)(1) or (2) of this section may be divided at any time into separate trusts to reflect that treatment. For this purpose, the rules of paragraph (b)(1)(ii)(C) of this section apply with respect to the severance and funding of the severed trusts.

(4) *Allocation of exemption*—(i) *In general.* With respect to a separate share treated as a separate trust under paragraph (a)(1) or (2) of this section, an individual's GST exemption is allocated to the separate trust. See § 26.2632–1 for rules concerning the allocation of GST exemption.

(ii) *Automatic allocation to direct skips.* If the transfer is a direct skip to a trust that occurs during the transferor's lifetime and is treated as a transfer to separate trusts under paragraphs (a)(1) or (a)(2) of this section, the transferor's GST exemption not previously allocated is automatically allocated on a pro rata basis among the separate trusts. The transferor may prevent an automatic allocation of GST exemption to a separate share of a single trust by describing on a timely-filed United States Gift (and Generation-Skipping Transfer) Tax Return (Form 709) the transfer and the extent to which the automatic allocation is not to apply to a particular share. See § 26.2632–1(b) for rules for avoiding the automatic allocation of GST exemption.

(5) *Examples.* The following examples illustrate the principles of this section (a):

Example 1. Separate shares as separate trusts. T transfers $100,000 to a trust under which income is to be paid in equal shares for 10 years to T's child, C, and T's grandchild, GC (or their respective estates). The trust does not permit distributions of principal during the term of the trust. At the end of the 10-year term, the trust principal is to be distributed to C and GC in equal shares. The shares of C and GC in the trust are separate and independent and, therefore, are treated as separate trusts. The result

would not be the same if the trust permitted distributions of principal unless the distributions could only be made from a one-half separate share of the initial trust principal and the distributee's future rights with respect to the trust are correspondingly reduced. T may allocate part of T's GST exemption under section 2632(a) to the share held for the benefit of GC.

Example 2. *Separate share rule inapplicable.* The facts are the same as in *Example 1,* except the trustee holds the discretionary power to distribute the income in any proportion between C and GC during the last year of the trust. The shares of C and GC in the trust are not separate and independent shares throughout the entire term of the trust and, therefore, are not treated as separate trusts for purposes of chapter 13.

Example 3. *Pecuniary payment as separate share.* T creates a lifetime revocable trust providing that on T's death $500,000 is payable to T's spouse, S, with the balance of the principal to be held for the benefit of T's grandchildren. The value of the trust is includible in T's gross estate upon T's death. Under the terms of the trust, the payment to S is required to be made in cash, and under local law S is entitled to receive interest on the payment at an annual rate of 6 percent, commencing immediately upon T's death. For purposes of chapter 13, the trust is treated as created at T's death, and the $500,000 payable to S from the trust is treated as a separate share. The result would be the same if the payment to S could be satisfied using noncash assets at their value on the date of distribution. Further, the result would be the same if the decedent's probate estate poured over to the revocable trust on the decedent's death and was then distributed in accordance with the terms of the trust.

Example 4. Pecuniary payment not treated as separate share. The facts are the same as in *Example 3,* except the bequest to S is to be paid in noncash assets valued at their values as finally determined for Federal estate tax purposes. Neither the trust instrument nor local law requires that the assets distributed in satisfaction of the bequest fairly reflect net appreciation or depreciation in all the assets from which the bequest may be funded. S's $500,000 bequest is not treated as a separate share and the trust is treated as a single trust for purposes of chapter 13.

Example 5. Multiple transferors to single trust. A transfers $100,000 to an irrevocable generation-skipping trust; B simultaneously transfers $50,000 to the same trust. As of the time of the transfers, the single trust is treated as two trusts for purposes of chapter 13. Because A contributed ⅔ of the value of the initial corpus, ⅔ of the single trust principal is treated as a separate trust created by A. Similarly, because B contributed ⅓ of the value of the initial corpus, ⅓ of the single trust is treated as a separate trust created by B. A or B may allocate their GST exemption under section 2632(a) to the respective separate trusts.

Example 6. *Additional contributions.* A transfers $100,000 to an irrevocable generation-skipping trust; B simultaneously transfers $50,000 to the same trust. When the value of the single trust has increased to $180,000, A contributes an additional $60,000 to the trust. At the time of the additional contribution, the portion of the single trust attributable to each grantor's separate trust must be redetermined. The portion of the single trust attributable to A's separate trust immediately after the contribution is ¾ ((2/3 × $180,000) + $60,000)/$240,000). The portion attributable to B's separate trust after A's addition is ¼.

Example 7. *Distributions from a separate share.* The facts are the same as in *Example 6,* except that, after A's second contribution, $50,000 is distributed to a beneficiary of the trust. Absent a provision in the trust instrument that charges the distribution against the contribution of either A or B, ¾ of the distribution is treated as made from the separate trust of which A is the transferor and 1/4 from the separate trust of which B is the transferor.

Example 8. *Separate share rule inapplicable.* T creates an irrevocable trust that provides the trustee with the discretionary power to distribute income or corpus to T's children and grandchildren. The trust provides that, when T's youngest child reaches age 21, the trust will be divided into separate shares, one share for each child of T. The income from a respective child's share will be paid to the child during the child's life with the remainder passing to such child's children (grandchildren of T). The separate shares that come into existence when the youngest child reaches age 21 will not be recognized as separate trusts for purposes of Chapter 13 because the shares did not exist from and at all times after the creation of the trust. Any allocation of GST exemption to the trust either before or after T's youngest child reaches age 21 will apply with respect to the entire trust. Thus, the inclusion ratio will be the same with respect to any distribution from the trust or the separate shares. The result would be the same if, the trust instrument provided that the trust was to be divided into separate trusts when T's youngest child reached age 21.

(b) *Division of a trust included in the gross estate*—(1) *In general.* The severance of a trust that is included in the transferor's gross estate (or created under the transferor's will) into two or more trusts is recognized for purposes of chapter 13 if—

(i) The trust is severed pursuant to a direction in the governing instrument providing that the trust is to be divided upon the death of the transferor; or

(ii) The governing instrument does not require or otherwise direct severance but the trust is severed pursuant to discretionary authority granted either under the governing instrument or under local law; and

(A) The terms of each of the new trusts provide for the same succession of interests and beneficiaries as are provided in the original trust;

(B) The severance occurs (or a reformation proceeding, if required, is commenced) prior to the date prescribed for filing the Federal estate tax return (including extensions actually granted) for the estate of the transferor; and

(C) Either—

(*1*) The new trusts are severed on a fractional basis. If severed on a fractional basis, the separate trusts need not be funded with a pro rata portion of each asset held by the undivided trust. The trusts may be funded on a nonpro rata basis provided funding is based on either the fair market value of the assets on the date of funding or in a manner that fairly reflects the net appreciation or depreciation in the value of the assets measured from the date of death to the date of funding; or

(*2*) If the severance is required (by the terms of the governing instrument) to be made on the basis of a pecuniary amount, the pecuniary payment is satisfied in a manner that would meet the requirements of paragraph (a)(1)(ii) of this section if it were paid to an individual.

(*2*) *Special rule.* If a court order severing the trust has not been issued at the time the Federal estate tax return is filed, the executor must indicate on a statement attached to the return that a proceeding has been commenced to sever the trust and describe the manner in which the trust is proposed to be severed. A copy of the petition or other instrument used to commence the proceeding must also be attached to the return. If the governing instrument of a trust or local law authorizes the severance of the trust, a severance pursuant to that authorization is treated as meeting the requirement of paragraph (b)(1)(ii)(B) of this section if the executor indicates on the Federal estate tax return that separate trusts will be created (or funded) and clearly sets forth the manner in which the trust is to be severed and the separate trusts funded.

(3) *Allocation of exemption.* An individual's GST exemption under § 2632 may be allocated to the separate trusts created pursuant to this section at the discretion of the executor or trustee.

(4) *Examples.* The following examples illustrate the provisions of this section (b):

Example 1. *Severance of single trust.* T's will establishes a testamentary trust providing that income is to be paid to T's spouse for life. At the spouse's death, one-half of the corpus is to be paid to T's child, C, or C's estate (if C fails to survive the spouse) and one-half of the corpus is to be paid to T's grandchild, GC, or GC's estate (if GC fails to survive the spouse). If the requirements of paragraph (b) of this section are otherwise satisfied, T's executor may divide the testamentary trust equally into two separate trusts, one trust providing an income interest to spouse for life with

remainder to C, and the other trust with an income interest to spouse for life with remainder to GC. Furthermore, if the requirements of paragraph (b) of this section are satisfied, the executor or trustee may further divide the trust for the benefit of GC. GST exemption may be allocated to any of the divided trusts.

Example 2. *Severance of revocable trust.* T creates an inter vivos revocable trust providing that, at T's death and after payment of all taxes and administration expenses, the remaining corpus will be divided into two trusts. One trust, for the benefit of T's spouse, is to be funded with the smallest amount that, if qualifying for the marital deduction, will reduce the estate tax to zero. The other trust, for the benefit of T's descendants, is to be funded with the balance of the revocable trust corpus. The trust corpus is includible in T's gross estate. Each trust is recognized as a separate trust for purposes of chapter 13.

26.2662–1 Generation-skipping transfer tax return requirements.

(a) *In general.* Chapter 13 imposes a tax on generation-skipping transfers (as defined in section 2611). The requirements relating to the return of tax depend on the type of generation-skipping transfer involved. This section contains rules for filing the required tax return. Paragraph (c)(2) of this section provides special rules concerning the return requirements for generation-skipping transfers pursuant to certain trust arrangements (as defined in paragraph (c)(2)(ii) of this section), such as life insurance policies and annuities.

(b) *Form of return*—(1) *Taxable distributions.* Form 706GS(D) must be filed in accordance with its instructions for any taxable distribution (as defined in section 2612(b)). The trust involved in a transfer described in the preceding sentence must file Form 706GS(D–1) in accordance with its instructions. A copy of Form 706GS(D–1) shall be sent to each distributee.

(2) *Taxable terminations.* Form 706GS(T) must be filed in accordance with its instructions for any taxable termination (as defined in section 2612(a)).

(3) *Direct skip*—(i) *Inter vivos direct skips.* Form 709 must be filed in accordance with its instructions for any direct skip (as defined in section 2612(c)) that is subject to chapter 12 and occurs during the life of the transferor.

(ii) *Direct skips occurring at death*—(A) *In general.* Form 706 or Form 706NA must be filed in accordance with its instructions for any direct skips (as defined in section 2612(c)) that are subject to chapter 11 and occur at the death of the decedent.

(B) *Direct skips payable from a trust.* Schedule R–1 of Form 706 must be filed in accordance with its instructions for any direct skip from a trust if such direct skip is subject to chapter 11. See paragraph (c)(2) of this section for special rules relating to the person liable for tax and required to make the return under certain circumstances.

(c) *Person liable for tax and required to make return*—(1) *In general.* Except as otherwise provided in this section, the following person is liable for the tax imposed by section 2601 and must make the required tax return—

(i) The transferee in a taxable distribution (as defined in section 2612(b));

(ii) The trustee in the case of a taxable termination (as defined in section 2612(a));

(iii) The transferor (as defined in section 2652(a)(1)(B)) in the case of an inter vivos direct skip (as defined in section 2612(c));

(iv) The trustee in the case of a direct skip from a trust or with respect to property that continues to be held in trust; or

(v) The executor in the case of a direct skip (other than a direct skip described in paragraph (c)(1)(iv) of this section) if the transfer is subject to chapter 11. See paragraph (c)(2) of this section for special rules relating to direct skips to or from certain trust arrangements (as defined in paragraph (c)(2)(ii) of this section).

(2) *Special rule for direct skips occurring at death with respect to property held in trust arrangements*—(i) *In general.* In the case of certain property held in a trust arrangement (as defined in paragraph (c)(2)(ii) of this section) at the date of death of the transferor, the person who is required to make the return and who is liable for the tax imposed by chapter 13 is determined under paragraphs (c)(2)(iii) and (iv) of this section.

(ii) *Trust arrangement defined.* For purposes of this section, the term *trust arrangement* includes any arrangement (other than an estate) which, although not an explicit trust, has the same effect as an explicit trust. For purposes of this section, the term ''explicit trust'' means a trust described in § 301.7701–4(a).

(iii) *Executor's liability in the case of transfers with respect to decedents dying on or after June 24, 1996 if the transfer is less than $250,000.* In the case of a direct skip occurring at death, the executor of the decedent's estate is liable for the tax imposed on that direct skip by chapter 13 and is required to file Form 706 or Form 706NA (and not Schedule R–1 of Form 706) if, at the date of the decedent's death—

(A) The property involved in the direct skip is held in a trust arrangement; and

(B) The total value of the property involved in direct skips with respect to the trustee of that trust arrangement is less than $250,000.

(iv) *Executor's liability in the case of transfers with respect to decedents dying prior to June 24, 1996 if the transfer is less than $100,000.* In the case of a direct skip occurring at death with respect to a decedent dying prior to June 24, 1996, the rule in paragraph (c)(2)(iii) of this section that imposes liability upon the executor applies only if the property involved in the direct skip with respect to the trustee of the trust arrangement, in the aggregate, is less than $100,000.

(v) *Executor's right of recovery.* In cases where the rules of paragraphs (c)(2)(iii) and (iv) of this section impose liability for the generation-skipping transfer tax on the executor, the executor is entitled to recover from the trustee (if the property continues to be held in trust) or from the recipient of the property (in the case of a transfer from a trust), the generation-skipping transfer tax attributable to the transfer.

(vi) *Examples.* The following examples illustrate the application of this paragraph (c)(2) with respect to decedents dying on or after June 24, 1996:

Example 1. *Insurance proceeds less than $250,000.* On August 1, 1997, T, the insured under an insurance policy, died. The proceeds ($200,000) were includible in T's gross estate for Federal estate tax purposes. T's grandchild GC, was named the sole beneficiary of the policy. The insurance policy is treated as a trust under section 2652(b)(1), and the payment of the proceeds to GC is a transfer from a trust for purposes of chapter 13. Therefore, the payment of the proceeds to GC is a direct skip. Since the proceeds from the policy ($200,000) are less than $250,000, the executor is liable for the tax imposed by chapter 13 and is required to file Form 706.

Example 2. *Aggregate insurance proceeds of $250,000 or more.* Assume the same facts as in Example 1, except T is the insured under two insurance policies issued by the same insurance company. The proceeds ($150,000) from each policy are includible in T's gross estate for Federal estate tax purposes. T's grandchild, GC1, was named the sole beneficiary of Policy 1, and T's other grandchild, GC2, was named the sole beneficiary of Policy 2. GC1 and GC2 are skip persons (as defined in section 2613). Therefore, the payments of the proceeds are direct skips. Since the total value of the policies ($300,000) exceeds $250,000, the insurance company is liable for the tax imposed by chapter 13 and is required to file Schedule R–1 of Form 706.

Example 3. *Insurance proceeds of $250,000 or more held by insurance company.* On August 1, 1997, T, the insured under an insurance policy, dies. The policy provides that the insurance company shall make

monthly payments of $750 to GC, T's grandchild, for life with the remainder payable to T's great grandchild, GGC. The face value of the policy is $300,000. Since the proceeds continue to be held by the insurance company (the trustee), the proceeds are treated as if they were transferred to a trust for purposes of chapter 13. The trust is a skip person (as defined in section 2613(a)(2)) and the transfer is a direct skip. Since the total value of the policy ($300,000) exceeds $250,000, the insurance company is liable for the tax imposed by chapter 13 and is required to file Schedule R–1 of Form 706.

Example 4. *Insurance proceeds less than $250,000 held by insurance company.* Assume the same facts as in Example 3, except the policy provides that the insurance company shall make monthly payments of $500 to GC and that the face value of the policy is $200,000. The transfer is a transfer to a trust for purposes of chapter 13. However, since the total value of the policy ($200,000) is less than $250,000, the executor is liable for the tax imposed by chapter 13 and is required to file Form 706.

Example 5. On August 1, 1997, A, the insured under a life insurance policy, dies. The insurance proceeds on A's life that are payable under policies issued by Company X are in the aggregate amount of $200,000 and are includible in A's gross estate. Because the proceeds are includible in A's gross estate, the generation-skipping transfer that occurs upon A's death, if any, will be a direct skip rather than a taxable distribution or a taxable termination. Accordingly, because the aggregate amount of insurance proceeds with respect to Company X is less than $250,000, Company X may pay the proceeds without regard to whether the beneficiary is a skip person in relation to the decedent-transferor.

(3) *Limitation on personal liability of trustee.* Except as provided in paragraph (c)(3)(iii) of this section, a trustee is not personally liable for any increases in the tax imposed by section 2601 which is attributable to the fact that—

(i) A transfer is made to the trust during the life of the transferor for which a gift tax return is not filed; or

(ii) The inclusion ratio with respect to the trust, determined by reference to the transferor's gift tax return, is erroneous, the actual inclusion ratio being greater than the reported inclusion ratio.

(iii) This paragraph (c)(3) does not apply if the trustee has or is deemed to have knowledge of facts sufficient to reasonably conclude that a gift tax return was required to be filed or that the inclusion ratio is erroneous. A trustee is deemed to have knowledge of such facts if the trustee's agent, employee, partner, or co-trustee has knowledge of such facts.

(4) *Exceptions*—(i) *Legal or mental incapacity.* If a distributee is legally or mentally incapable of making a return, the return may be made for the distributee by the distributee's guardian or, if no guardian has been appointed, by a person charged with the care of the distributee's person or property.

(ii) *Returns made by fiduciaries.* See section 6012(b) for a fiduciary's responsibilities regarding the returns of decedents, returns of persons under a disability, returns of estates and trusts, and returns made by joint fiduciaries.

(d) *Time and manner of filing return*—(1) *In general.* Forms 706, 706NA, 706GS(D), 706GS(D–1), 706GS(T), 709, and Schedule R–1 of Form 706 must be filed with the Internal Revenue Service office with which an estate or gift tax return of the transferor must be filed. The return shall be filed—

(i) *Direct skip.* In the case of a direct skip, on or before the date on which an estate or gift tax return is required to be filed with respect to the transfer (see section 6075(b)(3)); and

(ii) *Other transfers.* In all other cases, on or before the 15th day of the 4th month after the close of the calendar year in which such transfer occurs. See paragraph (d)(2) of this section for an exception to this rule when an election is made under section 2624(c) to value property included in certain taxable terminations in accordance with section 2032.

(2) *Exception for alternative valuation of taxable termination.* In the case of a taxable termination with respect to which an election is made under section 2624(c) to value property in accordance with section 2032, a Form 706GS(T) must be filed on or before the 15th day of the 4th month after the close of the calendar year in which the taxable termination occurred, or on or before the 10th month following the month in which the death that resulted in the taxable termination occurred, whichever is later.

(e) *Place for filing returns.* See section 6091 for the place for filing any return, declaration, statement, or other document, or copies thereof, required by chapter 13.

(f) *Lien on property.* The liens imposed under sections 6324, 6324A, and 6324B are applicable with respect to the tax imposed under chapter 13. Thus, a lien under section 6324 is imposed in the amount of the tax imposed by section 2601 on all property transferred in a generation-skipping transfer until the tax is fully paid or becomes uncollectible by reason of lapse of time. The lien attaches at the time of the generation-skipping transfer and is in addition to the lien for taxes under section 6321.

§ 26.2663–1 Recapture tax under section 2032A.

See § 26.2642–4(a)(4) for rules relating to the recomputation of the applicable fraction and the imposition of additional GST tax, if additional estate tax is imposed under section 2032A.

§ 26.2663–2 Application of chapter 13 to transfers by nonresidents not citizens of the United States.

(a) *In general.* This section provides rules for applying chapter 13 of the Internal Revenue Code to transfers by a transferor who is a nonresident not a citizen of the United States (NRA transferor). For purposes of this section, an individual is a resident or citizen of the United States if that individual is a resident or citizen of the United States under the rules of chapter 11 or 12 of the Internal Revenue Code, as the case may be. Every NRA transferor is allowed a GST exemption of $1,000,000. See § 26.2632–1 regarding the allocation of the exemption.

(b) *Transfers subject to chapter 13*—(1) *Direct skips.* A transfer by a NRA transferor is a direct skip subject to chapter 13 only to the extent that the transfer is subject to the Federal estate or gift tax within the meaning of § 26.2652–1(a)(2). See § 26.2612–1(a) for the definition of direct skip.

(2) *Taxable distributions and taxable terminations.* Chapter 13 applies to a taxable distribution or a taxable termination to the extent that the initial transfer of property to the trust by a NRA transferor, whether during life or at death, was subject to the Federal estate or gift tax within the meaning of § 26.2652–1(a)(2). See § 26.2612–1(b) for the definition of a taxable termination and § 26.2612–1(c) for the definition of a taxable distribution.

(c) *Trusts funded in part with property subject to chapter 13 and in part with property not subject to chapter 13*—(1) *In general.* If a single trust created by a NRA transferor is in part subject to chapter 13 under the rules of paragraph (b) of this section and in part not subject to chapter 13, the applicable fraction with respect to the trust is determined as of the date of the transfer, except as provided in paragraph (c)(3) of this section.

(i) *Numerator of applicable fraction.* The numerator of the applicable fraction is the sum of the amount of GST exemption allocated to the trust (if any) plus the value of the nontax portion of the trust.

(ii) *Denominator of applicable fraction.* The denominator of the applicable fraction is the value of the property transferred to the trust reduced as provided in § 26.2642–1(c).

(2) *Nontax portion of the trust.* The nontax portion of a trust is a fraction, the numerator of which is the value of property not subject to chapter 13

determined as of the date of the initial completed transfer to the trust, and the denominator of which is the value of the entire trust. For example, T, a NRA transferor, transfers property that has a value of $1,000 to a generation-skipping trust. Of the property transferred to the trust, property having a value of $200 is subject to chapter 13 and property having a value of $800 is not subject to chapter 13. The nontax portion is .8 ($800 (the value of the property not subject to chapter 13) over $1,000 (the total value of the property transferred to the trust).

(3) *Special rule with respect to the estate tax inclusion period.* For purposes of this section, the provisions of § 26.2632–1(c), providing rules applicable in the case of an estate tax inclusion period (ETIP), apply only if the property transferred by the NRA transferor is subsequently included in the transferor's gross estate. If the property is not subsequently included in the gross estate, then the nontax portion of the trust and the applicable fraction are determined as of the date of the initial transfer. If the property is subsequently included in the gross estate, then the nontax portion and the applicable fraction are determined as of the date of death.

(d) *Examples.* The following examples illustrate the provisions of this section. In each example T, a NRA, is the transferor; C is T's child; and GC is C's child and a grandchild of T:

Example 1. *Direct transfer to skip person.* T transfers property to GC in a transfer that is subject to Federal gift tax under chapter 12 within the meaning of § 26.2652–1(a)(2). At the time of the transfer, C and GC are NRAs. T's transfer is subject to chapter 13 because the transfer is subject to gift tax under chapter 12.

Example 2. *Transfers of both U.S. and foreign situs property.* (i) T's will established a testamentary trust for the benefit of C and GC. The trust was funded with stock in a publicly traded U.S. corporation having a value on the date of T's death of $100,000, and property not situated in the United States (and therefore not subject to estate tax) having a value on the date of T's death of $400,000.

(ii) On a timely filed estate tax return (Form 706NA), the executor of T's estate allocates $50,000 of GST exemption under section 2632(a) to the trust. The numerator of the applicable fraction is $450,000, the sum of $50,000 (the amount of exemption allocated to the trust) plus $400,000 (the value of the nontax portion of the trust (4/5 x $500,000)). The denominator is $500,000. Hence, the applicable fraction with respect to the trust is .9 ($450,000/$500,000), and the inclusion ratio is .1 (1 - 9/10).

Example 3. Inter vivos transfer of U.S. and foreign situs property to a trust and a timely allocation of GST exemption. T establishes a trust providing that trust income is payable to T's child for life and the remainder is to be paid to T's grandchild. T transfers property to the trust that has a value of $100,000 and is subject to chapter 13. T also transfers property to the trust that has a value of $300,000 but is not subject to chapter 13. T allocates $100,000 of exemption to the trust on a timely filed United States Gift (and Generation-Skipping Transfer) Tax return (Form 709). The applicable fraction with respect to the trust is 1, determined as follows: $300,000 (the value of the nontax portion of the trust) plus $100,000 (the exemption allocated to the trust)/ $400,000 (the total value of the property transferred to the trust).

Example 4. *Inter vivos transfer of U.S. and foreign situs property to a trust and a late allocation of GST exemption.* (i) In 1996, T transfers $500,000 of property to an inter vivos trust the terms of which provide that income is payable to C, for life, with the remainder to GC. The property transferred to the trust consists of property subject to chapter 13 that has a value of $400,000 on the date of the transfer and property not subject to chapter 13 that has a value of $100,000. T does not allocate GST exemption to the trust. On the transfer date, the nontax portion of the trust is .2 ($100,000/$500,000) and the applicable fraction is also .2 determined as follows: $100,000 (the value of the nontax portion of the trust)/$500,000 (the value of the property transferred to the trust).

(ii) In 1999, when the value of the trust is $800,000, T allocates $100,000 of GST exemption to the trust. The applicable fraction of the trust must be recomputed. The numerator of the applicable fraction is $260,000 ($100,000 (the amount of GST exemption allocated to the trust)) plus $160,000 (the value of the nontax portion of the trust as of the date of allocation (.2 x $800,000)). The denominator of the applicable fraction is $800,000. Accordingly, the applicable fraction with respect to the trust after the allocation is .325 ($260,000/$800,000) and the inclusion ratio is .675 (1 - .325).

Example 5. *Taxable termination.* The facts are the same as in Example 4 except that, in 2006, when the value of the property is $1,200,000, C dies and the trust corpus is distributed to GC. The termination is a taxable termination. If no further GST exemption has been allocated to the trust, the applicable fraction remains .325 and the inclusion ratio remains .675.

Example 6. *Estate Tax Inclusion Period.* (i) T transferred property to an inter vivos trust the terms of which provided T with an annuity payable for 10 years or until T's prior death. The annuity satisfies the definition of a qualified interest under section 2702(b). The trust also provided that, at the end of the trust term, the remainder will pass to GC or GC's estate. The property transferred to the trust consisted of property subject to chapter 13 that has a value of $100,000 and property not subject to chapter 13 that has a value of $400,000. T allocated $100,000 of GST exemption to the trust. If T dies within the 10 year period, the value of the trust principal will be subject to inclusion in T's gross estate to the extent provided in sections 2103 and 2104(b). Accordingly, the ETIP rule under paragraph (c)(3) of this section applies.

(ii) In year 6 of the trust term, T died. At T's death, the trust corpus had a value of $800,000, and $500,000 was includible in T's gross estate as provided in sections 2103 and 2104(b). Thus, $500,000 of the trust corpus is subject to chapter 13 and $300,000 is not subject to chapter 13. The $100,000 GST exemption allocation is effective as of T's date of death. Also, the nontax portion of the trust and the applicable fraction are determined as of T's date of death. In this case, the nontax portion of the trust is .375, determined as follows: $300,000 (the value of the trust not subject to chapter 13)/$800,000 (the value of the trust). The numerator of the applicable fraction is $400,000, determined as follows: $100,000 (GST exemption previously allocated to the trust) plus $300,000 (the value of the nontax portion of the trust). The denominator of the applicable fraction is $800,000. Thus, the applicable fraction with respect to the trust is .50, unless additional exemption is allocated to the trust by T's executor or the automatic allocation rules of § 26.2632–1(d)(2) apply.

Example 7. The facts are the same as in *Example 6* except that T survives the termination date of T's retained annuity and the trust corpus is distributed to GC. Since the trust was not included in T's gross estate, the ETIP rules do not apply. Accordingly, the nontax portion of the trust and the applicable fraction are determined as of the date of the transfer to the trust. The nontax portion of the trust is .80 ($400,000/$500,000). The numerator of the applicable fraction is $500,000 determined as follows: $100,000 (GST exemption allocated to the trust) plus $400,000 (the value of the nontax portion of the trust). Accordingly, the applicable fraction is 1, and the inclusion ratio is zero.

(e) *Transitional rule for allocations for transfers made before December 27, 1995.* If an NRA made a GST (inter vivos or testamentary) after December 23, 1992, and before December 27, 1995 that is subject to chapter 13 (within the meaning of § 26.2663–2), the NRA will be treated as having made a timely allocation of GST exemption to the transfer in a calendar year in the order prescribed in section 2632(c). Thus, an NRA's unused GST exemption will initially be treated as allocated to any direct skips made during the calendar year and then to any trusts with respect to which the NRA made transfers during the same calendar year and from which a taxable distribution or a taxable termination may occur. Allocations within the above categories are made in the order in which the transfers occur. Allocations among simultaneous transfers within the same category are made pursuant to the principles of section 2632(c)(2). This transitional allocation rule will not apply if the NRA transferor, or the executor of the NRA's estate, as the case may be, elected to have an automatic allocation of GST exemption not apply by describing on a timely-filed Form 709 for the year of the

transfer, or a timely filed Form 706NA, the details of the transfer and the extent to which the allocation was not to apply.

PART 301—PROCEDURE AND ADMINISTRATION

Par. 2. The authority citation for part 301 continues to read in part as follows:

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

Par. 3. Section 301.9100–7T is amended as follows:

a. Paragraph (a)(1) is amended in the table by removing both entries for ''1431(a)''.

b. Paragraph (a)(4)(i) is amended in the table by removing the entry for ''1431(a)''.

c. Paragraph (a)(4)(iii) is revised to read as follows:

§ 301.9100–7T Time and manner of making certain elections under the Tax Reform Act of 1986.

(a) * * *

(4) * * *

(iii) *Freely revocable election*. The election described in this section under Act section 311(d)(2) is freely revocable.

* * * * *

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 4. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 5. In § 602.101, paragraph (c) is amended by adding entries in numerical order in the table to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(c) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
26.2601–1	1545–0985
* * * * *	
26.2632–	1545–0985
* * * * *	
26.2642–1	1545–0985
26.2642–2	1545–0985
26.2642–3	1545–0985
26.2642–4	1545–0985
* * * * *	
26.2652–2	1545–0985
* * * * *	
26.2662–2	1545–0985
* * * * *	

Approved: December 14, 1995

Michael P. Dolan,

Deputy Commissioner of Internal Revenue.

Leslie Samuels,

Assistant Secretary of the Treasury

[FR Doc. 95–30873 Filed 12–26–95; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 638

[Docket No. 950929242–5302–02; I.D. 091295A]

RIN 0648–AH74

Coral and Coral Reefs Off the Southern Atlantic States; Amendment 3

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement Amendment 3 to the Fishery Management Plan for Coral and Coral Reefs off the Southern Atlantic States (FMP). Amendment 3: Establishes an aquacultured live rock permit system applicable to the exclusive economic zone off the southern Atlantic states; prohibits chipping of aquacultured live rock; prohibits octocoral harvest north of Cape Canaveral, FL; and prohibits anchoring of fishing vessels in the Oculina Bank habitat area of particular concern. In addition, NMFS amends the regulations to correct and clarify certain regulations, or conform them to current standards. The intended effect is to establish a management program for live rock aquaculture and to protect fishery habitat.

EFFECTIVE DATE: January 26, 1996.

FOR FURTHER INFORMATION CONTACT: Georgia Cranmore, 813–570–5305.

SUPPLEMENTARY INFORMATION: The FMP was prepared by the South Atlantic Fishery Management Council (Council) and is implemented through regulations at 50 CFR part 638 under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). With implementation of Amendment 3, the title of the FMP is changed to the Fishery Management Plan for Coral, Coral Reefs, and Live/Hard Bottom Habitats of the South Atlantic Region. This title change reflects the Council's intent to manage and protect essential live/hard bottom habitats as well as coral resources.

Detailed descriptions and rationale for the measures in Amendment 3 and for additional changes proposed by NMFS were included in the preamble to the proposed rule (60 FR 53730, October 17, 1995) and are not repeated here.

Comments and Responses

During the public comment period ending November 27, 1995, comments were received from the U.S. Fish and Wildlife Service (USFWS) and the Center for Marine Conservation (CMC). USFWS and CMC commended the Council for its record on coral reef protection and its recognition of the importance of live rock to the marine ecosystem. USFWS supported the coral conservation and habitat protection measures of Amendment 3.

Comment: CMC fully supports Amendment 3, because it is expected to minimize enforcement problems, protect important live bottom communities, and minimize further damage to the Oculina Bank area. CMC also urges NMFS not to delay implementation of the aquaculture permit system.

Response: Since a very similar permit system is already in place for live rock aquaculture in the Gulf of Mexico, NMFS expects no delays in implementing the aquaculture permit provisions of Amendment 3, including the special provisions for proposed sites off the southern Atlantic states.

Changes From the Proposed Rule

In § 638.2, the note added to the definition of ''Allowable octocoral'' to clarify the distinction between allowable octocoral and live rock is removed. Since publication of the proposed rule, a clarifying note was added to 50 CFR part 638 via the final rule implementing Amendment 3 to the Fishery Management Plan for Coral and Coral Reefs of the Gulf of Mexico (60 FR 56533, November 9, 1995); therefore, the note is unnecessary.

Approval of Amendment 3

On December 15, 1995, the Director, Southeast Region, NMFS (Regional Director), approved Amendment 3.

Classification

The Regional Director determined that Amendment 3 is necessary for the conservation and management of the coral and coral reef resources and live/hard bottom habitats off the southern Atlantic states and that it is consistent with the Magnuson Act and other applicable law.

This action has been determined to be not significant for purposes of E.O. 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration when the proposed rule was published that it would not have a significant economic impact on a substantial number of small entities. The reasons for this certification were published in the preamble to the proposed rule (60 FR 53731, October 17, 1995) and are not repeated here. As a result, a regulatory flexibility analysis was not prepared.

List of Subjects in 50 CFR Part 638

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: December 20, 1995.

Nancy Foster,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 638 is amended as follows:

PART 638—CORAL AND CORAL REEFS OF THE GULF OF MEXICO AND OFF THE SOUTHERN ATLANTIC STATES

1. The authority citation for part 638 continues to read as follows:

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

2. The title of part 638 is revised to read as set forth above.

§ 638.1 [Amended]

3. In § 638.1, in paragraph (a), the phrase ''Fishery Management Plan for Coral and Coral Reefs off the Southern Atlantic States'' is removed and ''Fishery Management Plan for Coral, Coral Reefs, and Live/Hard Bottom Habitats of the South Atlantic Region'' is added in its place.

4. In § 638.4, the last sentence in paragraph (a)(1)(v) is revised to read as follows:

§ 638.4 Permits and fees.

(a) * * *

(1) * * *

(v) * * * A person who has been issued an aquacultured live rock permit is exempt from the requirement to obtain a permit for prohibited coral that is attached to aquacultured live rock.

* * * * *

5. In § 638.7, in paragraph (k), the reference to ''(c)'' is removed and ''(c)(1)'' is added in its place; in paragraph (q), the reference to ''§ 635.26(c)'' is removed and ''§ 638.26(c)'' is added in its place; and paragraphs (x), (y), and (z) are added to read as follows:

§ 638.7 Prohibitions.

* * * * *

(x) Harvest allowable octocoral in the EEZ off the southern Atlantic states, north of Cape Canaveral, FL (28°35.1′ N. lat.—due east of the NASA Vehicle Assembly Building) or possess allowable octocoral in or from that area, as specified in § 638.21(b).

(y) Anchor a fishing vessel, or use an anchor and chain or grapple and chain on board a fishing vessel, in the Oculina Bank HAPC, as specified in § 638.23(c)(2).

(z) Harvest aquacultured live rock by chipping in the EEZ off the southern Atlantic states; possess chipped aquacultured live rock in or from that area; remove allowable octocoral or prohibited coral from aquacultured live rock; or, while in possession of aquacultured live rock, possess prohibited coral not attached to aquacultured live rock or allowable octocoral, as specified in § 638.27(c).

6. Section 638.21 is revised to read as follows:

§ 638.21 Harvest limitations.

(a) *Incidental harvest.* Except as authorized by a Federal permit or a Florida permit as specified in § 638.4, prohibited coral, allowable octocoral, and live rock taken as incidental catch must be returned immediately to the sea in the general area of fishing. In fisheries where the entire catch is landed unsorted, such as the scallop and groundfish fisheries, unsorted prohibited coral, allowable octocoral, and live rock are exempt from the requirement for a Federal permit and may be landed; however, no person may sell, trade, or barter or attempt to sell, trade, or barter such prohibited coral, allowable octocoral, or live rock.

(b) *Allowable octocoral harvest.* Harvest of allowable octocoral in the EEZ off the southern Atlantic states, north of Cape Canaveral, FL (28°35.1′ N. lat.—due east of the NASA Vehicle Assembly Building) or possession of allowable octocoral in or from that area is prohibited. See the note included in the definition of ''Allowable octocoral'' for clarification of the distinction between allowable octocoral and live rock.

7. In § 638.23, in paragraphs (a)(1) and (b)(1), the references to ''§ 634.4'' are removed and ''§ 638.4'' is added in both places; and paragraph (c) is revised to read as follows:

§ 638.23 Habitat areas of particular concern.

* * * * *

(c) *Oculina Bank.* The Oculina Bank is located approximately 15 nautical miles east of Fort Pierce, FL, at its nearest point to shore, and is bounded on the north by 27°53′ N. lat., on the south by 27°30′ N. lat., on the east by 79°56′ W. long., and on the west by 80°00′ W. long. The following restrictions apply in the HAPC:

(1) Fishing with bottom longlines, traps, pots, dredges, or bottom trawls is prohibited. See § 646.26(d) of this chapter for prohibitions on fishing for snapper-grouper in the Oculina Bank HAPC.

(2) Anchoring of fishing vessels, or using an anchor and chain or grapple and chain on board a fishing vessel, is prohibited.

8. In § 638.27, in the first sentence of paragraph (a), the phrase ''from the Gulf of Mexico EEZ'' is removed; paragraph (b)(2) is revised; and two sentences are added at the end of paragraph (c) to read as follows:

§ 638.27 Aquacultured live rock.

* * * * *

(b)* * *

(2) Material deposited on the aquaculture site—

(i) May not be placed over naturally occurring reef outcrops, limestone ledges, coral reefs, or vegetated areas;

(ii) Must be free of contaminants;

(iii) Must be nontoxic;

(iv) Must be placed on the site by hand or lowered completely to the bottom under restraint, that is, not allowed to fall freely;

(v) Must be placed from a vessel that is anchored;

(vi) In the Gulf of Mexico EEZ, must be distinguishable, geologically or otherwise (for example, be indelibly marked or tagged), from the naturally occurring substrate; and

(vii) In the EEZ off the southern Atlantic states must be geologically distinguishable from the naturally occurring substrate and, in addition, may be indelibly marked or tagged.

* * * * *

(c) * * * In addition, the following activities are prohibited off the southern Atlantic states: Chipping of aquacultured live rock in the EEZ; possession of chipped aquacultured live

rock in or from the EEZ; removal of allowable octocoral or prohibited coral from aquacultured live rock in or from the EEZ; and possession of prohibited coral not attached to aquacultured live rock or allowable octocoral, while aquacultured live rock is in possession. See the note included in the definition of ''Allowable octocoral'' for clarification of the distinction between allowable octocoral and live rock.

* * * * *

[FR Doc. 95–31337 Filed 12–26–95; 8:45 am]
BILLING CODE 3510–22–F

50 CFR Part 658

[Docket No. 951013251–5303–02; I.D. 091295B]

RIN 0648–AH72

Shrimp Fishery of the Gulf of Mexico; Amendment 8

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement Amendment 8 to the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico (FMP). Amendment 8 and this final rule establish a revised FMP framework rulemaking procedure for establishing or modifying certain management measures applicable to the fishery for royal red shrimp in the Gulf of Mexico exclusive economic zone. The intended effect of this measure is to allow more timely implementation of management measures.

EFFECTIVE DATE: January 26, 1996.

FOR FURTHER INFORMATION CONTACT: Michael E. Justen, 813–570–5305.

SUPPLEMENTARY INFORMATION: The shrimp fishery of the Gulf of Mexico is managed under the FMP. The FMP was prepared by the Gulf of Mexico Fishery Management Council and is implemented through regulations at 50 CFR part 658 under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act).

Explanation of the revised framework rulemaking procedure and the background and rationale for the procedure are contained in the preamble of the proposed rule to implement Amendment 8 (60 FR 54663, October 25, 1995) and are not repeated here. No comments were received on the proposed rule, and it is published as a final rule without change.

Approval of Amendment 8

On December 15, 1995, the Director, Southeast Region, NMFS (Regional Director), approved Amendment 8.

Classification

The Regional Director determined that Amendment 8 is necessary for the conservation and management of the shrimp fishery of the Gulf of Mexico and that it is consistent with the Magnuson Act and other applicable laws.

This action has been determined to be not significant for purposes of E.O. 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule would not have a significant economic impact on a substantial number of small entities. The reasons for this certification were published in the preamble to the proposed rule (60 FR 54663, October 25, 1995) and are not repeated here. As a result, a regulatory flexibility analysis was not prepared.

List of Subjects in 50 CFR Part 658

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: December 20, 1995.

Nancy Foster,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 658 is amended as follows:

PART 658—SHRIMP FISHERY OF THE GULF OF MEXICO

1. The authority citation for part 658 continues to read as follows:

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

2. A new § 658.29 is added to read as follows:

§ 658.29 Adjustment of management measures.

In accordance with the procedures and limitations of the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico, the Regional Director may establish or modify the maximum sustainable yield, optimum yield, and total allowable catch for royal red shrimp.

[FR Doc. 95–31338 Filed 12–26–95; 8:45 am]
BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 60, No. 248
Wednesday, December 27, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1007

[Docket No. AO–366–A37; AO–388–A9, et al.; DA–95–22]

Milk in the Carolina and Certain Other Marketing Areas; Recommended Decision and Opportunity to File Written Exceptions on Proposed Amendments to Marketing Agreements and Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This document recommends adoption of proposed amendments that would modify certain location adjustments under the Southeast Federal milk marketing order. The recommended decision denies a proposal to provide a fluid milk surcharge during the period of November 1995 through March 1996 and a transportation credit on bulk milk purchased for 6 Federal milk orders in the Southeastern United States. The recommendations are based on the record of a public hearing held in Atlanta, Georgia, on September 19, 1995.

DATES: Comments are due on or before January 26, 1996.

ADDRESSES: Comments (four copies) should be filed with the Hearing Clerk, Room 1083, South Building, United States Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Nicholas Memoli, Marketing Specialist, Order Formulation Branch, USDA/AMS/Dairy Division, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 690–1932.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this proposed rule will not have a significant economic impact on a substantial number of small entities. The proposed amendments would promote orderly marketing of milk by producers and regulated handlers.

The amendments to the rules proposed herein have been reviewed under Executive Order 12778, Civil Justice Reform. They are not intended to have a retroactive effect. If adopted, the proposed amendments would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law and requesting a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Prior Documents in This Proceeding:

Notice of Hearing: Issued August 11, 1995; published August 17, 1995 (60 FR 42815).

Supplemental Notice of Hearing: Issued September 8, 1995; published September 13, 1995 (60 FR 47495).

Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to proposed amendments to the tentative marketing agreements and the orders regulating the handling of milk in the 7 Federal milk marketing areas in the Southeastern United States. This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

Interested parties may file written exceptions to this decision with the Hearing Clerk, U.S. Department of Agriculture, Washington, DC 20250, by the 30th day after publication of this decision in the Federal Register. Four copies of the exceptions should be filed. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The proposed amendments set forth below are based on the record of a public hearing held at Atlanta, Georgia, on September 19, 1995, pursuant to a notice of hearing issued August 11, 1995 (60 FR 42815), and a supplemental notice of hearing issued September 8, 1995 (60 FR 47495).

The material issues on the record of the hearing relate to:

1. Whether the location adjustment at Hammond, Louisiana, should be increased by 7 cents under Order 7.
2. Whether the location adjustment at Mobile, Alabama, should be reduced by 7 cents under Order 7.
3. Whether a transportation credit for supplemental milk should be adopted for Orders 5, 6, 7, 11, 12 and 13.[1]
4. Whether a fluid milk surcharge should be provided on a temporary basis for Orders 5, 6, 7, 11, 12, and 13.
5. Whether emergency marketing conditions in the 6 regulated areas warrant the omission of a recommended decision and the opportunity to file written exceptions thereto.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. Whether the Location Adjustment at Hammond, Louisiana, Should be Increased by 7 Cents Under Order 7

The location adjustment in the portion of Tangipahoa Parish,

[1] The Louisville-Lexington-Evansville order was dropped from Proposals 4 and 5, as contained in the hearing notice, at the hearing.

Louisiana, south of State Highway 16, should be increased from plus 50 cents to plus 57 cents. The 7-cent price increase applies to both Class I prices applicable to handlers and blend prices applicable to producers. However, for the sake of simplicity, the price increase is discussed in terms of the Class I differential.

The vice-president of fluid milk marketing and economic analysis for Mid-America Dairymen, Inc. (Mid-Am), proposed the 7-cent higher location adjustment at Hammond, Louisiana, which is located in the southern portion of Tangipahoa Parish. He stated that the 7-cent location adjustment increase would provide a $3.65 Class I differential price at Hammond, the same price applicable at Baton Rouge and New Orleans.

The representative explained that Mid-Am is a cooperative owned by approximately 18,000 dairy farmers and a major supplier of distributing plants pooled on the Southeast Federal milk marketing order (Order 7). He testified that in southeast Louisiana Mid-Am has a full supply agreement with 5 of the 6 plants in the New Orleans/Baton Rouge/Hammond area and a partial supply agreement with the 6th plant. In August 1995, he indicated, Mid-Am represented 55.9 percent of both the Class I sales and total producer milk pooled on Order 7.

The Mid-Am representative stated that the final decision for the Southeast order that was issued on May 3, 1995 (60 FR 25014), established a price of $3.58 at Hammond and a price of $3.65 at Baton Rouge and New Orleans, Louisiana. The representative argued that the 7-cent difference in price provides a competitive sales advantage to the plant located in Hammond while its ability to procure milk is no different than plants located in Baton Rouge.

According to the Mid-Am representative, the milk supply for plants in Hammond and Baton Rouge comes from direct-ship milk produced in Louisiana's ''Florida parishes'' (i.e., Tangipahoa, Washington, St. Tammany, St. Helena, Livingston, East Feliciana, and East Baton Rouge). He contended that the 7-cent lower price at Hammond is not justified since the per hundredweight rate paid to local milk haulers who deliver milk to Baton Rouge and Hammond is the same. He elaborated further that the rate per hundredweight that is charged producers in the Florida parishes is the same whether the producer's milk is delivered to Hammond or Baton Rouge or even New Orleans. Thus, he asserted, competing handlers in the New Orleans/Hammond/Baton Rouge area should have the same Class I differential price because the cost of procuring milk at each of these locations is the same.

The assistant operations manager for Fleming Dairy, which operates two distributing plants in the Southern United States, testified in support of the proposal to equalize Class I prices adjusted for location at Hammond, Baton Rouge, and New Orleans, Louisiana. Alternatively, the witness stated, Fleming would support a 7-cent price reduction at Baton Rouge and New Orleans, which also would equalize the Class I differential prices at these locations. He testified that equal and uniform Class I differential prices are justified for these locations for competitive reasons.

The Fleming witness indicated that 100 percent of the raw milk supply delivered to its distributing plant in Baker, Louisiana,[2] is produced by dairy farmers located within 45 miles of the plant. He stated that a higher Class I price at one location compared to another suggests a greater shortage or need to attract milk from distant supply areas. However, the witness indicated, southern Louisiana has an abundant supply of milk available and has had to regularly transfer milk to Florida during short production months to supplement Florida's raw milk requirements. Additionally, he argued, handlers located in Hammond should not have a competitive advantage over Baton Rouge handlers because both locations are approximately the same distance to New Orleans, the primary population center of southern Louisiana.

According to the Fleming witness, the Secretary's Final Decision issued May 3, 1995, justifying the lower price in Hammond compared to Baton Rouge or New Orleans was based on mistaken conclusions of facts and miscommunications within the newly enlarged cooperative association (Mid-Am). The witness also stated that marketing conditions in the Southern United States have changed since the merger hearing was held in 1993. He explained that a single farmer-owned cooperative now controls the milk supply for southern Louisiana, as opposed to three or four competing cooperatives which previously supplied this area. Accordingly, he agreed with Mid-Am that the difference in price for these locations is not justified because there is no freight difference in supplying New Orleans, Hammond, and Baton Rouge with raw milk. Thus, he urged the Secretary to correct the price disparity at Hammond immediately.

Fleming reiterated support for the 7-cent location adjustment increase at Hammond, Louisiana, in its post-hearing brief. Gold Star Dairy, Inc. (Gold Star), Little Rock, Arkansas, also supported the proposed 7-cent location adjustment increase at Hammond in a post-hearing brief. Gold Star stated that the 7-cent increase will correct an unintended inequity problem in the Southeast order. There was no opposition to the proposed increase at the hearing or in post-hearing briefs.

The proposed 7-cent higher location adjustment in the southern portion of Tangipahoa Parish should be adopted to provide the same prices at pool distributing plants located at Hammond and Baton Rouge, Louisiana. These plants are located within a major production area of the market and procure their milk supplies from the same nearby farms. As a result, the rates paid to haulers to transport milk to Hammond compared to Baton Rouge are the same because the mileage from producers' farms to the various plants is essentially the same. Thus, the value of producer milk delivered to Hammond should be no less than the value of such milk delivered to Baton Rouge. Therefore, the southern portion of Tangipahoa Parish should be moved to Zone 12, as proposed, to provide a 7-cent higher price at Hammond.

2. Whether the Location Adjustment at Mobile, Alabama, Should be Reduced by 7 Cents Under Order 7

The location adjustment at Mobile, Alabama, should be reduced from plus 57 cents to plus 50 cents.

A witness appearing on behalf of Barber Pure Milk Company (Barber) and Dairy Fresh Corporation (Dairy Fresh) proposed the 7-cent reduction in the location adjustment at Mobile, Alabama. The witness stated that Barber and Dairy Fresh operate pool distributing plants under Order 7. He said the Barber plant at Mobile and the Dairy Fresh plant at Prichard, Alabama, are located within 20 miles of the Mobile City Hall and handle approximately 8.5 to 9.5 million pounds of milk per month.

The witness for Barber and Dairy Fresh contended that the Southeast order, which became effective July 1, 1995, established pricing zones that created cost inequities for the Barber Mobile plant and the Dairy Fresh Prichard plant with other Order 7 pool plant handlers. He argued that the final decision lowered the Class I price adjusted for location for Barber and Dairy Fresh competitors while the price at Mobile remained unchanged at $3.65.

[2] Baker is 10 miles north of Baton Rouge. Both Baker and Baton Rouge are in East Baton Rouge Parish, which is within Zone 12 of the marketing area.

He claimed that the 7-cent difference is a substantial amount and that Barber and Dairy Fresh cannot continue to operate as viable business entities with the current pricing situation. The proposed $3.58 Class I differential price is the price applicable for most of Barber and Dairy Fresh's competitors and is sufficient to attract an adequate supply of milk to the Mobile area, he asserted.

The Barber/Dairy Fresh witness also indicated that the market structure in the Southeastern United States had changed since the merger hearing was held in 1993. He stated that several plants had closed or changed ownership and that one new large state-of-the-art Class I plant had recently opened. Several cooperatives serving the Southeast marketing area at the time of the hearing have now joined Mid-Am, resulting in Mid-Am being the major supply organization in the market, he added.

The witness explained that one key change that has occurred since the 1993 merger hearing is that Barber now receives its entire milk supply from Mid-Am and approximately 2.8 million pounds are for its Mobile plant. He added that Dairy Fresh purchases about 92 percent of its milk from nonmembers and the remainder from Mid-Am. The milk supply for both plants is from producers located in the same general area, he said, while the Class I distribution area of the Mobile and Prichard plants is primarily along the Gulf Coast stretching west from Mobile to Hancock County, Mississippi, east from Mobile to Tallahassee, Florida, and northeast from Mobile to Montgomery County, Alabama. The witness argued that the proposed price change is needed to equalize prices between Mobile-area handlers and handlers located in the Upper Florida order. He urged the Department to lower the location adjustment by 7 cents at Mobile, Alabama, thus changing the location adjustment from a plus 57 cents to a plus 50 cents.

A post-hearing brief filed on behalf of Barber and Dairy Fresh reiterated their support for the proposed 7-cent lower location adjustment. The brief pointed out that witnesses at the hearing testified that 7 cents per hundredweight is a significant amount for Class I milk. The handlers asserted that the adoption of the proposal would align the Mobile price with the price applicable in the northern portion of the Upper Florida order.

At the hearing and in its post-hearing brief, Gold Star opposed the 7-cent lower location adjustment at Mobile, Alabama, but presented no testimony or evidence to support its position. There was no other opposition testimony.

The location adjustment at Mobile, Alabama, should be reduced by 7 cents to provide a price of $3.58 by eliminating the Zone 12 island around Mobile in what is otherwise a Zone 11 region. The city of Mobile, Alabama, is within Mobile County, which is in Zone 11 of the Southeast order. Unlike the rest of Mobile County, the 20-mile radius area surrounding the city of Mobile is now part of Zone 12, which is priced 7 cents above Zone 11.

The record of this hearing indicates that changes in procurement patterns have occurred since the 1993 hearing and that the original reason for placing the Mobile handlers in the 7-cent higher pricing zone—i.e., to insure the two Mobile handlers of an adequate supply of milk—is no longer an over-riding consideration. The record of this hearing indicates that the Barber plant at Mobile now has a full supply contract with Mid-America Dairymen, Inc., thereby eliminating any concern that the handler had about obtaining an adequate supply of milk.

Although the Dairy Fresh plant at Prichard still receives a majority of its milk from nonmember producers, there was no testimony at the hearing from any cooperative association representative or any nonmember producer and no post-hearing briefs to indicate that the plant would not be able to maintain its milk supply with the proposed 7-cent lower Class I price. Accordingly, it must be concluded that no valid purpose is served by pricing the Mobile area at its current $3.65 Class I differential price. A 7-cent lower price at Mobile will properly align the prices at Mobile with the Florida panhandle, which has a Class I differential price of $3.58, as well as with counties directly east and west of Mobile, which are also priced at $3.58. Most importantly, the record indicated that the lower price at Mobile would not jeopardize the supply of milk at the Barber or Dairy Fresh plants.

3. Whether a Temporary Transportation Credit for Supplemental Milk Should be Adopted for Orders 5, 6, 7, 11, 12, and 13

The proposed amendment to provide a transportation credit for bulk milk received by transfer from a plant regulated under another Federal order for Orders 5, 6, 7, 11, 12, and 13 during the period of July 1995 through February 1996 should be denied. The cooperatives withdrew their pre-hearing request to amend the Louisville-Lexington-Evansville Federal milk marketing order.

The transportation credit was proposed by the Dairy Cooperative Marketing Association, Inc. (DCMA), whose members include Arkansas Dairy Cooperative, Associated Milk Producers, Inc., Carolina-Virginia Milk Producers, Inc., Cooperative Milk Producers, Inc., Florida Dairy Farmers Association, Inc., Mid-America Dairymen, Inc., and Tampa Independent Dairy Farmers Association, Inc. These cooperatives represent the vast majority of milk pooled in the 6 marketing areas.

A spokesman for DCMA testified that a shortage of milk in the Southeast has been brought about by lower prices, rising costs, and extreme weather conditions in most areas of the Southeast. According to the spokesman, many factors, including extreme heat and drought conditions, contributed to the decline in milk production in the Southeast. He indicated that milk production in Florida declined by 15 percent or more during 1995. During August 1995, he noted, producer milk pooled on the 6 Federal milk orders was down approximately 15 million pounds from volumes pooled during August 1994 in comparable Federal orders.

The DCMA spokesman stated that the percentage of producer milk allocated to Class I under the 6 orders has increased, while total producer milk pooled under the orders has decreased. During July and August 1995, the spokesman indicated, the pounds of milk purchased as transfers from other Federal order plants exceeded 30 and 74 million, respectively.

According to the witness, current milk production of producers pooled on the 6 southeastern orders will be insufficient to meet fluid requirements. He argued that the current Federal order minimum Class I price structure has not and will not attract an adequate supply of locally-produced milk. Some handlers and/or cooperatives, he complained, will incur the cost of obtaining needed supplemental supplies from distant marketing areas. Additionally, he claimed, those producers who are responsible for supplying the needs of the market will pay the cost of bringing in supplemental milk. This will result in such producers not receiving uniform prices for their milk, he said.

The DCMA spokesman stated that the proposal would provide a temporary transportation credit to handlers who purchase supplemental milk allocated to Class I use from plants regulated under other Federal milk marketing orders. Milk received on a requested Class II or III basis or milk that is simply allocated to Class II or III would not receive the transportation credit, he

said. He explained that the rate of the hauling credit would be 3.9 cents per hundredweight per 10 miles, based on the distance between the shipping and receiving plants, less any positive difference between the Class I differential applicable at the receiving plant and the Class I differential applicable at the shipping plant. The rate of 3.9 cents per hundredweight per 10 miles is reflective of the actual cost of hauling milk, he claimed.

The DCMA spokesman testified that the transportation credit should be made effective beginning July 1, 1995, and extend through February 29, 1996. Applying the transportation credit retroactively is appropriate, he argued, because of the substantial amount of supplemental milk purchased during the months of July and August. However, he recommended that the amount of money deducted from the pool for transportation credits each month be limited to 150 percent of the funds generated by the proposed Class I price surcharge for the month. This approach would spread the price-reducing impact of the transportation credits over the proposed 7-month period. DCMA reiterated its position in a post-hearing brief.

The marketing specialist of the Southern Region of Associated Milk Producers, Inc. (AMPI), testified in support of the DCMA's proposed transportation credits for emergency relief. According to the representative, AMPI's Southern Region represents approximately 3,000 Grade A dairy farmers located throughout the Southwest United States, with the greatest concentration of milk production in Texas and New Mexico. He indicated that AMPI also now has a substantial quantity of producer milk marketed on the Southeast order each month that was associated with the former Central Arkansas Federal milk order (Order 108).

The AMPI representative stated that AMPI assisted in supplying supplemental milk to the Southeast during the extreme milk shortage. He testified that from August 23 through September 10 AMPI delivered 10 loads of milk per day to Schepps Dairy, Dallas, Texas, to allow Mid-Am to reroute an equivalent amount of milk to southeastern handlers from the Mid-Am reload facility in Sulphur Springs, Texas. A total of 193 loads of milk were delivered to Schepps, he noted.

The AMPI spokesman stated that AMPI supplied approximately 8.8 million pounds of supplemental milk during July and August, which includes milk delivered to Schepps, as well as milk transferred directly into the Southeast marketing area. He said that AMPI charged the purchasing handler or cooperative $2.00 per hundredweight for this service and that the buyer paid the freight charge.

A representative for Fleming Dairy (Fleming), Nashville, Tennessee, testified in support of the proposed transportation credit, but recommended certain modifications. He agreed with the testimony of DCMA that the Southeast had suffered an unusual milk supply crisis since early August and that it would be equitable to provide a method to reimburse those who have served the market by incurring extraordinary costs to bring supplemental milk into the region from distant supply markets. He said that Fleming is supplied primarily by independent producers, but receives supplemental supplies from Mid-Am. During the last week of August, he indicated, Fleming obtained milk supplies from the New Mexico-West Texas and Upper Midwest marketing areas to meet its fluid demand due to the insufficient supply of locally-produced milk.

According to the Fleming representative, some additional supplemental milk may be required through October, but the period of greatest crisis and demand is now over. Thus, he stated, Fleming would favor a transportation credit through the month of October.

The Fleming spokesman testified that supplemental shipments of milk in late summer and fall are a recurring feature of the southeastern marketing areas, and transportation credits in some form would be justified as a permanent feature of the orders for the months of July through October. However, he recommended that the transportation credit only apply for distances that exceed 100 miles. He said the Secretary should determine whether the proposed 3.9-cent rate is justified.

The Fleming representative also observed that this is the first year in which there has been a significant need for supplemental milk in the southeast region from the north-central region since the adoption of Class III–A pricing. The witness stated that the transportation credit should not be granted to a handler or cooperative association that has any milk assigned to Class III–A during the same period of time. In addition, he said, Class III–A pricing should be suspended for the Southeast region and neighboring marketing areas in the northeast and north-central regions when there is a clear demand for milk for Class I use that is not being met. Class III–A , he stressed, was adopted to permit the orderly disposition of excess milk when another use for the milk was not available, not as a bargaining lever to extract high give-up costs when the need for fluid milk is great.

Fleming's post-hearing brief reiterated its qualified support for transportation credits. The brief stated that transportation credits for past services of marketwide benefit are consistent with the 1985 amendments to the Agricultural Marketing Agreement Act. The transportation credits, Fleming contended, are necessarily retroactive because the application for credit comes only after a service has been rendered.

The president of Southern Belle Dairy (Southern Belle) Somerset, Kentucky, testified in opposition to the proposed transportation credit. The representative stated that Southern Belle is a pool plant regulated under the Tennessee Valley Federal milk order. He explained that Southern Belle receives its milk supply from Southeastern Graded Milk Producers, Milk Marketing, Inc., and Mid-America Dairymen, Inc. He said Southern Belle also receives supplemental milk supplies from Armour Foods.

According to the Southern Belle representative, during the crisis period Southern Belle purchased 2 loads of milk in Buffalo, New York, at a give-up charge of $5.50 per hundredweight. He said that, under the DCMA proposal, Southern Belle would receive a transportation credit of approximately $1,500, but claimed that the proposed 5-cent per hundredweight surcharge to pay for the transportation credits would force Southern Belle to pay an amount far in excess of its $1,500 credit.

In a post-hearing brief, Southern Belle reiterated its opposition to the retroactive application of the transportation credit but did not support or oppose the prospective issuance of the credit for supplemental milk purchased during months of very short production. The brief also argued that the record evidence shows that the ''crisis'' was due to Mid-Am's inability to properly manage its sales of milk and to recover adequate over-order premiums to cover the costs of purchasing supplemental milk supplies. Finally, Southern Belle argued that the retroactive application of the proposed transportation credit would encourage cooperatives to request relief for a problem that no longer exists.

The general manager of Gold Star Dairy (Gold Star), Little Rock, Arkansas, also testified in opposition to the proposed transportation credit at the hearing. In its post-hearing brief, Gold Star opposed any retroactive application of the transportation credit but did not

support or oppose the issuance of the credit for Class I milk purchased during months of very short production.

Gold Star contended that there is no record evidence to support DCMA'S argument that supplemental milk would be needed beyond October. According to Gold Star's brief, the last year of shipments into the southeast region from Wisconsin was in 1992, a year in which shipments began in mid-August and extended to October. The brief also argued that shipments from Wisconsin in 1995 probably have peaked already and that no shipments will likely be needed after October.

Gold Star and Southern Belle argued that the Secretary does not have the authority to issue rules that would have a retroactive effect. Moreover, even if he did, they contend, such authority would invite the post-crisis demand for modifications of the rules to alleviate problems that may no longer exist.

A brief filed on behalf of Land-O-Sun Dairies, Inc. (Land-O-Sun), opposed the proposed transportation credit. Land-O-Sun stated that it operates pool plants regulated under Orders 5 and 11 in Spartanburg, South Carolina, and Kingsport, Tennessee, respectively. The handler also indicated it operates an Order 5 partially regulated plant in Portsmouth, Virginia.

Land-O-Sun argued that the Secretary lacks the authority to grant rules regarding transportation credits that would have a retroactive effect absent the expressed statutory language. According to Land-O-Sun, the Department of Health and Human Services (HHS) issued a rule in 1984 which applied to a cost reimbursement calculation method and tried to recoup costs that were incurred prior to the effective date of the 1984 rule. However, Land-O-Sun noted, in the case of *Bowen* v. *Georgetown University Hospital,* 488 U.S. 204 (1988), the Supreme Court invalidated the retroactive feature of the HHS rule.

Land-O-Sun contends that the Agricultural Marketing Agreement Act, as amended, is wholly silent on the issue of retroactive powers vested in the Secretary. It argues that in 1986 the Secretary did not have the authority to implement retroactively the Class I differentials mandated by the 1985 Farm Bill and, by the same token, does not now have the authority to implement the proposed transportation credits retroactively.

Land-O-Sun argues that even if the Secretary had the authority to impose the retroactive transportation credits, he should deny this request because the problem should have been addressed through private business agreements. The Land-O-Sun brief states that the proposed credit penalizes both handlers who procured their own supplies and producers not involved in bringing in supplemental supplies. Finally, Land-O-Sun stated that there is significant competition between Order 5 plants and plants located in Florida, Georgia, Tennessee, Virginia, and Kentucky and that the 5-cent higher surcharge for Order 5 compared to Orders 7 and 11 would place Order 5 handlers at a competitive disadvantage.

Milkco, Inc. (Milkco), a fully regulated handler under Order 5, filed a post-hearing brief in opposition to the proposed transportation credit because of its retroactive effect. Milkco stated that if a transportation credit is granted, it should apply to the same months that an emergency fluid milk surcharge would be applicable.

After carefully evaluating the record evidence and the post-hearing briefs, we must conclude that during the summer of 1995 there was a need for supplemental milk for Class I use in all of the 6 orders and that this need was particularly acute for the Carolina and 3 Florida orders. Furthermore, the record clearly shows that the burden of bringing in supplemental milk to satisfy fluid milk demand fell, almost exclusively, on the cooperative associations supplying these markets. The record also shows that during the months of July and August 1995 over-order charges were either non-existent or—where they did exist—appeared to be inadequate to compensate the cooperatives for the costs which they incurred.

It may be true, as opponents argue, that price adjustments should not be made to compensate for prior marketing costs. Any pool plant operator that obtained milk on a direct-shipped basis—at whatever cost it had to pay—during July through September of 1995 would not be eligible for a credit under the DCMA proposal; yet the handler would now be asked to pay a higher Class I price to subsidize someone else's supplemental milk expense.

Opponents argued that the Secretary lacks the authority to retroactively apply the proposals. Ultimately, this question can only be clarified in a court of law. However, in this proceeding the threshold question of whether or not the proposals are supported by the record precludes any subsequent debate concerning their legality.

While the record clearly showed that a great deal of milk was brought into the 6 markets, it lacked comparable data for earlier years from which to measure the magnitude of this year's problem. As can be seen in Table 1, for example, there was clearly much more bulk milk imported to the Carolina and Florida markets for Class I use in August of 1995 compared to August 1993, but this picture is less clear in comparing the bulk imports for the Southeast market in August 1995 compared to August 1994, and the comparison is virtually impossible for the Tennessee Valley market because of the restrictions on the data. Also, while the record data unequivocally demonstrated a significant drop in production for some of the markets involved in this proceeding, it was less demonstrative for some of the other markets involved. For example, while producer receipts in the Southeastern Florida market were down by 8.5 percent in July (compared to July 1994), they were up by 19 percent during July 1995 in the Tennessee Valley market. Similarly, in August 1995 producer receipts were down (compared to a year earlier) in 4 of the 6 markets, but they were up by 4 percent in Order 7 and by 2 percent in Order 11.

TABLE 1.—MILLIONS OF POUNDS OF BULK FLUID MILK PRODUCTS FROM OTHER ORDER PLANTS

[Not Requested for Class II or III Use, July–August, 1993–1995]

	7/93	8/93	7/94	8/94	7/95	8/95
Order 5	2.3	1.8	R	R	1.7	12.3
Orders 6, 12, and 13	2.4	17.3	R	15.8	16.3	32.9
Order 7	4.1	12.3	6.9	27.6	10.5	29.7
Order 11	.8	R	0	R	R	5.2

R = Data restricted. Less than 3 handlers involved.

The record also was lacking in detail with respect to cooperatives' over-order charges. In the Florida markets, where such charges were in effect during the summer months, there is no indication how much, if any, of the premium is supposed to cover the cost of bringing supplemental milk to the market. It was also unclear how this year's transportation and give-up costs compared to prior years.

A transportation credit, with or without an accompanying surcharge, might have merit in these seasonally-deficit markets where no other means exist to recoup costs of servicing the market. However, the specific proposals under consideration in this proceeding are not supported by the weight of evidence in the record.

4. Whether a Fluid Milk Surcharge Should be Provided on a Temporary Basis for Orders 5, 6, 7, 11, 12, and 13

The proposal to impose a Class I surcharge in each of the 6 orders to pay for the proposed transportation credits should not be adopted.

A spokesman for DCMA proposed a fluid milk surcharge for the 6 Federal milk marketing orders for the period of November 1, 1995, through March 31, 1996. The spokesman requested that the proposed amendment not be considered for the Louisville-Lexington-Evansville Federal milk order. The DCMA spokesman estimated that a temporary fluid milk surcharge would generate enough money to fund the out-of-pocket transportation costs incurred by handlers during the period of July 1, 1995, through March 31, 1996. This money would be returned to dairy farmers through the blend price by the added specified rate to the Class I differential for each order, he stated.

The representative testified that DCMA's revised proposal would provide a fluid milk surcharge of 5 cents per hundredweight for Orders 7 and 11, 10 cents per hundredweight for Order 5, 20 cents per hundredweight for Order 6, 25 cents for Order 12, and 30 cents for Order 13.

According to the DCMA representative, these proposed temporary surcharges are designed to help assure that an adequate supply of milk will be made available to meet the fluid needs of the 6 orders. The representative proposed that the fluid milk surcharge for each order become effective November 1, 1995, and extend through March 1996. The November 1 effective date is needed to provide adequate advance notice, he stated.

The assistant operations manager for Fleming testified in support of the proposed fluid milk surcharge. He stated that Fleming favors a surcharge to offset the cost of the transportation credit for the extraordinary supplemental milk costs incurred by cooperatives during the months of July through October, but said that the surcharge and the transportation credit should be coordinated for each market. Fleming reiterated its qualified support for the proposed fluid milk surcharge in its post-hearing brief.

The controller of Coburg Dairy (Coburg), an Order 5 pool plant located in North Charleston, South Carolina, testified in support of the proposed fluid milk surcharge at a rate of 10 cents per hundredweight for Order 5. The witness indicated that Coburg purchases its raw milk supply from Edisto Milk Producers Association, a cooperative which purchases raw milk from Carolina Virginia Milk Producers Association and, on the spot market, from brokers. He stated that Coburg has distribution throughout South Carolina, southeastern Georgia, and parts of North Carolina.

The director of milk procurement and marketing for Dean Foods Company (Dean Foods) testified in opposition to DCMA's proposed fluid milk surcharge. According to the witness, Dean Foods is the largest fluid milk processor in the United States and owns and operates plants in Kentucky, Florida, and Athens, Tennessee.

The witness for Dean Foods stated that weather conditions in the southeast region caused milk supply shortages in the region in late August and early September. As a result, he indicated, supplemental milk was purchased from outside the region. The witness claimed that there has been and continues to be a shortage of milk in portions of the southeast region and that Dean Foods had adjusted its bottling schedule to accommodate the temporary shortage. However, he said, the Dean Foods plant at Athens, Tennessee, currently has an adequate supply of milk available to meet the plant's needs.

According to the witness, Dean Foods and other processors in the State of Florida agreed in June to accept a 73-cent per hundredweight increase in over-order premiums to help producers recover some of the costs for transporting supplemental milk into the region. Dean Dairies in Florida has agreed to a 40-cent increase for the month of October, he indicated. The witness also testified that processors in Florida have been paying from $1.00 to $1.75 per hundredweight in over-order premiums. Additionally, he stated, Dean Foods, Athens, Tennessee, agreed to 15-cent and 20-cent per hundredweight increases in over-order premiums for the months of September and October, respectively.

The witness for Dean Foods stressed that negotiations between buyers and sellers of milk remain the best mechanism to recover the costs associated with purchasing supplemental milk. He argued that the Federal Order system was not designed to remedy short-term aberrations in the market or provide relief to cooperatives for poor business decisions.

The general manager for Gold Star also testified in opposition to the proposed fluid milk surcharge for the 6 Federal milk marketing orders. The witness indicated that Gold Star is a handler regulated under the Southeast order but that a significant portion of its sales are in the Texas marketing area. If the surcharge were imposed, Gold Star would be at a competitive disadvantage compared to handlers regulated under the Texas order, he claimed, because those handlers would not be subject to the surcharge. These arguments were reiterated in Gold Star's post-hearing brief.

The representatives of Gold Star and Southern Belle claimed that the proposed fluid milk surcharge would have an impact on each handler's fluid milk sales. The representatives argued that in an industry where most sales are determined on fractions of a cent per gallon, the handlers would not be able to pass the cost on to its customers in areas where its competing handlers would not be subject to the surcharge. The Southern Belle representative stated that Southern Belle competes with handlers located in Ohio, Kentucky, West Virginia, Indiana, and Virginia, all of whom would not be subject to the surcharge.

Southern Belle also filed a post-hearing brief in opposition to the proposed fluid milk surcharge. Southern Belle stated that the crisis, if there was one, is now over for the Tennessee Valley marketing area. Southern Belle also indicated that it acquired its own supplemental milk without the assistance of cooperatives and no longer needs any supplemental milk. The handler added that it should not be required to pay an additional amount for its milk to compensate producers or cooperatives for services that it did not receive and will not need.

Tillamook County Creamy Association (Tillamook), a cooperative association located in Tillamook, Oregon, opposed the proposed fluid milk surcharge at the hearing and in its post-hearing brief. Tillamook contended that the continued existence of Class III-A pricing was and is a major contributing factor to any perceived

problem of production and delivery of Grade A milk into the Southeast during the past summer.

Tillamook indicated that the amount of milk allocated to Class III-A in Orders 5, 11, and 46 was about 1.4 million pounds in August 1995 compared to 270 thousand pounds in August 1994, and further noted that Federal Order 7 had approximately 2.1 million pounds of milk allocated to Class III-A in August 1995. Additionally, Tillamook pointed out that record data indicates that while handlers and cooperatives located in the Southeast were purchasing supplemental milk supplies from as far as Minnesota and El Paso, significant volumes of milk were being allocated to Class III-A in Federal Orders 4 (Middle Atlantic marketing area), 33 (Ohio Valley marketing area), 36 (Eastern Ohio-Western Pennsylvania marketing area), 40 (Southern Michigan marketing area), and 126 (Texas marketing area).

Tillamook recommended that the Secretary suspend Class III-A pricing nationwide to free up milk needed for fluid use in the Southeast and to continue uniform pricing throughout the Federal order program. The cooperative claimed that the fluid milk surcharge benefits a small portion of the dairy industry, while the suspension or alteration of Class III-A on an emergency basis would increase all dairy farmers' income. Therefore, Tillamook urged the Secretary to deny the proposed fluid milk surcharge and grant relief on Class III-A immediately.

In a post-hearing brief, Milkco opposed the revised proposal for a fluid milk surcharge for the 6 Federal milk orders, specifically the 10-cent surcharge for Order 5. Milkco indicated that it has approximately 44.5 percent of its total Class I sales in the Southeast and Tennessee Valley marketing areas. It stated that the proposed amendment would require it to pay 5 cents per hundredweight more than handlers regulated under Orders 7 and 11. Accordingly, Milkco contended, the amount of the surcharge should be the same for Orders 5, 7, and 11.

The Agricultural Marketing Agreement Act, as amended, clearly authorizes the Secretary to include provisions for payments to handlers that provide facilities to furnish additional supplies of milk needed by the market, but the Act does not provide for an automatic increase in the Class I price to offset such payments. If there had been a stronger record supporting adoption of the proposed transportation credit, the balance might have weighed in favor of taking the action for a temporary period of time. However, the evidence presented by the handler opposition to the proposals, in conjunction with the lack of clarity in the record concerning the magnitude of the problem and any needed increase in Class I prices, leads us to conclude that the transportation credit should not be adopted and, consequently, the Class I surcharge to pay for the transportation credit need not and should not be adopted either.

5. Whether Emergency Marketing Conditions in the 6 Regulated Areas Warrant the Omission of a Recommended Decision and the Opportunity to File Written Exceptions Thereto

Proponents of Proposals 1–2 and 4–5 requested that the Secretary handle these issues on an expedited basis by omitting a recommended decision and the opportunity to file exceptions thereto.

The request for emergency treatment is denied. In view of the denial of Proposals 4 and 5, no benefit would be gained in omitting a recommended decision. In fact, the interests of proponents would be furthered by providing them with an opportunity to file exceptions to this recommended decision.

Although proponents of Proposals 1 and 2 also requested emergency consideration of their proposals at the hearing and no objections were expressed either at the hearing or in post-hearing briefs, interested parties were not notified of the possible expedited handling of these proposals in the hearing notice that was issued. In view of this, and in conjunction with the normal handling of Proposals 4 and 5, the request for emergency treatment with respect to Proposals 1 and 2 also is denied.

Non-material Issue: Correction to § 1007.50(d). Paragraph (d) of Section 50 of the Southeast order should be corrected to reflect the appropriate order language. The changes resulting from the 27-market Class III-A proceeding (DA–91–13) and included in the December 31, 1993, Federal Register at 58 FR 63286 were adopted by reference at 60 FR 25036 in the final decision for the Southeast order. However, in the process of preparing the final decision and final order for the Southeast marketing area, the revised language in § 1007.50(d) was inadvertently overlooked.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions, and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when the orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

The following findings are hereby made with respect to the Southeast tentative marketing agreement and order:

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the aforesaid marketing area, and the minimum prices specified in the tentative marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

Recommended Marketing Agreement and Order Amending the Order

The recommended marketing agreement is not included in this decision because the regulatory provisions thereof would be the same as those contained in the order, as hereby proposed to be amended. The following order amending the order, as amended, regulating the handling of milk in the Southeast marketing area is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out.

List of Subjects in 7 CFR Part 1007

Milk marketing orders.

For the reasons set forth in the preamble, the following provisions in 7 CFR part 1007, are proposed to be amended as follows:

PART 1007—MILK IN THE SOUTHEAST MARKETING AREA

1. The authority citation for 7 CFR part 1007 continues to read as follows:

Authority: 7 U.S.C. 601–674.

§ 1007.2 [Amended]

2. In § 1007.2, *Zone 11*, the words ''(more than 20 miles from the Mobile city hall)'' are removed following the word ''Mobile'' and the words ''(north of State Highway 16)'' are added following the word ''Tangipahoa''.

3. In § 1007.2, *Zone 12*, the words ''Alabama counties: Mobile (within 20 miles of the Mobile city hall).'' are removed and the words ''Tangipahoa (south of State Highway 16)'' are added following the word ''St. Mary,''.

§ 1007.50 [Amended]

4. In § 1007.50(d), the words ''value per hundredweight of 3.5 percent milk and rounded to the nearest cent, and subject to the adjustments set forth in paragraph (c) of this section for the applicable month'' are removed and the words ''times 35 and rounded to the nearest cent'' are added in their place.

Dated: December 18, 1995.

Lon Hatamiya,

Administrator.

[FR Doc. 95–31272 Filed 12–26–95; 8:45 am]

BILLING CODE 3410–02–P

Rural Utilities Service

7 CFR Part 1755

Telecommunications Program—Postloan Engineering Service Contract

AGENCY: Rural Utilities Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Utilities Service (RUS), successor to the Rural Electrification Administration (REA), hereby proposes to amend its contract for the procurement of postloan engineering services for telecommunications systems. This action would codify the terms and conditions of the agreement to be executed between RUS telecommunications borrowers and consulting engineering firms hired to design and oversee construction of telecommunications facilities financed with RUS financing assistance. Several years have passed since these regulations were last amended and changes in common contract language have occurred. These amendments would allow contracts to be more consistent with common practice.

DATES: Written comments must be received by RUS or carry a postmark or equivalent by January 26, 1996.

ADDRESSES: Written comments should be addressed to Mr. Orren E. Cameron, III, Director, Telecommunications Standards Division, Rural Utilities Service, U.S. Department of Agriculture, Ag Box 1598, 14th and Independence Ave., SW, Washington, DC 20250–1598. RUS requires a signed original and 3 copies of all comments (7 CFR 1700.30 (e)). Comments will be available for public inspection during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Mr. Orren E. Cameron III, Director, Telecommunications Standards Division, Rural Utilities Service, U.S. Department of Agriculture, Ag Box 1598, Washington, DC 20250–1598, telephone number (202) 720–8663.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule has been determined to be not significant for purposes of Executive Order 12866 and therefore has not been reviewed by OMB.

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If adopted, this proposed rule will not: (1) Preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule; (2) Have any retroactive effect; and (3) Require administrative proceedings before parties may file suit challenging the provisions of this rule.

Regulatory Flexibility Act Certification

The Administrator of RUS has determined that the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) does not apply to this rule.

Information Collection and Recordkeeping Requirements

The reporting and recordkeeping requirements contained in the proposed rule were approved by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended) under control number 0572–0059.

Send questions or comments regarding this burden or any other aspect of these collections of information, including suggestions for reducing the burden, to F. Lamont Heppe, Jr., Deputy Director, Program Support Staff, Rural Utilities Service, Ag Box 1522, Washington, DC 20250–1522.

National Environmental Policy Act Certification

RUS has determined that this proposed rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

Catalog of Federal Domestic Assistance

The program described by this proposed rule is listed in the Catalog of Federal Domestic Assistance Programs under 10.851, Rural Telephone Loans and Loan Guarantees. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402–9325.

Executive Order 12372

This proposed rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation. A Notice of Final Rule entitled Department Programs and Activities Excluded from Executive Order 12372 (50 FR 47034) exempts RUS loans and loan guarantees to governmental and nongovernmental entities from coverage under this Order.

National Performance Review

This regulatory action is being taken as part of the National Performance Review program to eliminate unnecessary regulations and improve those that remain in force.

Background

Pursuant to 7 CFR part 1753, subpart B, RUS telecommunications borrowers must use a contract to procure engineering services for design and construction of facilities which qualify as ''major'' under that part. The contract required is the RUS Form 217, Postloan Engineering Services Contract.

The Form 217 contract was developed by REA (predecessor to RUS) to meet the specific requirements of rural telecommunications borrowers, and to meet the objectives of the RE Act. It contains provisions to facilitate the use of RUS-required contract forms for the procurement of outside plant, central office equipment, special transmission equipment, and exchange switching equipment buildings. Most of the past

revisions of the Form 217 contract have been triggered by major revisions of these other RUS construction contracts. Prior to this action, the RUS Form 217 contract has never been codified.

A major feature of the Form 217 contract is that engineering fees are agreed to in a manner that makes it possible to estimate them accurately in advance. This helps RUS ensure that funding set aside for the construction and engineering of a project will be adequate.

On November 6, 1992, RUS published an advance notice of proposed rulemaking (57 FR 53044) to invite comments for possible revisions to the Form 217. Comments received were considered in developing this proposed rule. The changes made in this proposed rule are evolutionary. The duties and responsibilities of the contracting engineer, and its named representatives, are specified in more detail. Design and construction monitoring activities are more carefully defined. Many terms used throughout the contract form are now defined. Details for handling termination by the owner and the engineer are set forth. RUS Form 506, used for estimating and closing the contract, is made a part of the contract. A number of requirements of 7 CFR part 1753, subpart B are brought in to the contract, including RUS's reduced progress reporting requirements.

List of Subjects in 7 CFR Part 1755

Loan programs—communications, Reporting and recordkeeping requirements, Rural areas, Telecommunications.

For reasons set out in the preamble, RUS proposes to amend Chapter XVII of title 7 of the Code of Federal Regulations as follows:

PART 1755—TELECOMMUNICATIONS STANDARDS AND SPECIFICATIONS FOR MATERIALS, EQUIPMENT AND CONSTRUCTION

1. The authority citation for part 1755 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.*, 1921 *et seq.*

2. Section 1755.217 is added to read as follows:

§ 1755.217 Postloan Engineering Service Contract, RUS Form 217.

Engineering services provided for major construction are to be covered by the Postloan Engineering Services Contract, RUS Form 217. The requirements and procedures for the use of this contract are contained in 7 CFR 1753.17.

Postloan Engineering Services Contract—Telecommunications Systems

AGREEMENT made _____, ____, between _____ (hereinafter called the ''Owner'') and _____ (hereinafter called the ''Engineer'').

In consideration of the mutual undertakings herein contained, the parties hereto agree as follows:

Section 1. Definitions. For purposes of this Agreement the following definitions shall be used:

Administrator. The Administrator of RUS or personnel delegated authority to act for the Administrator.

Borrower's Environmental Report. An environmental study as described in 7 CFR 1794. For the purposes of this contract, this is the level of environmental review as described in 7 CFR 1794 required for the Project by RUS. In most cases of telecommunications construction, this will be a Borrower's Environmental Report.

Contractor. A provider of goods or services for the Project, other than the Engineer.

Construction Administration. The coordination of construction activities.

Construction Drawings. The drawings developed through the Staking used to guide the construction of outside plant facilities.

Cut Sheets. The complete and sequential plans for Cutover.

Cutover. The orderly integration of new facilities with existing facilities.

Description of Project. The work and facilities listed by principal subdivisions in Table 1.

Inspect. To monitor and examine the work of the Contractor, compare the work to the contract, and note the details and quantities of construction on records and progress reports.

Inspector. A representative of the Engineer who Inspects construction and reports compliance or noncompliance to the Resident Engineer.

Loan Design. Supplemental information which supports a loan application, as described in 7 CFR 1737.32.

Marker. A physical indicator at the construction site to guide the Contractor in construction of facilities.

Project. The telecommunications construction and procurements financed by a particular RUS loan.

Resident Engineer. The representative of the Engineer who is delegated full time ''on site'' engineering responsibilities for Construction Administration.

Staking. The determination of the approximate location of the facilities to be placed and creation of schematic drawings which show the facilities located with respect to the physical terrain.

Work Sector. A localized portion of the Project.

Section 2. General.

2.01 Financing of the Project. All or part of the financing of the Project, including costs of materials, construction, installation, and engineering, shall be by a loan administrated by RUS.

If the Project is financed in part by the Rural Telephone Bank, an agency of the United States of America, the references in this Agreement to ''The United States of America'' and the ''Government'' shall mean the ''Rural Telephone Bank'' as well, and the references to the ''Administrator'' shall mean the ''Governor'' of the Rural Telephone Bank as well. If the Project is financed wholly by the Rural Telephone Bank, the references to ''The United States of America'' and the ''Government'' shall mean the ''Rural Telephone Bank'' and the references to the ''Administrator'' shall mean the ''Governor'' of the Rural Telephone Bank.

2.02 Compliance with Regulations. The objective of this Agreement is for the Owner to obtain assistance in completing a Project, while complying with RUS postloan construction regulations. The Engineer shall, therefore, perform all services hereunder, and render advice and assistance, so as to enable the Owner to comply with 7 CFR Part 1753 and other applicable RUS regulations.

2.03 General Obligation. The Engineer shall, consistent with sound professional practices, diligently and competently render the engineering services required in this Agreement. These engineering services shall be reasonably necessary or advisable for the expeditious, economical, and sound design and construction of the Project listed in Table 1 by means of the services described in this agreement and its attachments. The Engineer shall also render other preparatory work as is necessary to place such portion of the Project in service, except where such duties are excluded from the terms of this Agreement. The enumeration of specific duties and obligations to be performed by the Engineer and included herewith, shall not be construed to limit the foregoing general undertaking of the Engineer, with reference to such portion of the Project.

2.04 Description of Project. The Project shall consist of the subdivisions of the work and facilities listed by exchanges in Table 1 attached hereto.

Section 3. Miscellaneous.

3.01 Insurance. The Engineer shall take out and maintain throughout the contract period the minimum insurance as required in Subpart C of 7 CFR part 1788 in effect at the date of this Agreement.

3.02 Project Schedule. The Engineer shall prepare in collaboration with the Owner, a work and progress report schedule to facilitate coordination of activities for Cutover of the Owner's Project. The Engineer shall report construction progress to the Owner monthly during all times when one or more contracts are open.

3.03 Plans and Specifications. Complete and detailed plans and specifications, drawings, maps and other engineering documents as required for the construction of the Project (all of the foregoing being herein sometimes collectively called the ''plans and specifications''), shall be prepared by the Engineer, pursuant to the various attachments to this Agreement, and made a part hereof.

3.04 Scope of services. The Engineer shall not be obligated to perform any services for the Project or any part thereof except to the extent that the Project as defined in Table 1, (or the parts thereof and the services related thereto) are delineated in (1) the attachments to this Agreement and (2) the plans and specifications approved by the Owner and the Administrator, as they may be amended from time to time, prepared pursuant to this Agreement.

3.05 Standards. All maps, drawings, plans, specifications, estimates, studies and other engineering documents required to be prepared or submitted by the Engineer under this Agreement shall conform to the applicable standard specifications and other forms prescribed by the Administrator and in effect at the date of this Agreement.

3.06 Termination by Owner. The Owner may at any time terminate this Agreement by giving notice to the Engineer, in writing, to that effect not less than thirty (30) days prior to the effective date of termination specified in this notice. Such notice shall be deemed given if delivered or mailed to the last known address of the Engineer. From and after the effective date specified in such notice this Agreement shall be terminated.

When termination is initiated by the owner, compensation for services hereunder shall be computed as far as possible in accordance with the provisions of the applicable attachment to this Agreement. To the extent that the provisions of any such attachment cannot be applied because construction is incomplete at the effective date of such termination, then the Engineer shall be paid for engineering services in respect to such incomplete construction, a sum which shall bear the same ratio to the compensation which would have been payable under the provisions of any such attachment to this Agreement, if such construction had been completed. If requested by the Owner, the Engineer shall submit to the Owner in duplicate a certified statement of the Engineer's actual expenses in respect of such incomplete construction. All compensation invoiced by the Engineer and payable under this paragraph shall be due and payable thirty (30) days after the approval by the Owner and the Administrator of the amount due. In any case, compensation shall be due 30 days after the date Project documentation is delivered to the Owner under paragraph 3.08 of this Agreement.

3.07 Termination by the Engineer. The Engineer shall have the right, by giving to the Owner not less than thirty (30) days notice in writing, to terminate this Agreement if the Engineer shall have been prevented by conditions beyond the control and without the fault of the Engineer: (i) from commencing performance of this Agreement for a period of twelve (12) months from the date of this Agreement; or (ii) from proceeding with the completion of full performance of any remaining services, required of the Engineer pursuant to this Agreement, for a period of six (6) months from the date of last performance by the Engineer of other services required pursuant to this Agreement. From and after the effective date specified in such notice this Agreement shall be terminated, except that the Engineer shall be entitled to receive compensation for services performed hereunder, computed and payable in the same manner as set forth in paragraph 3.06.

3.08 Project Documents. Upon final payment by the Owner to the Engineer in accordance with the Final Statement of Engineering Fee, RUS Form 506, the following documents in final form become the property of the Owner and may be used by the Owner for Project operation and future development:

1. ''As built'' system maps, in master form (electronic or original hard copy)
2. Cable schematics
3. Construction sheets
4. Cable assignment sheets
5. All contract documents including attached plans and specifications and final inventories.

All other documents and engineering records, including preliminary forms of the above documents, remain the property of the Engineer.

Upon termination of this Agreement the Engineer shall deliver to the Owner at a mutually agreeable place within 5 working days after the date of termination all Project documents (electronic or original hard copy) including records, map tracings, plans and specifications, test data, and field notes.

If requested by the Owner upon completion of the Project, the Engineer shall deliver to the Owner those documents which are the Owner's property, at a mutually agreed upon place and time.

3.09 Employee's Qualifications. The obligations and duties to be performed by the Engineer under this Agreement shall be performed by persons qualified to perform such duties efficiently. The Engineer, if the Owner shall so direct, shall promptly replace any Resident Engineer or other person employed by the Engineer in connection with the Project.

For information of the Owner and the Administrator, the Engineer shall file with the Owner statements signed by the Engineer of the qualifications, including resumes of specific experience, and the duties to be assigned to each Resident Engineer, Inspector and such other personnel assigned to the Project as may be requested by the Owner and Administrator.

The term Resident Engineer and Inspector, as used in this Agreement shall mean a person properly trained and experienced to perform the services required under the terms of this Agreement, and does not mean that the person performing those duties must be a licensed or a registered professional engineer.

3.10 License. The Engineer shall comply with all applicable statutes pertaining to engineering and warrants that _____ (Fill in name of individual) who shall be in responsible charge of the Project possesses license number _____ issued by the State of _____ on the ____ day of _____.

3.11 Payments of Engineer's Employees. For each invoice the Engineer, if requested by the Owner, shall furnish to the Owner as a prior condition to payment, a certificate to the effect that all salaries or wages earned by the employees of the Engineer in connection with the Project have been fully paid by the Engineer up to and including a date not more than thirty (30) days prior to the date of such invoice. Before final payment under this Agreement the Engineer shall furnish to the Owner a certificate that all of the employees of the Engineer have been paid for services rendered by them in connection with the Project, and that all other obligations which might become a lien upon the Project have been paid.

3.12 Engineer's Records. The Owner and the Administrator shall have the right to Inspect and audit all payrolls, records, and accounts of the Engineer relevant to the work performed for the purposes of this Agreement and the Engineer agrees to provide all reasonable facilities necessary for such inspection and audit.

3.13 Compensation. For the purpose of this Agreement, compensation for each type of work covered by the attachments and thereby made a part of this Agreement shall be as outlined in said attachments except where compensation is listed as being a ''time and expense'' basis, in which case the rates in Table 2 attached hereto (or as subsequently modified by approved amendments to this Agreement) shall apply.

3.14 Taxes. Any taxes or levies (excluding Federal, State, and local income taxes) which may be assessed against the Engineer for services performed or payments for services performed by the Engineer per this Agreement shall be in addition to the compensation set forth in the attachments to this Agreement. Such taxes or levies when paid by the Engineer shall be stated separately on all invoices and paid by the Owner.

3.15 Interest. Interest at the rate of ____ percent (____%) per annum shall be paid by the Owner to the Engineer on any unpaid balance due the Engineer, commencing thirty (30) days after the receipt of the Engineer's invoice, provided that the delay in payment beyond such time shall not have been caused by any conditions within the control of the Engineer. Such compensation shall be paid ten (10) days after the amount of interest has been determined by the Engineer and the Owner. The start date of interest accrual is irrespective of the date of the Owner's approval of the invoice, but the interest computation shall be based on the invoice approved by the Owner.

3.16 Non-Assignment. The obligations of the Engineer under this Agreement shall not be assigned without the approval in writing of the Owner and the Administrator.

3.17 Attachments. The following listed attachments, when checked in appropriate boxes, are attached to and made a part of this contract, by this reference:

____ RUS Form 217a—Project Design, Assistance and Coordination;

____ RUS Form 217b—Central Office Equipment Engineering Services;

____ RUS Form 217c—Transmission Facilities Engineering Services;

____ RUS Form 217d—Building Engineering Services;

____ RUS Form 217e—Outside Plant Staking Services;

____ RUS Form 217f—Outside Plant Contract Document Phase Engineering Services; and

____ RUS Form 217g—Outside Plant Construction Phase Engineering Services.

3.18 Service Addition. When a service listed in paragraph 3.17 above is added to this contract after execution, an amendment to the Contract is required.

3.19 Engineering Fee. The Engineer shall provide an initial estimate, monthly updates and a final statement of engineering fees using RUS Form 506, Statement of

Engineering Fees, (Exhibit B) or a facsimile thereof. Where a fixed amount or percentage is used in the attachments checked in section 3.17 above, the same fixed amount or percentage shall be used in the statement of engineering fees.

3.20 Contract Amendment. When the total engineering fee exceeds the initial contract estimate by 20% or more, an amendment to the contract shall be required as set forth in 7 CFR Part 1753.

3.21 Compensation for Corrections. No compensation shall be due or payable to the Engineer, pursuant to this Agreement, for any engineering services performed by the Engineer in connection with effecting of corrections to the design or construction of the Project, when such corrections are required as a direct result of failure by the Engineer to properly fulfill one or more of the Engineer's obligations as set forth in this Agreement.

3.22 Force Majeure. The Engineer shall not be held responsible for Project delays which are a result of Owner delays, Contractor delays or acts of God. The Engineer shall not be entitled to additional compensation unless the delays are the result of the Owner's negligence.

3.23 Contract Beneficiaries. Nothing under this Agreement shall be construed to give any rights or benefits in this Agreement to anyone other than the Owner, the Engineer and the Administrator, and all duties and responsibilities undertaken pursuant to this Agreement shall be for the sole and exclusive benefit of the Owner, Engineer and Administrator and not for the benefit of any other party. This paragraph does not relieve the Engineer of any obligation or responsibilities conferred upon licensed engineers under State law.

3.24 Addenda. Any addenda required for this contract should be placed before Table 1.

3.25 Contract Completion and Closeout. Upon completion of all services covered by this Contract, the Engineer shall execute the Final Statement of Engineering Fee, RUS Form 506, and submit copies to the Owner as prescribed under 7 CFR 1753 Subpart B.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed.

_____ Owner

By _____ President

ATTEST: _____ Secretary

_____ Engineer

By _____ President, Partner (Strike out inapplicable Designation—If partnership, all partners shall sign)

ATTEST: _____ Secretary

TABLE 1

Description of project (Attach supplemental sheets, as required)

___ EXCHANGE
MILEAGE OF OUTSIDE PLANT ___
EQUIPMENT BUILDING [1] ___
CENTRAL OFFICE EQUIPMENT [1] ___
ASSOCIATED FACILITIES [2] ___
OTHER [3] ___
EXCLUDED SERVICES [2] ___

[1] Insert ''new'' or ''additional'' or ''none'' as appropriate.
[2] Insert ''none'' or list as appropriate.
[3] Describe.

TABLE 2

Schedule of Time, Expense and Equipment Usage Rates, Dated ___

1. Time Rates. Includes all costs associated with the employees except for those itemized in Paragraph 2, below. Job Classification and Employee Name, if Known _____ Hourly Billing Rate ___ (Attached supplemental sheet, as required)
2. Expense Rates. These shall include subsistence expense, if any, paid to (or on behalf of) employees; plus reasonable employee transportation costs; plus the cost of printing (including mailing and transportation expenses), telephone, facsimile, and other materials and equipment related to the Project.
3. Test Equipment and Computer Usage Rates. Description of Equipment _____ Hourly Billing Rate ___ (Attached supplemental sheet, as required)
4. Review of Rates. To the extent that the completion date of the Agreement, to which this Table 2 applies, shall extend 12 months beyond the date when this Agreement is originally executed; and on each subsequent anniversary of such Agreement this schedule of rates shall be verified or modified in writing by the Parties, to new rates mutually agreeable to the Parties to such Agreement, until Completion or Termination of such Agreement as provided therein.
5. Information for Owner. With each invoice for payment, the Engineer shall furnish the Owner information of the type outlined in a jointly approved format similar to that shown in Exhibit A.
6. Compensation Payment. Unless otherwise specified in this Agreement, compensation payable pursuant to Table 2 shall be due and payable ten (10) days after approval of the Owner of the service performed and the invoice of the Engineer, including the detail breakdown of the cost by the portion of the Project and section of the contract for which the service was performed. The Engineer shall be notified, within ten (10) days of receipt of invoices, of any discrepancies which require correction or addition as precedent for payment of such invoices by the Owner.

EXHIBIT A

Suggested Information and Format for Time and Expense Billing

Certificate of Time, Expense and Equipment Usage Charges

Project Designation: _____

Postloan Engineering Contract, RUS Form 217: _____

Name: _____

Dated: _____

Classification: _____

Invoice period ending: _____

Date: _____

Service Performed * _____

Hourly Rate _____

Number of Hours _____

Extended Costs _____

Miles Driven _____

Cost Per Mile _____

Extended Costs _____

Other Transportation _____

Air Travel _____

Other (Explain) _____

Extended Costs _____

Lodging _____

Subsistence _____

* Service performed to be included by description of activity and by reference to paragraph number in RUS Form 217 Attachment. Example: Pre-Bid Conference: 217c 3 refers to conducting Pre-Bid Conference.

Computer _____
Rate _____
Hours _____
Extended Costs _____
Date: _____
Equipment Rental:
COE Test Equipment _____
Hourly Rate _____
Number of Hours _____
Extended Costs _____
O. P. Test Equipment _____
Hourly Rate _____
Number of Hours _____
Extended Costs _____
Transmission Testing _____
Hourly Rate _____
Number of Hours _____
Extended Costs _____
OTHER EXPENSES:
Telephone Charges _____
Facsimile Charges _____
Printing _____
Construction Sheets _____
Maps _____
SUBMITTED (by Engineer): _____
Title _____
Date _____
APPROVED (by Owner): _____
Title _____
Date _____

BILLING CODE 3410–15–P

No further benefits may be paid out under this program unless this report is completed and filed as required by existing law and regulations (7 U.S.C. et seq.)

U.S. Department of Agriculture
Rural Utilities Service

STATEMENT OF ENGINEERING FEE TELEPHONE

INSTRUCTIONS - *See 7 CFR Part 1753*

PROJECT DESIGNATION		
CONTRACT NO.	DATE	
ESTIMATED		

CONTRACT SECTION	ESTIMATED	INVOICED AND APPROVED	FINAL
Form 217a - Project Design			
A. Section 1. Program Design			
B. Section 2. Assistance to Owner			
C. Section 3. Coordination			
D. Section 4. Plant Records			
Form 217b - Central Office Equipment Engineering Services			
A. Section 1. Review of Requirements			
B. Section 2C. Rebidding			
C. Additions, Modifications, Relocations, or Removals			
D. Sections 2F, 2H and 2I and Section 3			
E. For each New Central Office Equipment Contract or Force Account Proposal an amount equal to:			
_____ percent (_____ %) of First $100,000			
Plus _____ percent (_____ %) of next $300,000			
Plus _____ percent (_____ %) of the Balance			
F. For each Installation Only Contract: _____ percent (_____ %)			
Form 217c - Transmission Facilities Engineering Services			
A. Section 1. Review of Requirements			
B. Additions, Modifications, Relocations or Removals			
C. Section 3A. Rebidding			
D. Sections 3E, 3F, and 3G			
E. Section 4. Tests			
F. For each New Transmission Facilities Contract or Force Account Proposal an amount equal to:			
_____ percent (_____ %) of First $50,000			
Plus _____ percent (_____ %) of next $150,000			
Plus _____ percent (_____ %) of the Balance			
G. For each Installation Only Contract: _____ percent (_____ %)			
Form 217d - Building Engineering Services			
A. Section 1. Review of Requirements			
B. Section 3B. Rebidding			
C. Additions, Modifications, Relocations or Removals			
D. Sections 3F and 3G			
F. For each New Building Contract or Force Account Proposal an amount equal to:			
_____ percent (_____ %) of First $50,000			
Plus _____ percent (_____ %) of the Balance			
Form 217e - Outside Plant Staking Services			
A. Section 1. Review of Requirements			
B. Section 2C. Changes			
C. Section 2I. Joint Use			
D. Replacement of Markers			
E. For Staking:			
1. _____ miles at $ _____ per miles of existing buried plant to be modified			
2. Plus _____ miles at $ _____ per miles of new buried plant			
3. Plus _____ miles at $ _____ per miles of underground cable installed in ducts			
4. Plus _____ miles at $ _____ per miles of new aerial plant			
5. Plus _____ miles at $ _____ per miles of existing aerial plant to be modified			
6. Plus _____ miles at $ _____ per miles of new joint use lines			
7. Plus _____ miles at $ _____ per miles of existing lines to be removed where no construction or modification work is to be performed			
8. Plus _____ service entrances at $ _____ per service entrance for each new or modified service entrance			
9. Plus _____ subscribers at $ _____ per subscriber shown on construction sheets			

"You are not required to respond to this collection of information unless this form displays the currently valid OMB control number."

CONTRACT SECTION	ESTIMATED	INVOICED AND APPROVED	FINAL
Form 217f - Outside Plant Plans and Specifications, Contracts and Force Account Proposals			
A. Sum of $ _____ or _____ Sections at $ _____ per section			
Plus _____ Amendments at $ _____ per Amendment			
Plus _____ miles at $ _____ per miles of Project Line			
B. The Sum of $ _____ for each approved Force Account Proposal			
C. Section 2. Map Tracings and Other Data			
D. Section 3. Schematics, Assignments and Cut Sheets			
E. Section 4B6. Underground Conduit			
F. Section 4C3. Pre-Bid Conference and Rebidding			
G. Section 4D3. Changes to Force Account Proposals			
Form 217g - Outside Plant Construction Phase Engineering Services			
A. Section 1. Construction Phase			
1. Section 1B. Resident Engineers, Inspectors and Specialists			
2. Section 1C. Pre-Contraction Conference			
3. Section 1F. Joint Use			
4. Section 1G. Tests			
5. Section 1H. Connecting Company			
6. Section 1I. Reporting			
7. Section 1J. Final Inspection			
B. Section 2. Final Documents: the sum of $ _____ or _____ Sections			
at $ _____ per Section			
Plus _____ miles at $ _____ per miles of line included			
Plus _____ service entrances at $ _____ for each service entrance			
installed, replaced or modified			
C. Section 3. Plant Records			
D. Section 4. Inventory and Appraisal			
SUBTOTAL			
TAXES			
GRAND TOTAL			

CERTIFICATE OF ENGINEER

(Complete for Final Statement Only)

_____, *certifies that (1) he is the* _____ *of*
(Name of Engineer) (Title)

_____, *the Engineer in a contract entered into between the Engineer and the Owner,*
(Name of Owner)

for engineering services in a rural telephone Project, which Project bears the Rural Utilities Service Project designation _____ *; and that (2) this is a true and correct statement of the fees due under the terms of engineering service contract; and that (3) all persons employed by the Engineer in connection with the engineering on the Project have been paid in full.*

_____
(Signature)

THIS STATEMENT AND CERTIFICATE IS HEREBY APPROVED

_____
(Owner)

_____ *By:* _____
(Date)

RECOMMENDED BY:

_____ _____
(Date) *(RUS General Field Representative)*

APPROVED BY:

_____ _____
(Date) *(Chief,* _____ *Area, Engineering Branch)*

RUS Form **506** *(Rev. 11-95)* **Facsimile**

BILLING CODE 3410–15–C

Attachment—RUS Form 217a

Project Design, Assistance and Coordination

Section 1. Project Design.

A. Design. The Project shall be constructed in accordance with the current Loan Design and Borrower's Environmental Report. Such Loan Design shall be based on the latest applicable criteria as specified by the Owner and the Administrator.

When necessary for the preparation of plans and specifications, the Engineer shall, upon request of the Owner and with the approval of the Administrator: (1) Revise as necessary the Loan Design and Borrower's Environmental Report; (2) prepare or revise as necessary the outside plant design; (3) make measurements and analyses of existing traffic; (4) make tests of existing cable, including the determination of field locations for treatment of existing facilities associated with installation of carrier equipment; and (5) submit the resulting Loan Design and Borrower's Environmental Report to the Owner in a format suitable for approval by the Administrator.

B. Change in Design. If, after the approval of the Loan Design, Borrower's Environmental Report, or plans and specifications by the Owner and the Administrator, it shall be determined by the Owner that any change is required, the Engineer shall prepare such revisions in the Loan Design, Borrower's Environmental Report, and plans and specifications, or any part thereof, as is necessitated by the changes in requirements for service, design criteria, or other reasons arising during the performance of services for the Project.

Section 2. Assistance To Owner. The Engineer, to the extent requested by the Owner, shall assist the Owner with obtaining agreements and authorizations required for the Project, including without limitation the furnishing of engineering information and drawings and participating in obtaining:

A. Toll, EAS, operator assistance, special services and other connecting company commitments;

B. Joint use or joint occupancy agreements with other utilities;

C. Permits for crossing public roads, railroads, navigable streams or bodies of water;

D. Right-of-way authorizations, easements, and other permits necessary for encroachment on public or private lands;

E. Authorizations from regulatory bodies and franchises from public bodies; and

F. Environmental studies and clearances.

Section 3. Coordination. The Engineer, to the extent requested by the Owner, shall coordinate the work of others engaged in the Project, including work performed or supervised by the Owner, architect, and other engineers, to facilitate expeditious and economical completion of the Project. Services pursuant to this section shall be in addition to, and shall not include, services required by other provisions of this Agreement.

Section 4. Plant Records. The Owner shall furnish to the Engineer current and accurate plant records. If such records are not available the Owner may direct the Engineer to update existing records to current status. This may include conversion of existing records to a new medium.

Section 5. Compensation. The Owner shall pay the Engineer for services performed pursuant to this RUS Form 217a the ''time and expense'' compensation as defined in Table 2 of this Agreement.

Section 6. Section Reference. Unless otherwise specified or indicated, any reference to ''section'' shall mean within this attachment (RUS Form 217a - Project Design, Assistance and Coordination).

Attachment—Form 217b

Central Office Equipment Engineering Services

Section 1. Review of Requirements. Prior to the preparation of plans and specifications, the Engineer shall review with the Owner the current and future requirements of the Project, in respect to central office equipment additions, replacements, modifications or complete new offices. The Engineer, to the extent requested by the Owner, shall prepare such studies as the Owner may require to support the selection by the Owner of the final design plan.

Section 2. Plans and Specifications and Contracts.

A. Preparation of Plans and Specifications. Plans and specifications shall be prepared by the Engineer in accordance with standard RUS specifications and requirements for central office equipment, and shall be submitted to the Owner in a format suitable for approval by the Administrator.

B. Bidders Qualifications. The Engineer shall review with the Owner all Bidder qualifications and shall prepare and furnish to the qualified bidders the plans and specifications upon the conditions provided in the applicable standard RUS contract forms and in accordance with 7 CFR Part 1753.

C. Bid or Proposal. The Engineer shall be available to each prospective bidder for consultation with respect to the details of the plans and specifications and all other matters pertaining to the preparation of the proposals for the supply of equipment or services therefore. All changes to or clarifications of the plans and specifications provided to one prospective bidder shall be provided by the Engineer in writing to all other prospective bidders and to the Owner.

The Engineer shall attend and supervise all technical prebid review meetings and openings of quotes for the furnishing of equipment or services therefor. Where additions to existing equipment are proposed, a quote may be solicited from the original supplier or separate materials and installation contracts may be requested from several suppliers. The Engineer shall carefully check all quotes received and shall render to the Owner assistance in connection with the Owner's consideration of the quotes received so that contracts may be prudently and properly awarded.

The Engineer shall submit in writing to the Owner recommendations of first and second choice of bidders stating the reasons therefor, or, if the analysis of quotes indicates that no quote is satisfactory because of prices or other conditions, the Engineer shall recommend to the Owner that all quotes be rejected, giving reasons therefor. Unless otherwise directed by the Owner, the Engineer shall proceed in respect to rebidding in the manner provided for herein for the initial bidding.

D. Award of Contract. The Engineer shall prepare and furnish to the Owner three (3) copies of a detailed tabulation of all the bids or quotes and a tabulation showing the bidders' names and totals. The Owner shall submit to the Administrator the bidding information required for approval of the award of the contract by the Administrator. Upon receipt of notice from the Owner of the Administrator's approval of the award of the contract, the Engineer shall prepare contracts in accordance with 7 CFR Part 1753.

E. Contract Amendments. If, after the equipment contract and the installation contract have been approved by the Owner and the Administrator, it shall be determined by the Owner that any change or changes in the plans and specifications are advisable, the Engineer shall prepare and submit a contract amendment in accordance with 7 CFR Part 1753.

F. Customer Information and Engineering Meeting. If necessary, the Engineer shall arrange, at a mutually agreeable time, a Customer Information and Engineering Meeting with the Owner, Contractor and Engineer to review the Contractor's proposal, equipment lists, software, data requirements, translation requirements, etc. prior to beginning of manufacture.

G. Compliance. The Engineer shall review all equipment lists, manufacturer's drawings, and other data submitted by the Contractor, to determine apparent compliance of such lists, drawings and other data with the approved contract. This shall not relieve the Contractor of its obligation to meet the performance specifications of the contract.

H. Pre-Installation Meeting. The Engineer shall arrange at a mutually agreeable time, a pre-installation meeting between the Contractor, Owner and Engineer, after the installer has arrived at the contract site, to clarify areas of responsibility, check scheduling and to determine the Contractor's proposed compliance with the plans and specifications.

I. Progress Reports. A competent representative of the Engineer shall make periodic visits to the equipment installation site to Inspect the progress and quality of the executed work and to determine, in general, if the work is proceeding in accordance with the contract. The Engineer shall report at least monthly to the Owner in writing stating the results of Inspections. When the Engineer observes any failure of the executed work or work in progress to comply with the requirements of the contract, this shall be reported to the Owner immediately. These reports shall include suitable recommendations. If the engineer observes an unsafe practice, his only responsibility shall be to consult immediately with the Contractor and if his concerns are not satisfied, to notify the Owner immediately.

Section 3. Tests. The Engineer shall conduct, or cause to be conducted by the installer, such tests of all such equipment as required by the Owner and the Administrator to determine that the equipment meets the

performance requirements of the plans and specifications. The Engineer shall make recommendations for the correction of performance or operational difficulties. All cases of performance or operational difficulties due to faulty installation or defective equipment shall be reported to the Contractor, for correction. When the corrections have been made, the Engineer shall retest the equipment. The Engineer shall furnish test equipment, when required, for all required tests or measurements performed by the Engineer.

The Owner and a representative of the Administrator will normally conduct a final inspection of completed construction. When requested by the Owner, a qualified representative of the Engineer shall be present.

Section 4. Final Documents. The Engineer shall prepare or cause to be prepared, and shall submit to the Owner for approval, in a format suitable for approval by the Administrator, complete and detailed final documents as specified in 7 CFR 1753 and a statement showing the total amounts due the Contractor, pursuant to the terms of the contract, including any amendments thereto. The final documents shall be submitted for the Owner's approval within forty (40) calendar days after the completion of construction based on the date on the certificate of completion covered by each central office equipment contract and each installation contract.

Section 5. Compensation.

A. Time and Expense. The Owner shall pay the Engineer ''time and expense'' compensation as outlined in the current Table 2 of this Agreement for: (1) All services performed pursuant to section 1; (2) ''rebidding'' pursuant to paragraph C of section 2; (3) all services in connection with additions to, replacement of components in, modifications of, or removal of, existing central office equipment; (4) all services pursuant to paragraphs F, H, and I of section 2; and (5) all services pursuant to section 3.

B. Percent of Cost. The Owner shall pay the Engineer for all other services performed pursuant to this RUS Form 217b, including final documents, for each central office equipment contract an amount equal to: _____ percent (_____%) of the first one hundred thousand dollars ($100,000); plus _____ percent (_____%) of the next three hundred thousand dollars ($300,000); plus _____ percent (_____%) of the balance of the installed cost of such equipment for each complete new central office equipment contract, and for each installation contract an amount equal to _____% of such installation contract. Ninety percent (90%) of such sums shall be due and payable ten (10) days after approval by the Administrator of each contract (or force account proposal) and the balance of the compensation shall be due and payable ten (10) days after approval by the Owner and the Administrator of a certificate of completion of installation for each such equipment.

''Installed cost'' shall mean the total cost of labor and materials of the central office equipment as shown on the final inventory documents prepared by the Engineer and approved by the Owner and the Administrator. For a materials only contract, ''installed cost'' shall mean the amount for materials shown on the final inventory documents.

Section 6. Section Reference. Unless otherwise specified or indicated, any reference to ''section'' shall mean within this attachment (RUS Form 217b—Central Office Equipment Engineering Services).

Attachment—RUS Form 217c

Transmission Facilities Engineering Services

Section 1. Review of Requirements. Prior to the preparation of plans and specifications for transmission facilities the Engineer shall review with the Owner the up-to-date requirements of the Project, as related to transmission facilities.

Section 2. Plans and Specifications. The Engineer shall prepare, and submit to the Owner in a format suitable for approval by the Administrator, the plans and specifications for the purchase and installation of such transmission facilities in sufficient time to allow normal scheduled delivery and installation of such to coordinate with the schedule of completion of the Project.

Section 3. Contracts.

A. Bid or Proposal. The Engineer shall be available to each prospective bidder for consultation with respect to the details of the plans and specifications and all other matters pertaining to the preparation of the proposals for the supply of equipment or services therefor. All changes to or clarifications of the plans and specifications provided to one prospective bidder shall be provided by the engineer in writing to all other prospective bidders and to the Owner.

The Engineer shall attend and supervise all technical prebid review meetings and openings of quotes for the furnishing of equipment or services therefor. Where additions to existing equipment are proposed, a quote may be solicited from the original supplier or separate materials and installation contracts may be requested from several suppliers. The Engineer shall carefully check all quotes received and shall render to the Owner assistance in connection with the Owner's consideration of the quotes received so that contracts may be prudently and properly awarded.

The Engineer shall submit in writing to the Owner recommendations of first and second choice of bidders stating the reasons therefor, or, if the analysis of quotes indicates that no quote is satisfactory because of prices or other conditions, the Engineer shall recommend to the Owner that all quotes be rejected, giving the reasons therefor. Unless otherwise directed by the Owner, the Engineer shall proceed in respect to rebidding in the manner provided for herein for the initial bidding.

B. Award of Contract. Upon receipt of notice from the Owner of the Administrator's approval of the award of any contract, or bid proposal, the Engineer shall prepare and submit contracts in accordance with 7 CFR Part 1753.

C. Contract Amendments. If, after any such contract has been approved by the Owner and the Administrator, it shall be determined by the Owner that any change or changes in the plans and specifications are advisable, the Engineer shall prepare and submit a contract amendment in accordance with 7 CFR Part 1753.

D. Compliance. The Engineer shall review all equipment lists and manufacturer's drawings, and other data submitted by the Contractor, to determine apparent compliance of such lists, drawings and other data with the approved contract. This shall not relieve the Contractor of its obligation to meet the performance specifications of the contract.

E. Pre-Installation Meeting. The Engineer shall arrange, when requested by the Owner, at a mutually agreeable time, a pre-installation meeting between the Contractor, Owner and Engineer to clarify areas of responsibility, check delivery and completion scheduling and to assure that the Contractor comply with the plans and specifications.

F. Customer Information and Engineering Meeting. The Engineer shall arrange, if necessary, at a mutually agreeable time a customer information and engineering meeting with Owner, Contractor and Engineer to review the Contractor's proposal, equipment lists, software, data requirements, translation requirements, etc. prior to beginning of manufacture.

G. Progress Reports. A competent representative of the Engineer shall make periodic visits to the equipment installation site to Inspect the progress and quality of the executed work and to determine, in general, if the work is proceeding in accordance with the contract. The Engineer shall report at least monthly to the Owner in writing stating the results of Inspections. When the Engineer observes any failure of the executed work or work in progress to comply with the requirements of the contract, this shall be reported to the Owner immediately. These reports shall include suitable recommendations. If the engineer observes an unsafe practice, his only responsibility shall be to consult immediately with the Contractor and if his concerns are not satisfied, to notify the Owner immediately.

Section 4. Tests. The Engineer shall conduct, or cause to be conducted, such tests as required by the Owner and the Administrator to determine that the equipment meets the performance requirements of the plans and specifications. The Engineer shall make recommendations for the correction of performance or operational difficulties. All cases of performance or operational difficulties due to faulty installation or defective equipment shall be reported to the Contractor for correction. When the corrections have been made, the Engineer shall retest the equipment. The Engineer shall furnish test equipment, when required, for all required tests or measurements performed by the Engineer.

The Owner and a representative of the Administrator will normally conduct a final inspection of completed construction. When requested by the Owner, a qualified representative of the Engineer shall be present.

Section 5. Final Documents. The Engineer shall prepare or cause to be prepared, and

shall submit to the Owner for approval, in a format suitable for approval by the Administrator, complete and detailed final documents as specified in 7 CFR 1753 and a statement showing the total amounts due the Contractor, pursuant to the terms of the contract, including any amendments thereto. The final documents shall be submitted for the Owner's approval within forty (40) calendar days after the completion of construction based on the date on the certificate of completion covered by each transmission facilities contract and each installation contract.

Section 6. Compensation.

A. Time and Expense. The Owner shall pay the Engineer ''time and expense'' compensation as defined in the current Table 2 of this Agreement for: (1) All services performed pursuant to section 1; (2) all services in connection with additions to, replacement or removal of components in, modifications of, relocation of existing systems of transmission facilities; (3) ''rebidding'' pursuant to paragraph A of section 3; (4) all services pursuant to paragraphs E, F, and G of section 3; and (5) all services pursuant to section 4.

B. Percent of Cost. The Owner shall pay the Engineer for all other services pursuant to this RUS Form 217c, including final documents, for each contract or force account proposal for new transmission facilities, an amount equal to: _____ percent (_____%) of the first fifty thousand dollars ($50,000.00); plus _____ percent (_____%) of the next one hundred fifty thousand dollars ($150,000.00); plus _____ percent (_____%) of the balance of the installed cost of each such document and for each installation contract an amount equal to _____% of such document. Ninety percent (90%) of such sums shall be due and payable ten (10) days after approval by the Owner of the document for the purchase or installation of such equipment. The balance of the compensation shall be due and payable ten (10) days after approval by the Owner and the Administrator of a certificate of completion of installation for such equipment.

''Installed cost'' shall mean the total cost of labor and materials of the transmission facilities as shown on the final documents prepared by the Engineer and approved by the Owner and the Administrator. For a material's only contract, ''installed cost'' shall mean the amount for materials shown on the final inventory documents.

Section 7. Section Reference. Unless otherwise specified or indicated, any reference to ''section'' shall mean within this attachment (RUS Form 217c—Transmission Facilities Engineering Services).

Attachment—RUS Form 217d

Building Engineering Services

Section 1. Review of Requirements. Prior to the preparation of plans and specifications, the Engineer shall review with the Owner the current and future requirements for buildings to be constructed as a part of the Project.

Section 2. Plans and Specifications. The plans and specifications for the construction of buildings shall be prepared in sufficient time to allow normal completion of construction of the buildings at least thirty (30) days prior to delivery of central office equipment as specified in the central office equipment contract. The plans and specifications shall, unless otherwise directed by the Owner, be prepared in accordance with standard RUS specifications and construction drawings relating thereto. Additionally, the plans and specifications shall include such details as the characteristics of the building site(s) may require, including, without limitation, a plot plan and description of site development work, if any. The plans and specifications shall be submitted to the Owner in a format suitable for approval by the Administrator.

Section 3. Contracts.

A. Bidder's Qualifications. After approval of the plans and specifications by the Owner and Administrator, notices shall be sent to prospective bidders in accordance with 7 CFR Part 1753. The names of those so notified shall be forwarded to the Owner at the time such notices are sent. The Engineer shall review with the Owner and the Owner shall approve the qualifications of all prospective bidders. The Engineer shall prepare and furnish to qualified contractors requesting them, the plans and specifications upon the conditions provided in the applicable standard RUS contract forms.

B. Proposals. The Engineer shall be available to each prospective bidder for consultation with respect to the details of the plans and specifications and all other matters pertaining to the preparation of the proposals for the construction of the building(s) or the supply of materials and equipment or services therefor. All changes to or clarifications of the plans and specifications provided to one prospective bidder shall be provided in writing to all other prospective bidders and to the Owner.

The Owner shall return unopened the bids received from bidders not specifically qualified to bid the plans and specifications.

The Engineer shall attend and supervise all openings of bids for the construction of the building(s) or for the furnishing of materials and equipment or services therefor. In the event that less than three (3) bids are received from qualified bidders, the bids shall remain unopened and the Engineer shall notify the Administrator thereof immediately. Unless otherwise directed by the Owner, the Engineer shall proceed, in respect of the rebidding, in the manner provided for herein for the initial bidding. The Engineer shall carefully check all bids received and shall render to the Owner all such assistance as shall be required in connection with consideration of the bids received so that contracts may be prudently and properly awarded.

The Engineer shall submit in writing to the Owner recommendations of first, second and third choice of bidders, stating the reasons therefor, or if the analysis of bids indicates that no bid is satisfactory because of prices or other conditions, the engineer shall recommend to the Owner that all bids be rejected, giving the reasons therefor.

C. Award of Contract. The Engineer shall prepare and furnish to the Owner three (3) copies of a detailed tabulation of all the bids and a tabulation showing the bidders' names and totals of all bids. The Owner shall submit to the Administrator the bidding information required for approval of the award of the contract by the Administrator. Upon receipt of notice from the Owner of the Administrator's approval of the award of the contract, the Engineer shall prepare contracts in accordance with 7 CFR Part 1753.

D. Contract Amendments. If, after the contract has been approved by the Administrator it shall be determined by the Owner that any change or changes in the plans and specifications are advisable, the Engineer shall prepare and submit a contract amendment in accordance with 7 CFR Part 1753.

E. Compliance. The Engineer shall review all shop and manufacturer's drawings, construction detail variations, and other data submitted by the Contractor, to determine apparent compliance of such lists, drawings and other data with the approved contract. This shall not relieve the Contractor of its obligation to comply with the plans and specifications.

F. Progress Reports. A competent representative of the Engineer shall make periodic visits to the construction site to Inspect the progress and quality of the executed work and to determine, in general, if the work is proceeding in accordance with the contract. The Engineer shall report at least monthly to the Owner in writing stating the results of Inspections. When the Engineer observes any failure of the executed work or work in progress to comply with the requirements of the contract, this shall be reported to the Owner immediately. These reports shall include suitable recommendations. If the Engineer observes an unsafe practice, his only responsibility shall be to consult immediately with the Contractor and if his concerns are not satisfied, to notify the Owner immediately.

G. Final Inspection. The Owner and a representative of the Administrator will normally conduct a final inspection of completed construction. When requested by the Owner, a qualified representative of the Engineer shall be present.

Section 4. Final Documents. The Engineer shall prepare, and shall submit to the Owner in a format suitable for approval by the Administrator, complete and detailed final documents as specified in 7 CFR 1753 and a statement showing the total amounts due the Contractor pursuant to the terms of the construction contract, including any approved amendments thereto. The final documents shall be submitted for the Owner's approval within sixty (60) calendar days after the completion of construction based on the date shown on the certificate of completion covered by each contract.

Section 5. Compensation.

A. Time and Expense. The Owner shall pay the Engineer ''time and expense'' compensation as defined in the current Table 2 of this Agreement for: (1) All services performed pursuant to section 1; (2) services performed for rebidding pursuant to paragraph B of section 3; (3) all services in connection with additions to or modifications of existing buildings; and (4) inspection of construction pursuant to paragraphs F and G of section 3.

B. Percent of Cost. The Owner shall pay the Engineer for all other services performed

pursuant to this RUS Form 217d, including final documents, for each new building contract included in the Project an amount equal to: _____ percent (_____%) of the first fifty thousand dollars ($50,000.00); plus _____ percent (_____%) of the balance of the cost of construction thereof, of which sums ninety percent (90%) shall be due and payable ten (10) days after approval by the Administrator of a contract (or force account proposal) for the construction of the buildings; and the balance of the compensation shall be due and payable ten (10) days after approval by the Owner and the Administrator of a certificate of completion of construction for all such buildings included in the Project (or in a completed section of the Project).

''Cost of construction'' shall mean the total cost of labor and materials (including Owner-furnished materials and labor) used in the construction of such buildings as shown on the final documents prepared by the Engineer and approved by the Owner and Administrator.

Section 6. Section Reference. Unless otherwise specified or indicated, any reference to ''section'' shall mean within this attachment (RUS Form 217d—Building Plans and Specifications and Contracts).

Attachment—RUS Form 217e

Outside Plant Staking Services

Section 1. Review of Requirements. Prior to the commencement of Staking, the Engineer shall review with the Owner the current requirements of the Project with respect to outside plant and service entrance Staking. At this review, decisions shall be reached concerning public and private rights-of-way, nominal width of construction corridors, and design status.

Section 2. Staking Requirements.

A. General.

1. Staking for aerial plant shall include locating the proposed line and marking all new pole and other locations as necessary to construct the facilities.

2. Staking for buried plant shall include locating the proposed facilities indicating all pertinent construction information including details of the construction corridor.

3. Staking for underground plant shall include locating conduit systems, construction corridors, marking manhole sites and detailing all other pertinent information.

4. Staking for service entrances shall include locating protectors on the structure, the routing of aerial or buried entrances and the placement of markers, if required, to indicate construction information.

B. Commencement. The Engineer, with the approval of the Owner, shall determine when Staking of the Project shall begin. The Engineer shall not commence Staking in any area of the Project until the Owner has:

1. Either (a) stated in writing that right-of-way authorizations and easements reasonably required therefor have been procured, or (b) directed the Engineer in writing to perform right-of-way procurement under section 2, paragraph D, of RUS Form 217a—Project Design, Assistance, and Coordination;

2. Identified to the Engineer, by map locations, which line segments shall be staked on public right-of-way and which line segments shall be staked on privately owned right-of-way; and

3. Provided information to the Engineer pertaining to limitations on width of construction corridors for each such line segment.

The Owner shall review with the Engineer, and shall inform the Engineer, which specific lines are to be staked. The Owner shall furnish to the Engineer a current list of all existing and potential subscribers by map location and grade of service for whom service is to be furnished. When requested by the Engineer, the Owner shall also furnish the telephone numbers of the existing subscribers. In determining when to proceed with Staking, farming operations and other relevant conditions shall be taken into consideration so as to minimize the need for restaking. The Owner, when requested by the Engineer, shall furnish a qualified person to accompany each Staking crew for the purpose of negotiating with landowners or tenants with respect to such right-of-way authorizations and easements, widths of construction corridors, and locations of proposed facilities.

C. Changes.

1. If, during the progress of Staking by the Engineer, the Owner shall change the routing or location of a particular line segment, the Owner shall as early as practicable, notify the Engineer of such changes. Upon such notice the Engineer shall duly note such change and instruct the Staking crews accordingly. The same procedure shall be followed for changes made in type or quantity of facilities during the Staking phase of the Project.

2. If during the process of Staking, the Engineer determines that the routing of facilities along the right-of-way designated by the Owner would result in high costs of placement due to obstacles, inadequate construction corridors, or other circumstances, the Engineer shall notify the Owner and recommend alternative routing. If alternative routing is approved by the Owner and right-of-way can be obtained, the Engineer shall arrange to stake the facilities along the alternate route.

D. Time of Staking.

1. The Engineer shall proceed diligently with Staking and continue therewith in such a manner that, prior to the release of plans and specifications to bidders, the Staking of all outside plant facilities except service entrances shall be complete in order that the plans and specifications shall be complete and accurate.

2. If service entrances are included in the construction contract, Staking of the service entrances shall be completed prior to beginning of construction in a Work Sector. If such Staking is being performed by the Owner, the Engineer shall keep the Owner advised of the status of construction and the Owner shall do the Staking in a timely manner.

3. The Engineer shall perform all restaking made necessary by changes discussed under paragraph C of section 2, above, as necessary to minimize delays in construction.

E. Manner of Staking. The Staking shall be done in a thorough and workmanlike manner such that construction can be completed in accordance with the latest revision of the National Electrical Safety Code, National Electric Code, local and State laws, rules, regulations and orders of regulatory bodies having jurisdiction; and the Loan Design, Borrower's Environmental Report, and specifications approved by the Owner and the Administrator. The Engineer shall in no case stake lines other than those shown in the approved Loan Design except for minor re-routing and minor changes dictated by field conditions, unless such change shall have been previously approved by the Owner and the Administrator. The Engineer shall replace all markers lost or removed prior to or during construction of the Project. All costs, including costs of markers, equipment, and other materials used in connection with the Staking, shall be borne by the Engineer. All markers and existing poles shall be properly identified with corresponding listing on the construction sheets. Where it is probable that the Contractor or the Owner will have difficulty in locating markers, the Engineer shall provide some other suitable means to identify the location. When Staking service entrances, the Engineer shall give due consideration to the location of the station protector (or network interface device if it incorporates a station protector) in relation to the availability of adequate grounding and the length of the service drop and station wiring.

F. Construction Sheets. The Engineer shall prepare or maintain construction sheets in such standard form as the Owner shall require (and as hereinafter described) to: serve as the means by which directions are given for the construction of the Project; serve as the permanent plant record by the Owner's facilities as built; and identify adequately the geographical location of the facilities, including non-standard construction corridors and cable placement locations. The Engineer shall enter thereon all pertinent and useful design, specifications and data governing the construction of the Project, including, without limitations:

1. Detailed instructions on the point of attachment of the Owner's facilities on existing pole lines employed in joint use with others;

2. Non-standard depths for installing buried and underground facilities;

3. The presence, but not location of, buried facilities of other utilities when known;

4. The presence of rock when known;

5. Vegetation clearing requirements; and

6. Surface type and surface features of terrain if appropriate.

Copies of construction sheets shall be made available for sale to all prospective bidders in advance of the pre-bid conference. For contract construction five counterparts of the construction sheets shall be supplied by the Engineer to the Contractor for construction use and two copies shall be supplied to the Owner. For force account construction three copies of the construction sheets shall be supplied to the Owner. When revisions in Staking are necessary, the Engineer shall issue copies of the revised construction sheets.

G. Resident Engineer. A competent Resident Engineer, with full authority to act for the Engineer per this attachment shall be

maintained by the Engineer at the site of the Project at all times when Staking or other services required under this attachment are being performed at the site of this Project. The Resident Engineer may also be engaged in Staking as well as in supervising the Staking activities of other Staking crews of the Engineer. The Engineer shall establish and maintain, in the proximity of the Project, a field office with telephone service at all times when Staking or other services required under this RUS Form 217e are in progress.

H. Reporting. The Engineer shall prepare, execute, and submit to the Owner _____ (insert frequency of reporting—minimal monthly) all estimates, certificates, reports and other documents required to be executed by the Engineer pursuant to the loan contract.

I. Joint Use or Joint Occupancy. In connection with Staking of joint use or joint occupancy facilities the Engineer shall:

1. Prepare and submit to the Owner for approval, detailed information on pole changes, additional poles, and other changes or additions required in existing facilities of other parties to joint use or joint occupancy agreements to accommodate the Owner's facilities; and

2. Coordinate engineering activities under direction of the Owner with other parties to joint use or joint occupancy agreements.

Section 3. Compensation. The Owner shall pay the Engineer for services performed pursuant to this RUS Form 217e as follows:

A. Staking Fee. For all services in connection with the Staking of the Project lines provided for in the approved Project design, including lines which, pursuant to the direction of the Owner, with the approval of the Administrator, shall not be constructed, and for all other services outlined in this RUS Form 217e (except as provided in paragraph C of section 3):

1. The sum of _____ dollars ($_____) per mile of existing buried plant Project lines to be modified; plus

2. The sum of _____ dollars ($_____) per mile of new buried plant Project lines; plus

3. The sum of _____ dollars ($_____) per mile of underground cable to be installed in ducts; plus

4. The sum of _____ dollars ($_____) per mile of new aerial Project lines; plus

5. The sum of _____ dollars ($_____) per mile of existing aerial Project lines to be modified; plus

6. The sum of _____ dollars ($_____) per mile of new joint use or joint occupancy Project lines; plus

7. The sum of _____ dollars ($_____) per mile of existing Project lines to be removed where no construction or modification work is to be performed; plus

8. The sum of _____ dollars ($_____) for each new service entrance staked and for which a construction sheet is prepared and each existing service drop to be modified as part of the Project; plus

9. The sum of _____ dollars ($_____) for each subscriber shown on the construction sheets.

For purposes of this section ''modified'' means rearrangements, additions, change of pair assignments, etc., which require preparation of construction sheets to implement.

The length of the Project lines shall be determined by taking the sum of all distances between terminal points for underground cable and buried cable or conductor, and new service entrances added as part of the Project and all distances between pole markers or from center to center of poles carrying aerial conductor or cable, including joint use or joint occupancy poles, plus the vertical distances parallel to vertical cable runs for aerial cable installations.

B. Time and Expenses. The Owner shall pay the Engineer ''time and expense'' compensation as defined in the current Table 2 of this Agreement for all services performed in this RUS Form 217e in connection with: section 1; paragraph C of section 2; paragraph I of section 2; and for the replacement of markers made necessary by causes beyond the control of the Engineer.

C. Payments. Compensation under paragraph A of this section 3 shall be due and payable ten (10) days after delivery to the Owner, on a monthly basis, a copy of the construction sheets representing the Staking completed during that month and a recapitulation of the mileage of the various types of line covered by such construction sheets and by previous construction sheets for which compensation has been requested.

The Staking shall be subject to review and inspection by the Owner and the Administrator. The Engineer, when notified to do so by the Owner or the Administrator, shall correct such Staking as the review and inspection may indicate to be necessary. Such review and payments shall not constitute unqualified approval of the Staking. Where restaking is required for reasons within the control of the Engineer, no additional compensation shall be payable.

The compensation payable for lines actually constructed, shall be adjusted to the number of units actually constructed or actually completed as part of the construction of the Project, as reflected in the final documents. Compensation payable for lines which have been staked, but which shall not be constructed, shall be determined from the construction sheets as covered by line abandonment order.

D. Plant Retained in Place. Compensation under this section, for Staking existing Project lines on which modification work is to be performed, shall include compensation for the designation of assembly units of existing plant to be retained in place, and shown on the construction sheets.

Section 4. Section Reference. Unless otherwise specified or indicated, any reference to ''section'' shall mean within this attachment (RUS Form 217e—Outside Plant Staking Services).

Attachment—RUS Form 217f

Outside Plant Contract Document Phase Engineering Services

Section 1. Review of Requirements

The Engineer shall use the Loan Design and other information furnished by the Owner under this Agreement as the basis for the preparation of the plans and specifications. Prior to the beginning of the preparation of the plans and specifications, the Engineer shall review with the Owner all data furnished to determine the most recent requirements for facilities to be included in the plans and specifications.

Section 2. Map Tracings and Other Data

Prior to and during the preparation of the plans and specifications by the Engineer, the Owner, if it has not previously done so by other provisions of this Agreement, shall furnish any of the following items needed by the Engineer:

A. Up-to-date tracings of the detail and town maps of the area of the proposed system on which the Loan Design was based and which show the existing system, and a tracing of the key map when a key map is required by the Owner;

B. Up-to-date cable schematics (cable plant layout), and construction sheets showing the existing system construction;

C. Up-to-date line and station data on existing subscribers;

D. The Loan Design and Borrower's Environmental Report on which the loan was based;

E. Current information as to the location and extent of electric and other lines available for joint use, together with conformed copies of all existing joint use or joint occupancy agreements covering such lines;

F. Current listing of existing, signed, and potential subscribers by map location and grade of service to be considered in the preparation of the plans and specifications. The list of existing subscribers shall be properly referenced to the line and station data;

G. Detailed lists of materials on hand, or on order, which are to be furnished by the Owner in the construction of the Project, together with the quantity and value of each item of such materials; and

H. A written statement setting forth the scope of plans and specifications and the sequence in which the construction shall be performed and whether service entrances are to be included in the plans and specifications.

The map tracings, schematics, and construction sheets are to be of suitable material capable of allowing corrections to be made of the information shown thereon and capable of being reproduced.

Section 3. Schematics, Assignments, and Cut Sheets.

A. Cable Schematics. The Engineer shall prepare cable schematics in such form as the Owner shall require to: (a) serve as a means by which directions are given for connecting feeder cable and distribution cable pairs, cross-connection terminals, connecting load coils, and such other directions as may be necessary for properly splicing the feeder cables, distribution cables and other facilities being installed; (b) serve as the permanent circuit assignment record of the Owner's cable and wire facilities; and (c) adequately identify the physical location of all equipment, devices and connections other than services, associated with the pairs of

such feeder cable and distribution cable facilities.

B. Circuit and Number Assignments. If requested by the Owner, the Engineer shall prepare telephone number assignments and shall identify the circuit to which the service is to be connected for station installations, including without limitation such information with respect to central office equipment connections as may be required.

C. Cut Sheets. Where modification of existing lines is to be performed, the Engineer shall furnish in such form as the Owner shall require complete and detailed information, collectively known as ''Cut Sheets'' for: (a) making such changes in circuit connections in the existing outside plant as may be required, including without limitation all associated devices such as load coils, terminals, and temporary connections; (b) making such changes in telephone number assignments and service connections as may be required, including without limitations, the corresponding connection changes required at the central office end; and (c) designating the sequence to be followed in making such changes.

Section 4. Outside Plant Plans and Specifications and Contracts.

A. Plans and Specifications. The Engineer shall, to the extent not previously prepared under other provisions of this Agreement, prepare and review with the Owner complete and detailed plans and specifications, drawings, maps and other documents required for the construction of the outside plant facilities to be included as a part of the Project. During the preparation of the plans and specifications, the Engineer shall make such changes in the plans and specifications as may be reasonably required by the Owner as a condition of approval by the Owner and Administrator.

B. Content of Plans and Specifications. The plans and specifications for outside plant shall be prepared in sufficient time to allow normal completion of construction of the outside plant to coincide with the established service dates and shall include the following:

1. One copy of the key map of the system, when a tracing is furnished by the Owner.

2. One copy (or more if necessary for clarity) of the central office area detail maps (sometimes referred to as exchange detail maps) and town maps of the system, on which there shall be indicated the following:

a. Location of lines to be constructed, indicating joint use or joint occupancy lines;

b. Location of switching centers and pair-gain devices;

c. Location of existing lines included as part of the proposed system and modification of such lines;

d. Location of existing lines to be retired;

e. Locations other than service entrances, where right-of-way has not been obtained;

f. Work Sectors indicating sequence of construction;

3. Complete drawings of each type of non-standard RUS unit covering the construction and the materials to be used.

4. An estimate of quantities of the various units of construction.

5. A complete cable plant layout and cable schematics, when applicable, for each central office area as prepared pursuant to paragraph A of section 3.

6. If the Project contains requirements for installation of underground conduit, manholes and associated appurtenances, the Engineer, during the preparation of the plans and specifications, shall secure field data necessary for the proper design of such facilities (including plan and profile data, if required, and detail construction drawings, including cable to be installed), and shall proceed with the preparation of detailed plans and specifications for the construction of such facilities. Such drawings and specifications, when completed, shall be added to, and made a part of, the construction plans and specifications.

7. An itemized list of materials on hand or on order to be furnished by the Owner, showing the locations of delivery points and delivery schedules of such materials, the quantity, unit price and extended price.

8. The form of the contract to be entered into between a Contractor and the Owner for the construction of the outside plant, including forms of notice and instructions to bidders, Contractor's proposal, materials and construction specifications, Contractor's bond, description of assembly units and construction drawings.

Note: Plans and specifications for outside plant facilities to be constructed under a force account proposal do not require Items 7 and 8, above.

C. Contracts.

1. Upon receipt of notice by the Engineer from the Owner of the Administrator's approval of the plans and specifications, the Engineer shall, unless otherwise instructed by the Owner, with the approval of the Administrator, proceed to take all usual and customary actions, including compliance with the procedures set forth herein and in 7 CFR Part 1753, to facilitate full, free, and competitive bidding for the award of contracts.

2. Notices to Bidders shall be sent in accordance with Subpart F of 7 CFR Part 1753. The Engineer shall then review with the Owner and the Owner shall approve the qualifications of bidders who replied to the notice, as a condition of release of bid documents to any such bidder. The Engineer shall prepare and furnish to such qualified bidders the appropriate bid documents including construction sheets, and the plans and specifications upon the conditions provided in the applicable standard RUS contract forms. The construction sheets shall be furnished upon payment of reasonable charges. The Engineer shall also prepare and furnish, upon payment of reasonable charges, to material suppliers requesting them, copies of the Contractor's proposal sheets for outside plant together with any special drawings or material specifications pertaining thereto and a list of materials to be furnished by the Owner.

3. The Engineer shall conduct a Pre-Bid Conference in accordance with Subpart F of 7 CFR Part 1753 and shall be available to each prospective bidder for consultation with respect to the details of the plans and specifications and all other matters pertaining to the preparation of the proposals for the construction, or the supply of materials and equipment or services therefor. All changes to or clarifications of the plans and specifications provided to one prospective bidder shall be provided in writing to all other prospective bidders and to the Owner.

4. The Engineer shall attend and supervise all openings of bids for the construction, or for the furnishing of materials and equipment or services therefor. The Owner shall return unopened bids received from Bidders not previously qualified under paragraph C2 of this section. In the event that bids are received from less than three (3) qualified bidders, the bids shall remain unopened and the Owner shall notify the Administrator thereof immediately. If directed by the Owner, the Engineer shall proceed in respect of the rebidding, in the manner provided for herein for the initial bidding. The Engineer shall check the assembly unit prices and summarize of all bids received. The Engineer shall render to the Owner assistance in connection with the Owner's consideration of the bids received so that contracts may be prudently and properly awarded. The Engineer shall submit to the Owner a written recommendation for award of the contract or rejection of all bids stating the reasons therefor.

5. The Engineer shall prepare and furnish to the Owner three (3) copies of the detailed proposal sheets or a detailed tabulation of the low bid, and a tabulation showing the names and totals of all bids. The Owner shall submit to the Administrator the bidding information for approval by the Administrator of the award of the contract. Upon receipt of notice from the Owner of the Administrator's approval of the award of the contract, the Engineer shall prepare three (3) counterparts of the construction contract to be executed by the Owner and the successful bidder and the Owner shall forward such executed counterparts to the Administrator for approval.

6. If, after the construction contract has been approved by the Owner and the Administrator, it shall be determined by the Owner that any changes in the plans and specifications are advisable, the Engineer shall prepare and submit a contract amendment in accordance with 7 CFR Part 1753.

D. Force Account.

1. If all or a portion of the Project, shall be constructed by force account, the Engineer shall prepare a force account proposal in accordance with Subpart G of 7 CFR Part 1753.

a. When requested by the Owner, the Engineer shall prepare an itemized list of the total quantities of all items of materials required for the construction showing in addition the quantity of each item of materials the Owner has on hand based on the list furnished by the Owner pursuant to paragraph G of section 2.

b. The force account proposal shall include an estimate, prepared in collaboration with the Owner, of the unit construction costs in substantially the same form as the Contractor's proposal in the standard contract form, and a summary of the total estimated cost of construction, setting forth the following:

(1) The total Cost of labor and other;

(2) The total Cost of materials; and

(3) The number of calendar days required for the construction.

2. After receipt of notice by the Engineer from the Owner of approval by the Administrator of the force account proposal, the Engineer, in collaboration with the Owner, shall fix a date for the commencement of construction. In the determination of this date, consideration shall be given to the status of material deliveries, Staking, easements, and the availability of competent construction personnel and adequate equipment to facilitate continuous construction in an efficient and expeditious manner. Such date as agreed upon shall be submitted to the Administrator by the Owner and the date thus established shall be the ''Commencement Date'' for the construction. The Engineer shall be available to the Owner for consultation with respect to the details of the plans and specifications and all other matters pertaining to the construction of the Project.

3. If, after the force account proposal has been approved by the Owner and the Administrator, it shall be determined by the Owner that any change or changes in the force account proposal are advisable, the Engineer shall prepare and submit to the Owner all necessary details in connection with the change or changes, and upon approval thereof by the Owner, the proposed change or changes shall be submitted by the Owner to the Administrator. To the extent that the Administrator approves such proposed change or changes they shall be included as part of the force account proposal, and the Engineer shall immediately proceed in respect of any additional Staking, construction, and material contracts or amendments required thereby in like manner as though such Staking, construction, and material contracts or amendments were originally included as part of the force account proposal.

Section 5. Compensation

A. The Owner shall pay the Engineer for services performed pursuant to this RUS Form 217f (except as provided in paragraph B of this section) as follows:

1. The sum of __ dollars ($__) or when the outside plant is divided into sections for construction purposes requiring separate plans and specifications for each section; a sum of __ dollars ($__) for each such section for which complete plans and specifications are prepared; plus,

2. The sum of __ dollars ($__) for each approved amendment to the contract; plus

3. The sum of __ dollars ($__) per mile for each mile of Project line facilities (1) included in the plans and specifications, and (2) added or deleted by approved amendments to the plans and specifications; plus

4. The sum of __ dollars ($__) for each approved force account proposal. The compensation payable under paragraph A of this section shall be due and payable ten (10) days after the approval of the plans and specifications or approved amendments by the Owner and the Administrator.

B. The Owner shall pay the Engineer ''time and expense'' compensation as defined in the current Table 2 of this Agreement for services: (1) as requested by the Owner, in connection with corrections to, or the furnishing of, items required to be furnished by the Owner per section 2; (2) required under section 3; (3) in connection with underground conduits, paragraph B6 of section 4; (4) for changes in force account plans and specifications, paragraph D3 of section 4; and (5) in connection with the conducting of the Pre-Bid Conference, and for rebidding, paragraph C3 of section 4.

Section 6. Section Reference. Unless otherwise specified or indicated, any reference to ''section'' shall mean within this attachment (RUS Form 217f—Outside Plant Plans and Specifications and Contracts).

Attachment—RUS Form 217g

Outside Plant Construction Phase Engineering Services

Section 1. Construction Phase.

A. General. As engineering representative of the Owner, and in accordance with sound and accepted engineering practices, the Engineer: (1) shall provide Construction Administration and Inspection services; (2) shall assist the Owner in obtaining the expeditious and economical construction of the Project in accordance with the approved plans and specifications, the terms of the construction contract or force account proposal, and 7 CFR Part 1753; and (3) shall have and exercise sole responsibility for the issuance of supplemental directives to the Contractor regarding the Contractor's performance in accordance with the terms of the construction contract as approved by the Owner and the Administrator. The Engineer's undertaking hereunder shall not relieve the Contractor of the Contractor's obligation to perform the work in conformity with the plans and specifications and in a workmanlike manner and shall not impose upon the Engineer any obligation to see that the work is performed in a safe manner. The Engineer shall not be responsible for the failure of the Contractor to perform the work in accordance with the contract or to perform the work in a safe workmanlike manner. In fulfilling the above responsibility, the Engineer shall as necessary:

1. Interpret the plans and specifications and convey such interpretation to the Contractor;

2. Inspect the progress of and quality of construction, in sufficient detail to provide reasonable assurance to the Owner of the adequacy of such progress and quality of construction, pursuant to the requirements of the plans and specifications and contract;

3. Confirm the acceptability of materials and equipment proposed by the Contractor to be utilized in the construction prior to the use of such materials or equipment on the Project and promptly reject materials and equipment not in compliance with the plans and specifications; and

4. Inspect the manner of incorporation of the materials and equipment into the Project, and the workmanship with which such materials and equipment are incorporated and reject materials, equipment and workmanship which the Engineer determines will not be in compliance with the plans and specifications. Such Inspection shall be deemed to be adequate if a reasonable percentage of all routine construction units (other than units requiring detailed inspection) are observed at the time of installation and found free of error.

The above enumeration of specific requirements shall not limit the general undertakings of the Engineer to perform services set forth in the first sentence of paragraph A of this section. The obligations of the Engineer hereunder are for the benefit of only the Owner and the Administrator, and shall not relieve the Contractor of any of its own responsibilities under its contract with the Owner.

B. Resident Engineers and Inspectors.

1. A competent Resident Engineer with full authority to act for the Engineer shall be maintained by the Engineer at the site of the Project at all times during the entire period of scheduled construction (including times when the Resident Engineer is available and through no fault of the Engineer scheduled construction is not performed, and including times when corrective work is being performed) unless specifically directed otherwise by the Owner with the approval of the Administrator. A Resident Engineer shall be necessary for each outside plant construction contract.

2. If, at any time during construction, a Resident Engineer, or Inspector, is not required at the Project site, or such personnel are not available because of other responsibilities on the Project, the Engineer shall assign a Resident Engineer and/or Inspector on an intermittent basis, to effect necessary observations of construction during any critical phase of such construction.

3. If the Engineer determines that particular components of the work or particular circumstances during construction require the presence of a specialized representative of the Engineer, such as an architect, structural engineer, design engineer or other specialist for the purpose of interpreting contract requirements, or performing special inspections or tests to facilitate compliance by the Contractor with the plans and specifications and terms of the construction contract, the Engineer with prior approval of the Owner shall assign such personnel to the Project site.

4. The Engineer shall maintain at the site of the Project and under the direct supervision of the Resident Engineer a sufficient number of qualified inspectors, to fully discharge the responsibility of the Engineer pursuant to paragraph A of this section (including times when such assigned inspectors are available and through no fault of the Engineer scheduled construction is not performed). The number of inspectors so required will vary with the size of the Project, the number of construction crews, and the speed of construction.

5. The number of resident engineers and inspectors required by the Engineer for a routine construction schedule for this Project to effect completion within the allowed number of scheduled ''working days'' is as follows:

a. _____ (_____) resident engineers(s);

b. _____ (_____) inspectors(s);

6. In the event conditions should arise, through no fault of and beyond control of the Engineer, which would require the placement by the Engineer of additional inspectors (or resident engineers) on the Project, to accommodate special needs of the Owner (or Contractor, with approval of the Owner), then, with the approval of the Owner prior to their assignment to the Project, the Engineer shall assign such additional qualified personnel to the Project for the limited time of such requirements.

C. Pre-Construction Conference. A competent representative from the office of the Engineer, and the Resident Engineer (or resident engineers) to be assigned to the Project, shall conduct the outside plant pre-construction conference. The detailed notes taken by the Engineer on items discussed shall be furnished to all parties. Such notes shall be used by the Resident Engineer, as applicable, in interpreting the plans and specifications pursuant to paragraph A1 of this section.

D. Project Office. The Engineer shall establish and maintain a field office, with telephone service, in the proximity of the Project when construction is in progress and shall notify the Owner of the address and telephone number of such field office. Any notices, instructions or communications delivered to such field office shall be deemed to have been delivered to the Engineer.

E. Defective Construction. If the construction is by contract, the Engineer shall notify the Contractor in writing of all observed or otherwise determined defects in workmanship or materials in accordance with the terms of the construction contract. If the construction is by force account, the Engineer shall advise the Owner relative to the correction of such defects.

F. Joint Use or Joint Occupancy. In connection with all joint use or joint occupancy construction, the Engineer shall:

1. Coordinate construction activities for the Owner with the designated representative of other parties to joint use or joint occupancy agreements;

2. Review for the Owner all changes proposed by other parties to joint use or joint occupancy agreements for changes in and additions to their existing pole lines under such agreements and submit to the Owner recommendations thereon.

G. Tests. The Engineer shall conduct, or cause to be conducted, such tests of circuits and equipment as required by the Owner and the Administrator to determine compliance with the performance requirements of the plans and specifications. The Engineer shall make recommendations in writing for the correction of defective materials, workmanship, or equipment. All cases of transmission or operational difficulties due to faulty construction or defective materials or equipment in the Project shall be reported in writing to the Contractor for correction if the construction is by contract or to the Owner if construction is by force account. When the corrections have been made, the circuits and equipment shall again be tested. The Engineer shall furnish test equipment as required for performing all required tests or measurements.

The outside plant tests to be made on this Project are noted in the table below:

Description of test or measurements	Test or measurements		Will perform or participate in performing tests	
	Subscriber loop plant	Trunk plant	Owner	Engineer
C.O. Ground Measurement	.....	.....	.....	X
Copper Shield or Shield/Armor Continuity	X	X	.....	X
Conductor Continuity	X	X	.....	X
Shield or Armor Ground Resistance	X	X	.....	X
Conductor Insulation Resistance	X	X	.....	X
DC Loop Resistance	.....	.....	.....	.....
DC Loop Resistance Unbalance	.....	.....	.....	.....
VF Insertion Loss	.....	.....	.....	.....
Loop Measurements (Loop Checking)	.....	.....	.....	.....
Two Person Structural Return Loss	.....	.....	.....	.....
One-Person Open Circuit Measurements	.....	.....	.....	.....
Cable Insertion Loss at Carrier Frequency	.....	.....	.....	.....
Fiber Armor Continuity	X	X	.....	X
Fiber Optic Splice Loss—Field	X	X	.....	X
Fiber Optic Splice Loss—C. O.	X	X	.....	X
End-to End Attenuation	X	X	.....	X
End-to End Fiber Signature	X	X	.....	.....

As appropriate, complete the table using these symbols:
X—These are standard tests and measurements required on facilities as desired by the owner or required by the Administrator.
*—These tests will not be required if the distribution pairs are not cross-connected to feeder pairs at the time of acceptance testing.
N/A—Not Applicable.

H. Connecting Companies. The Engineer shall coordinate all engineering and construction activities with connecting companies and shall notify the Owner when the Project, or a section thereof, shall be ready to be placed in service. After giving such notice, the Engineer shall, when directed to do so by the Owner, cause the Project, or such section thereof as may be ready, to be placed in service.

I. Reporting. The Engineers shall prepare, execute and submit to the Owner _____ (insert frequency of reporting—minimal monthly) all estimates, certificates, reports, and other documents required to be executed by the Engineer pursuant to a construction contract, a force account proposal, or the 7 CFR Part 1753. The Engineer shall review and, if satisfactory, recommend for approval each periodic estimate submitted by contractors prior to approval and payment by the Owner. Such recommendations shall include a statement by the Engineer based on the Engineer's Inspection of executed work and the progress of the work and subject to evaluation and testing of the work as a completed Project, that all construction for which payment is requested has been completed and cleaned up in accordance with the terms of the construction contract and that all defective construction of which the Contractor shall have received fifteen (15) or more days written notice, has been corrected.

The Engineer shall maintain a cumulative inventory of all units of construction incorporated in the Project, showing unit prices and extended totals, for all such units of construction. When it appears that the previously approved contract total is likely to be exceeded, the Engineer shall immediately notify the Owner in a format suitable for notifying the Administrator. When requested by the Owner or when the ''Overrun'' results in 20% above the contract total, the Engineer shall prepare a contract amendment in accordance with 7 CFR Part 1753 for execution by the Parties to the construction contract, to cover the additions or changes in construction units that are resulting in such ''Overrun''.

J. Final Inspection. The Owner and a representative of the Administrator will normally conduct a final inspection of completed construction. When requested by the Owner, a qualified representative of the Engineer shall be present.

Section 2. Final Documents.

A. Contract Construction. If the Project or any portion thereof shall be constructed

pursuant to a construction contract, the Engineer shall prepare and submit to the Owner complete and detailed final documents as specified in 7 CFR 1753 and a statement of all amounts payable by the Owner under the construction contract. The final documents shall be in a format suitable for approval by the Owner and subsequent submission to the Administrator for approval. These final documents shall be submitted to the Owner within forty-five (45) calendar days after the completion of construction based on the date shown on the certificate of completion covered by each contract.

B. Force Account Construction. If the Project or any portion thereof shall be constructed by force account:

1. Within thirty (30) calendar days after completion of construction of the Project, the Owner shall furnish to the Engineer the following data:

a. The cost of all materials used in construction of the Project;

b. Cost of right-of-way clearing (direct labor costs);

c. All direct labor costs chargeable to construction exclusive of the right-of-way clearing; and

d. A list of all items of overhead cost applicable to the construction of the Project, but excluding the cost of engineering, legal, accounting and other professional services, interest during construction and preliminary survey charges.

2. Within forty-five (45) calendar days after the completion of construction of the Project, the engineer shall prepare and submit to the Owner for approval complete and detailed final documents in such form as the Administrator may prescribe, including without limitation, a final inventory of construction and a final inventory of retirements. The final documents shall contain the labor and material unit costs based on data supplied by the Owner.

C. Number of Copies. Copies of final documents shall be furnished in accordance with 7 CFR Part 1753.

Section 3. Plant Records.

A. Prior to Cutover. If the Owner shall have notified the Engineer not later than ten (10) days prior to of the start of construction in a central office area that the Owner elects to assign to the Engineer the preparation of any of the following plant records, the Engineer shall prepare and deliver these records to the Owner, not later than fifteen (15) calendar days prior to the start of Cutover of each central office area included as a part of the Project. These records cover the Cutover work on facilities completed as of the date of delivery of such records for each such area. The following records shall be in such form as the Owner, with the approval of the Administrator, may prescribe:

1. Cable schematics, corrected to show ''as constructed'' conditions of that portion of the Project as of such date;

2. Cable records data, for completed line segments as of such date;

3. Line and station data for completed line segments as of such date; and

4. Terminal assignment records.

B. After Cutover. The Engineer shall deliver to the Owner, within thirty (30) calendar days after Cutover of facilities in any completed exchange area or completed section of the Project, the record drawings of the following plant records covering such Project area (excluding any of such records that the Owner has previously elected to prepare with its own forces):

1. Cable schematics, corrected to show ''as constructed'' conditions of such Project area;

2. Cable record data, for all construction completed in such Project area;

3. Line and station records for all lines completed in such Project area as a part of the Project;

4. Final maps, showing record drawings facilities completed in such Project area; and

5. Final complete and detailed construction sheets, showing facilities completed in such Project area, including the designation of assembly units of existing plant retained in place along existing plant lines segments on which modification work was performed as a part of the Project.

Section 4. Inventory and Appraisal. When requested by the Owner, the Engineer shall prepare within thirty (30) calendar days after completion of construction of the Project and submit to the Owner an inventory and appraisal of all existing telephone plant retained as part of the Owner's system. The inventory and appraisal shall be in such form and provide such data as the Owner, with the approval of the Administrator, may prescribe.

Section 5. Compensation.

A. For Services Under sections 1, 3 and 4. The Owner shall pay the Engineer ''time and expense'' compensation, as defined and detailed in current Table 2 of this Agreement for all services performed under sections 1, 3 and 4. Compensation under this section shall not exceed _____ dollars ($_____) unless said amount has been increased by a contract amendment approved by the Owner and the Administrator. Appropriate documentation justifying the increase shall accompany the contract amendment.

Compensation under paragraph A of this section shall be due and payable as follows:

1. Ninety-five Percent (95%) thereof shall be due and payable ten (10) days after delivery each month of the invoice of the Engineer;

2. The balance of such compensation shall be due and payable ten (10) days after delivery of a statement by the Engineer to the Owner certifying that all final documents prepared by the Engineer, for execution by the Contractor, have been mailed or delivered to the Contractor for execution.

B. For Services Under section 2. The Owner shall pay the Engineer for all services performed under section 2 as follows:

1. The sum of _____ dollars ($_____) for each service entrance to be installed, replaced or modified during the construction of the Project; plus

2. The sum of _____ dollars ($_____); or when the Project is divided into sections for which separate outside plant plans and specifications are prepared, the sum of _____ dollars ($_____) for each section requiring final documents; plus the sum of _____ dollars ($_____) for each mile of Project line facilities included in the final documents. Ninety-five (95%) percent of the compensation under this paragraph shall be due and payable ten (10) days after approval by the Owner and the Administrator of the respective final documents and the balance of the compensation under this paragraph shall be due and payable ten (10) days after completion of the Project as defined in the Table 1.

C. Bi-weekly Statement. For compensation covered by paragraph A this section, the Engineer shall submit to the Owner a biweekly statement showing the names of the resident engineers and inspectors, and the actual time spent on the Project by each Resident Engineer and each Inspector during the preceding period. The statement should be prepared and submitted to the Owner in a format similar to that shown in RUS Form 217, Exhibit A.

Section 6. Section Reference. Unless otherwise specified or indicated, any reference to ''section'' shall mean within this attachment RUS Form 217g—Outside Plant Construction-Project Direction, Inspection, Testing and Contract Closeout.

[End of clause]

Dated: December 12, 1995.

Jill Long Thompson,

Under Secretary, Rural Economic and Community Development.

[FR Doc. 95–31096 Filed 12–26–95; 8:45 am]

BILLING CODE 3410–15–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 354

RIN 3064–AA92

Deposit Liabilities, Withdrawal of Proposed Rule

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Withdrawal of proposed rule.

SUMMARY: The FDIC is withdrawing a proposal issued in 1988 prescribing by regulation that certain liabilities of an insured depository institution are deposit liabilities by general usage. The proposal would have found that an institution's liability on certain obligations issued by the institution as a means of obtaining funds constitutes a deposit liability. The FDIC has decided to withdraw the proposed rule because an FDIC policy statement recommends withdrawal of proposed rules that have not been acted upon by the Board of Directors within nine months.

DATES: This withdrawal of the proposed rule is made on December 27, 1995.

FOR FURTHER INFORMATION CONTACT: Jamey Basham, Counsel, (202) 898–7265, Legal Division, FDIC, 550 17th Street, N.W., Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION:

The Proposed Rule

On November 25, 1988, the FDIC published a proposed rule dealing with the definition of the term ''deposit.'' [1] In that rulemaking, the FDIC proposed that an insured depository institution's liability on a promissory note, bond, acknowledgement of advance, or similar obligation that is issued or undertaken by the institution as a means of obtaining funds would be a deposit liability. The proposed rule would have allowed a number of enumerated exceptions to the general provision.

The proposal was issued because the FDIC had become aware over a period of years that institutions were issuing obligations generically known as ''deposit notes,'' which typically were general credit obligations of the institution; were represented to customers as deposits; were designated as deposits on the issuer's report of condition; and for which deposit insurance assessments were paid. In addition, institutions were issuing instruments generally known as ''bank notes,'' which were also general obligations of the institution but were not otherwise treated as deposits by the institution and may or may not have contained representations to the customer about the instruments' deposit status. Although the FDIC believes that many of these transactions fall within section 3(l)(1) of the Federal Deposit Insurance Act (Act), 12 U.S.C. 1813(l)(1), defining what constitutes a ''deposit,'' the FDIC proposed to use its authority under section 3(l)(5) of the Act, 12 U.S.C. 1813(l)(5), to determine that certain liabilities are deposits by general usage.

The Policy Statement

An FDIC Statement of Policy [2] provides that any regulation upon which final action by the Board of Directors has not been taken within nine months from the date the regulation was last proposed will be formally withdrawn. If any proposed regulation is so withdrawn, the Board of Directors reserves the right to begin the rulemaking process anew (*i.e.*, republish in the Federal Register, resolicit public comments, etc.). The FDIC believes that withdrawal of the proposed rule is appropriate because no action has been taken with respect to the proposal for over nine months.

In consideration of the foregoing, the FDIC hereby withdraws proposed new part 354 of title 12 of the Code of Federal Regulations.

By Order of the Board of Directors.

Dated at Washington, D.C., this 19th day of December, 1995.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 95–31261 Filed 12–26–95; 8:45 am]

BILLING CODE 6174–01–P

[1] 53 FR 47723

[2] Statement of Policy on Development and Review of FDIC Rules and Regulations, 44 FR 7288 (May 30, 1979).

NATIONAL CREDIT UNION ADMINISTRATION

15 CFR Part 701

Supervisory Committee Audits and Verifications

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule; extension of comment period.

SUMMARY: On November 2, 1995 (60 FR 55663), the National Credit Union Administration (NCUA) published for public comment a proposed rule regarding credit union supervisory committee audits and verifications. The comment period for this proposed rule was to have expired on January 2, 1996. A national trade association has requested an additional two weeks to respond. In view of this request, the NCUA Board has decided to extend the comment period on the proposed rule for an additional sixteen days. The extended comment period now expires January 18, 1996.

DATES: The comment period has been extended and now expires January 18, 1996. Comments must be received on or before January 18, 1996.

ADDRESSES: Comments should be directed to Becky Baker, Secretary of the Board. Mail or hand-deliver comments to: National Credit Union Administration Board, 1775 Duke Street, Alexandria, VA 22314–3428. Fax comments to (703) 518–6319. Post comments on NCUA's electronic bulletin board by dialing (703) 518–6480. Please send comments by one method only.

FOR FURTHER INFORMATION CONTACT: Karen Kelbly, Accounting Officer, Office of Examination and Insurance (703) 518–6360, or Michael McKenna, Attorney, Office of General Counsel (703) 518–6540, at the above address.

By the National Credit Union Administration Board on December 19, 1995.

Becky Baker,

Secretary of the Board.

[FR Doc. 95–31315 Filed 12–26–95; 8:45 am]

BILLING CODE 7535–01–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 134

RIN 1515–AB82

Country of Origin Marking

AGENCY: U. S. Customs Service, Department of the Treasury.

ACTION: Proposed rule; extension of comment period.

SUMMARY: On November 16, 1995, Customs published in the Federal Register a document which proposed to amend the Customs Regulations to ease the requirement that whenever words appear on an imported article indicating the name of a geographic location other than the true country of origin of the article, the country of origin marking always must appear in close proximity to those words. Comments were to be received on or before January 16, 1996. This document extends for an additional 30 days the period of time within which interested members of the public may submit comments on the proposed amendments.

DATES: Comments must be received on or before February 15, 1996.

ADDRESSES: Written comments (preferably in triplicate) may be addressed to the Regulations Branch, U. S. Customs Service, Franklin Court, 1301 Constitution Avenue, NW., Washington, DC 20229. Comments submitted may be inspected at the Regulations Branch, Office of Regulations and Rulings, Franklin Court, 1099 14th Street, NW., Suite 4000, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Anthony Tonucci, Office of Regulations and Rulings, 202–482–6980.

SUPPLEMENTARY INFORMATION:

Background

On November 16, 1995, Customs published in the Federal Register (60 FR 57559) a notice of proposed rulemaking which set forth proposed amendments to part 134 of the Customs Regulations (19 CFR Part 134) regarding country of origin marking. The document proposed to ease the requirement that whenever words appear on an imported article indicating

the name of a geographic location other than the true country of origin of the article, the country of origin marking always must appear in close proximity to those words. The document solicited public comments that were to be received on or before January 16, 1996.

Customs has been requested to extend the period of time for comments in order to afford interested parties additional time to study the proposed regulatory changes and prepare responsive comments. Customs believes that it would be appropriate to grant the request. Accordingly, the period of time for the submission of comments is being extended 30 days.

Dated: December 20, 1995.

Stuart P. Seidel,

Assistant Commissioner, Office of Regulations and Rulings.

[FR Doc. 95–31326 Filed 12–26–95; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 95–72, Notice 2]

RIN 2127–AF75

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices and Associated Equipment

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Extension of Comment Period for a Notice of Proposed Rulemaking.

SUMMARY: This document grants three requests to extend the comment period on an agency proposal to amend the geometric visibility requirements of signal lamps and the rear side marker color, both contained Standard No. 108, Lamps, Reflective Devices and Associated Equipment. The goal of the proposed amendment is to assist international efforts to harmonize the lighting requirements of continental Europe, the United Kingdom, Japan and the United States. A lengthy extension of the comment period is desirable because a large number of governmental and industry parties require time to achieve internal consensus on the usefulness of the NHTSA proposal. The comment closing date is changed from December 26, 1995 to May 16, 1996.

DATES: Comments on docket 95–72, Notice 1 must be received on or before May 16, 1996.

ADDRESSES: Comments should refer to the Docket No. 95–72, Notice 1 and be submitted to: Docket Section, room 5109, 400 Seventh Street, SW., Washington, DC 20590 (Docket hours are from 9:30 a.m. to 4 p.m.)

FOR FURTHER INFORMATION CONTACT: Rich Van Iderstine, Office of Safety Performance Safety Standards, NHTSA, telephone (202) 366–5280, FAX (202) 366- 4329. Please note that written comments should be sent to the Docket Section rather than faxed to the above contact person.

SUPPLEMENTARY INFORMATION: NHTSA's proposal responded to a petition from the Groupe Travail de Bruxelles 1952 (GTB). GTB is composed of vehicle and lamp manufacturers from Europe, Japan and the United States. GTB is an advisory group for the two organizations operating under the United Nations' Economic Commission for Europe that are involved in establishing motor vehicle lighting standards: The Meeting of Experts on Lighting and Light Signaling (GRE) and the Working Party on the Construction of Motor Vehicles (WP29). GTB requested the extension of the comment period, and an extension was supported by similar requests from the American Automobile Manufacturers Association (AAMA) and the Chairman of GRE, Mr. G.J.M. Meekel.

In its comment period extension request, GTB explained the process it was pursuing in its quest for harmonization. GTB submitted its petition to NHTSA concurrently with its proposal to GRE for amendments of the European regulations. NHTSA proposed some of the suggestions in the GTB petition but not others. GTB believes that NHTSA's response has greatly complicated its dealings with several European countries and Japan. Therefore, according to GTB, arriving at a constructive response to NHTSA's NPRM will not be a trivial matter. AAMA cited that a special meeting of GTB to discuss these issues was not scheduled until December 20, 1995 and that any recommendations developed at this meeting could not be acted upon by GRE until its Spring meeting. Mr. Meekel also mentioned GRE's early Spring meeting and the desire for discussions there and submission of comments resulting from that meeting.

It is NHTSA's general policy to deny requests for comment period extensions based on the timing of formal meetings of interested associations. Modern communication technology provides many rapid ways (e.g., fax, teleconferencing, e- mail, etc.) for associations to communicate with members and reach consensus. However, NHTSA believes that GTB's desire for an extension is motivated by more than the mere mechanics of international communication. NHTSA's proposal did not provide GTB with the easiest path to harmonization. NHTSA understands the difficulty of finding a signal lamp harmonization solution that would benefit U.S. and international vehicle manufacturers while satisfying the concerns of the various regulatory bodies. NHTSA agrees that this first step toward lighting harmonization may be unusually time-consuming if it is to be productive.

The agency wants to elevate international harmonization among its priorities. However, it views a seven month comment period for this notice as a special circumstance and not a precedent for future rulemaking actions regarding harmonization.

After reviewing the situation, NHTSA agrees with the petitioners that additional time is desirable so that GTB may determine the level of flexibility on the part of European authorities for signal lighting harmonization. Accordingly, the agency believes that there is good cause for the extension and that the extension is consistent with the public interest. Based on the above considerations, the agency has decided to extend the comment period until May 16, 1996.

Issued on: December 19, 1995.

Barry Felrice,

Associate Administrator for Safety Performance Standards.

[FR Doc. 95–31294 Filed 12–26–95; 8:45 am]

BILLING CODE 4910–59–P

49 CFR Part 571

[Docket No. 95–98–No1]

Public Meeting With Manufacturers of School Buses and School Transportation Providers

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of public meeting; request for comments.

SUMMARY: This document announces a public meeting at which NHTSA will seek information from school bus manufacturers, school transportation providers, and other members of the public on issues related to the transportation of school children. NHTSA is also requesting suggestions for actions with respect to NHTSA's regulations and Federal Motor Vehicle Safety Standards (FMVSS) that govern the manufacture of school buses. This document also invites written comments on the same subject.

DATES: *Public meeting:* The meeting will be held on February 14, 1996 at 9:00 a.m. Those wishing to make oral presentations at the meeting should contact Charles Hott, at the address or telephone number listed below, by February 2, 1996.

Written comments: Written comments may be submitted to the agency and must be received by March 15, 1996.

ADDRESSES: *Public meeting:* The public meeting will be held at the following location: Tysons West Park Hotel, 8401 West Park Drive, McLean, VA 22102, Tel: (703) 734–2800.

Written comments: All written comments (preferably 10 copies) should be mailed to the Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 7th Street, SW., Washington, DC 20590. Please refer to the docket number when submitting written comments.

FOR FURTHER INFORMATION CONTACT: Charles Hott, Office of Vehicle Safety Standards, NPS–15, NHTSA, 400 7th Street, SW., Washington, DC 20590 (telephone 202–366–0247, Fax: 202–366–4329).

SUPPLEMENTARY INFORMATION:

Regulatory Reform

Calling for a new approach to the way Government regulates the private sector, President Clinton asked Executive Branch agencies to improve the regulatory process. Specifically, the President requested that agencies: (1) Cut obsolete regulations; (2) reward agency and regulator performance by rewarding results, not red tape; (3) create grassroots partnerships by meeting with those affected by regulations and other interested parties; and (4) use consensual rulemaking, such as regulatory negotiation, more frequently.

This meeting is one of NHTSA's announced public meetings to create grassroots partnerships with regulated industries and other affected parties that do not deal with NHTSA on a routine basis. By meeting with these groups, NHTSA believes that it can build a better understanding of their needs and concerns. The agency has met with multistage vehicle manufacturers and will meet with other groups which include heavy truck manufacturers, child seat manufacturers, lamp/reflector manufacturers, and small volume manufacturers.

[Note: This list is not all-inclusive and will be expanded.]

NHTSA recognizes that manufacturers who build school buses operate under different conditions than manufacturers of passenger cars and trucks. In addition, the agency is aware that school transportation providers and school bus manufacturers share a common interest in matters relating to pupil transportation safety. Therefore, the agency has decided to hold a public meeting to listen to the views of these groups and others in order to be better informed of their specific needs. The agency is interested in obtaining their views on how it can improve its regulations that govern the manufacture of school buses. Suggestions should be accompanied by a statement of the rationale for the suggested action and of the expected consequences of that action. Suggestions should address at least the following considerations:

Administrative/compliance burdens
Cost effectiveness
Costs of the existing regulation and the proposed changes to consumers
Costs of testing or certification to regulated parties
Effects on safety
Effects on small businesses
Eforceability of the standard
Whether the suggestion reflects a ''common sense'' approach to solving the problem

Statements should be as specific as possible and provide the best available supporting information. Statements also should specify whether any change recommended in the regulatory process would require a legislative change in NHTSA's authority.

Other Topics of Interest

In recent years there have been many changes to the Federal requirements for school buses. Many changes to the FMVSSs have occurred. These new requirements include stop arms for all school buses, more emergency exits for most of the larger school buses, performance requirements for wheelchair restraints in school buses, and mirror systems that are performance based instead of design based. Future requirements include head impact protection for small school buses, and may include antilock brake systems for large school buses.

Improvements have been made to the safety of the school bus loading zones. The stop arm and mirror requirements were implemented to reduce the number of loading zone injuries and fatalities. However, changes in clothing style and design have resulted in snagging and dragging injuries to bus occupants departing from the school bus. Most manufacturers have implemented recalls to modify handrail designs.

Pending administrative decision are two rulemaking actions, flammability of school bus seating and joint strength requirements for maintenance access panels and small school buses.

The agency is interested in your views on how the above regulations and developments have affected school bus safety. Have increased costs of school buses affected the normal replacement cycle for your school buses?

There have also been many changes to the Federal requirements for school bus drivers. School bus drivers are now required to possess a commercial drivers license which requires pre-employment drug tests and random drug and alcohol tests. Staff from the Federal Highway Administration's Office of Motor Carrier Research and Standards will be available to answer questions at the meeting.

Procedural Matters

The agency intends to conduct the meeting informally so as to allow for maximum participation by all who attend. Interested persons may ask questions or provide comments during any period after a party has completed its presentation, on a time allowed basis as determined by the presiding official. If time permits, persons who have not requested time to speak, but would like to make a statement, will be afforded an opportunity to do so.

The agency is interested in obtaining the views of its customers both orally and in writing. An agenda for the meeting will be made based on the number of persons wishing to make oral presentations and will be available on the day of the meeting.

Those speaking at the public meeting should limit their presentations to 20 minutes. If the presentation will include slides, motion pictures, or other visual aids, please indicate so that the proper equipment may be made available. Presenters should bring at least one copy of their presentation to the meeting so that NHTSA can readily include the material in the public record.

A schedule of participants making oral presentations will be available at the designated meeting room. NHTSA will place a copy of any written statement in the docket for this notice. Participation in the meeting is not a prerequisite for the submission of written comments. NHTSA invites written comments from all interested parties. It is requested but not required that 10 copies be submitted.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, Room 5219, at

the street address given above, and copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation (49 CFR Part 512.)

All comments received before the close of business on the comment closing date indicated above will be considered. Comments will be available for inspection in the docket.

After the closing date, NHTSA will continue to file relevant information in the docket as it becomes available. It is therefore recommended that interested persons continue to examine the docket for new material.

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

Issued: December 19, 1995.

Barry Felrice,

Associate Administrator for Safety Performance Standards.

[FR Doc. 95–31295 Filed 12–26–95; 8:45 am]

BILLING CODE 4910–59–P

Notices

Federal Register
Vol. 60, No. 248
Wednesday, December 27, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. LS–95–016]

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) request for comments from the grain industry to improve or change the procedures for collecting information used to compile and generate grain related reports.

DATES: Comments must be submitted on or before February 26, 1996.

ADDRESSES: Contact Jimmy A. Beard; Assistant to the Chief; Livestock and Grain Market News Branch, Livestock and Seed Division, AMS–USDA, Room 2623 South Building, P.O. Box 96456, Washington, D.C. 20090–6456.

FOR FURTHER INFORMATION CONTACT: Jimmy A. Beard, (202) 720–1050.

SUPPLEMENTARY INFORMATION:

Title: Grain Market News Reports and Molasses Market News Reports.

OMB Number: 0581–0005.

Expiration Date of Approval: 3–31–96.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: The grain industry has requested that USDA issue market news reports on grain and molasses. These reports are compiled in cooperation with the grain and feed industry and AMS. Market news reporting must be timely, accurate, and continuous if it is to be useful to producers, processors, and the trade in general. Industry traders can use market news information to make marketing decisions on when and where to buy and sell. For example, a producer could compare prices being paid at local, terminal, or export elevators to determine which location will provide the best return. Some traders might choose to chart prices over a period of time in order to determine the most advantageous day of the week to buy or sell, or to determine the most favorable season. In addition, the reports are used by other Government agencies to evaluate market conditions and calculate price levels used for the Farmer-owned Reserve Program. Economists at most major agricultural colleges and universities use the grain and feed market news reports to make short and long-term market projections.

The Agricultural Marketing Act of 1946 (7 U.S.C. 1621), section 203(g) directs and authorizes the collection and dissemination of marketing information including adequate outlook information, on a market area basis, for the purpose of anticipating and meeting consumer requirements aiding in the maintenance of farm income and to bring about a balance between production and utilization.

The grain industry could not collect the information themselves as they would not want to divulge their information to competitors, and exchange of such information between competitors would violate antitrust laws. Consequently, the information must be collected, compiled, and disseminated by an impartial third-party, in a manner which protects the confidentiality of the reporter. Also, since the Government is a large purchaser of grain and related products, a system to monitor the collection and reporting of data is needed.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .0833 hours per response.

Respondents: Business or other for profit, individuals or households, farms, Federal Government.

Estimated Number of Respondents: 160.

Estimated Number of Responses per Respondent: 52.

Estimated Total Annual Burden on Respondents: 204 hours.

Copies of this information collection can be obtained from Jimmy A. Beard, Livestock and Grain Market News Branch, at (202) 720–1050.

Send comments regarding the accuracy of the burden estimate, ways to minimize the burden, including through the use of automated collection techniques or other forms of information technology, or any other aspect of this collection of information, to: Jimmy A. Beard, Assistant to the Chief, Livestock and Grain Market News Branch, Livestock and Seed Division, AMS–USDA, Room 2623 South Building, P.O. Box 96456, Washington, D.C. 20090–6456.

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, and will be made available at the address above during regular business hours.

Dated: December 18, 1995.

Lon Hatamiya,

Administrator.

[FR Doc. 95–31273 Filed 12–26–95; 8:45 am]

BILLING CODE 3410–02–P

[Docket No. LS–95–015]

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) request for comments from the livestock and meat industry to improve or change the procedures for collecting information used to compile and generate the Federally Inspected Estimated Daily Slaughter Report.

DATES: Comments must be submitted on or before February 26, 1996.

ADDRESSES: Jimmy A. Beard; Assistant to the Chief; Livestock and Grain Market News Branch, Livestock and Seed Division, AMS-USDA, Room 2623 South Building, P.O. Box 96456, Washington, D.C. 20090–6456.

FOR FURTHER INFORMATION CONTACT: Jimmy A. Beard, (202)720–1050.

SUPPLEMENTARY INFORMATION:

Title: Plan for Estimating Daily Livestock Slaughter Under Federal Inspection.

OMB Number: 0581–0050.

Expiration Date of Approval: 04–30–96.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: Estimated daily livestock slaughter estimates are provided at the request of industry and are used to make production and marketing decisions. Slaughter information which is obtained from individual packers is confidential. Divulging individual information would provide competitors with an economic advantage.

The Agricultural Marketing Act of 1946 (7 U.S.C. 1621), section 203(g) directs and authorizes the collection and dissemination of marketing information including adequate outlook information, on a market area basis, for the purpose of anticipating and meeting consumer requirements aiding in the maintenance of farm income and to bring about a balance between production and utilization.

The Daily Estimated Livestock Slaughter Under Federal Inspection Report is used by a wide range of industry contacts, including packers, processors, producers, brokers, and retailers of meat and meat products. The livestock and meat industry requested that USDA issue slaughter estimates (daily and weekly), by species, for cattle, calves, hogs, and sheep in order to assist them in making immediate production and marketing decisions and as a guide to the volume of meat in the marketing channel. The information solicited from respondents includes their estimation of the current day's slaughter at their plant(s) and the actual slaughter for the previous day.

The industry could not collect the information themselves as they would not want to divulge their information to competitors, and exchange of such information between competitors would violate antitrust laws. Consequently, the information must be collected, compiled, and disseminated by an impartial third party, in a manner which protects the confidentiality of the reporter. Industry has grown to depend on the slaughter information for assistance to make marketing and production decisions. Also, since the Government is a large purchaser of meat, a system to monitor the collection and reporting of data is needed.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .01667 hours per response.

Respondents: Business or other for-profit, individuals or households, farms, Federal Government.

Estimated Number of Respondents: 77.

Estimated Number of Responses per Respondent: 260.

Estimated Total Annual Burden on Respondents: 854 hours.

Copies of this information collection can be obtained from Jimmy A. Beard, Livestock and Grain Market News Branch, at (202)720–1050.

Send comments regarding the accuracy of the burden estimate, ways to minimize the burden, including through the use of automated collection techniques or other forms of information technology, or any other aspect of this collection of information, to: Jimmy A. Beard, Assistant to the Chief, Livestock and Grain Market News Branch, Livestock and Seed Division, AMS-USDA, Room 2623 South Building, P.O. Box 96456, Washington, D.C. 20090–6456.

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, and will be made available at the address above, during regular business hours.

Dated: December 18, 1995.

Lon Hatamiya,

Administrator.

[FR Doc. 95–31277 Filed 12–26–95; 8:45 am]

BILLING CODE 3410–02–P

[FV–96–353]

Information About Legislative Changes In License Fees Under The Perishable Agricultural Commodities Act

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: This document gives notice to the public of changes in the fee structure of licenses under the Perishable Agricultural Commodities Act (PACA).

FOR FURTHER INFORMATION CONTACT: M.A. Clancy, PACA Branch, USDA, AMS, F&V Division, P.O. Box 96456, Room 2715–So. Bldg., Washington, D.C., 20090–6456, 202–720–2814.

SUPPLEMENTARY INFORMATION: Public Law 104–48, the Perishable Agricultural Commodities Act Amendments of 1995, signed by President Clinton on November 15, 1995, restructured the license fees to be paid by PACA licensees. The PACA Amendments of 1995 phases out, over a 3 year period, annual license fees for retailers and grocery wholesalers, and increases the base fee from $400 to $550 for all other licensees during that period. The $200 fee for each branch or additional business facility, in excess of nine, and the maximum aggregate fee of $4000 remain unchanged, with the exception for retailers and grocery wholesalers noted below.

During the phase-out period, the new license and annual renewal fee for retailers and grocery wholesalers will be as follows:

A. From November 15, 1995, through November 14, 1996, $400 plus $200 for each branch or additional business facility operated by the applicant, in excess of nine. In no case shall the aggregate annual fees paid by any applicant exceed $4,000.

B. From November 15, 1996 through November 14, 1997, the annual fee will be 75 percent of the aggregate fee paid under paragraph ''A.''

C. From November 15, 1997 through November 14, 1998, the annual fee will be 50 percent of the aggregate fee paid under paragraph ''A.''

At the end of the 3 year phase-out period, as of November 15, 1998, and thereafter, retailer and grocery wholesalers will not be required to pay license fees and new retailer and grocery wholesaler applicants will pay a one-time administrative fee of $100. Other licensees and new applicants will continue to pay $550 plus branch fees, or whatever fee is prescribed by the Secretary under rulemaking authority provided in the PACA Amendments of 1995 to cover the cost of the PACA program. Whether required to pay license fees or not, all licensees will continue to be required to file license applications or renewals.

Dated: December 18, 1995.

Shirley R. Watkins,

Acting Assistant Secretary, Marketing and Regulatory Programs.

[FR Doc. 95–31276 Filed 12–26–95; 8:45 am]

BILLING CODE 3410–02–P

Forest Service

Southwest Oregon Provincial Interagency Executive Committee (PIEC), Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Southwest Oregon PIEC Advisory Committee will meet on January 17, 1996 at the Riverside Motel, 971 SE 6th Street, Grants Pass, Oregon. The meeting will begin at 9:30 a.m. and continue until 4:30 p.m. Agenda items to be covered include: (1)

Recommendations for revising standards and guides for large woody material; (2) Local area issues presentation; (3) Public forum. All Province Advisory Committee meetings are open to the public, interested citizens are encouraged to attend; and (4) Monitoring Subcommittee report.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Kurt Austermann, Province Advisory Committee Staff, USDI, Medford District, Bureau of Land Management, 3040 Biddle Rd., Medford, Oregon 97504, phone 541–770–2200.

Dated: December 18, 1995.

James T. Gladen,

Forest Supervisor, Designated Federal Official.

[FR Doc. 95–31340 Filed 12–26–95; 8:45 am]

BILLING CODE 3410–11–M

Grain Inspection, Packers and Stockyards Administration

Designation for the Alton (IL), Columbus (OH), and Farwell (TX) Areas

AGENCY: Grain Inspection, Packers and Stockyards Administration (GIPSA).

ACTION: Notice.

SUMMARY: GIPSA announces the designation of Alton Grain Inspection Department (Alton), Columbus Grain Inspection, Inc. (Columbus), and Farwell Grain Inspection, Inc. (Farwell), to provide official services under the United States Grain Standards Act, as amended (Act).

EFFECTIVE DATES: April 1, 1996, for Alton; March 1, 1996, for Columbus; and February 1, 1996, for Farwell.

ADDRESSES: Janet M. Hart, Chief, Review Branch, Compliance Division, GIPSA, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart, telephone 202–720–8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the August 1, 1995, Federal Register (60 FR 39147), GIPSA asked persons interested in providing official services in the geographic areas assigned to Alton, Columbus, and Farwell to submit an application for designation. Applications were due by August 30, 1995. There were four applicants: Alton, Columbus, and Farwell each applied for designation to provide official inspection services in the entire areas currently assigned to them; California Department of Food and Agriculture, applied for the Yuma County, Arizona, portion of the Farwell area.

GIPSA requested comments on the applicants in the September 29, 1995, Federal Register (60 FR 50542). Comments were due by October 30, 1995. GIPSA received no comments by the deadline.

GIPSA evaluated all available information regarding the designation criteria in Section 7(f)(l)(A) of the Act; and according to Section 7(f)(l)(B), determined that Alton and Columbus are able to provide official services in the geographic areas for which they applied, and that Farwell is better able to provide official services in the geographic area for which they applied. Effective April 1, 1996, and ending January 31, 1999, Alton is designated to provide official inspection services in the geographic area specified in the June 1, 1995, Federal Register. Effective March 1, 1996, and ending January 31, 1999, Columbus is designated to provide official inspection services in the geographic area specified in the June 1, 1995, Federal Register. Effective February 1, 1996, and ending January 31, 1999, Farwell is designated to provide official inspection services in the geographic area specified in the June 1, 1995, Federal Register.

Interested persons may obtain official services by contacting Alton at 314–838–1961, Columbus at 614–474–3519, and Farwell at 806–481–9052.

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

Dated: December 18, 1995

Neil E. Porter

Director, Compliance Division

[FR Doc. 95–31270 Filed 12–26–95; 8:45 am]

BILLING CODE 3410–EN–F

Opportunity for Designation in the Barton (KY) and North Dakota (ND) Areas

AGENCY: Grain Inspection, Packers and Stockyards Administration (GIPSA).

ACTION: Notice.

SUMMARY: The United States Grain Standards Act, as amended (Act), provides that official agency designations will end not later than triennially and may be renewed. The designations of J. W. Barton Grain Inspection Service, Inc. (Barton), and North Dakota Grain Inspection Service, Inc. (North Dakota), will end June 30, 1996, according to the Act, and GIPSA is asking persons interested in providing official services in the Barton and North Dakota areas to submit an application for designation.

DATES: Applications must be postmarked or sent by telecopier (FAX) on or before January 30, 1996.

ADDRESSES: Applications must be submitted to Janet M. Hart, Chief, Review Branch, Compliance Division, GIPSA, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454. Telecopier (FAX) users may send applications to the automatic telecopier machine at 202–690–2755, attention: Janet M. Hart. If an application is submitted by telecopier, GIPSA reserves the right to request an original application. All applications will be made available for public inspection at this address located at 1400 Independence Avenue, S.W., during regular business hours.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart, telephone 202–720–8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act authorizes GIPSA' Administrator to designate a qualified applicant to provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services. GIPSA designated Barton, main office located in Owensboro, Kentucky, and North Dakota, main office located in Fargo, North Dakota, to provide official inspection services under the Act on July 1, 1993. Section 7(g)(1) of the Act provides that designations of official agencies shall end not later than triennially and may be renewed according to the criteria and procedures prescribed in Section 7(f) of the Act. The designations of Barton and North Dakota end on June 30, 1996.

The geographic area presently assigned to Barton, in the States of Indiana, Kentucky, and Tennessee, pursuant to Section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation is as follows:

In Indiana: Clark, Crawford, Floyd, Harrison, Jackson, Jennings, Jefferson, Lawrence, Martin, Orange, Perry, Scott, Spencer, and Washington Counties.

In Kentucky: Bounded on the North by the northern Daviess, Hancock, Breckinridge, Meade, Hardin, Jefferson, Oldham, Trimble, and Carroll County lines;

Bounded on the East by the eastern Carroll, Henry, Franklin, Scott, Fayette, Jessamine, Woodford, Anderson, Nelson, Larue, Hart, Barren, and Allen County lines;

Bounded on the South by the southern Allen and Simpson County lines; and

Bounded on the West by the western Simpson and Warren County lines; the southern Butler and Muhlenberg County lines; the Muhlenberg County line west to the Western Kentucky Parkway; the Western Kentucky Parkway west to State Route 109; State Route 109 north to State Route 814; State Route 814 north to U.S. Route Alternate 41; U.S. Route Alternate 41 north to the Webster County line; the northern Webster County line; the western McLean and Daviess County lines.

In Tennessee: Bounded on the North by the northern Tennessee State line from Sumner County east;

Bounded on the East by the eastern Tennessee State line southwest;

Bounded on the South by the southern Tennessee State line west to the western Giles County line; and

Bounded on the West by the western Giles, Maury, and Williamson County lines North; the northern Williamson County line east; the western Rutherford, Wilson, and Sumner County lines north.

The geographic area presently assigned to North Dakota, in the State of North Dakota, pursuant to Section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation is as follows:

Bounded on the North by the northern Steele County line from State Route 32 east; the eastern Steele County line south to State Route 200; State Route 200 east-southeast to the State line;

Bounded on the East by the eastern North Dakota State line;

Bounded on the South by the southern North Dakota State line west to State Route 1; and

Bounded on the West by State Route 1 north to Interstate 94; Interstate 94 east to the Soo Railroad line; the Soo Railroad line northwest to State Route 1; State Route 1 north to State Route 200; State Route 200 east to State Route 45; State Route 45 north to State Route 32; State Route 32 north.

North Dakota's assigned geographic area does not include the following grain elevators inside North Dakota's area which have been and will continue to be serviced by the following official agency: Grain Inspection, Inc.: Norway Spur, and Oakes Grain, both in Oakes, Dickey County.

Interested persons, including Barton and North Dakota, are hereby given the opportunity to apply for designation to provide official services in the geographic areas specified above under the provisions of Section 7(f) of the Act and section 800.196(d) of the regulations issued thereunder. Designation in the specified geographic areas is for the period beginning July 1, 1996, and ending June 30, 1999. Persons wishing to apply for designation should contact the Compliance Division at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated.

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

Dated: December 18, 1995

Neil E. Porter

Director, Compliance Division

[FR Doc. 95–31271 Filed 12–26–95; 8:45 am]

BILLING CODE 3410–EN–F

Designation for the Grand Forks (ND) Area

AGENCY: Grain Inspection, Packers and Stockyards Administration (GIPSA).

ACTION: Notice.

SUMMARY: GIPSA announces the designation of Grand Forks Grain Inspection Department, Inc. (Grand Forks), to provide official inspection services under the United States Grain Standards Act, as amended (Act).

EFFECTIVE DATES: January 1, 1996.

ADDRESSES: Janet M. Hart, Chief, Review Branch, Compliance Division, GIPSA, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart, telephone 202–720–8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Grand Forks Grain Inspection, Inc., asked that their designation be terminated effective December 31, 1995, due to a change in ownership and the dissolution of the company. In the September 5, 1995, Federal Register (60 FR 46108), GIPSA asked persons interested in providing official services in the Grand Forks area to submit an application for designation. Applications were due by September 11, 1995. Grand Forks Grain Inspection Department, Inc., the new corporation and the only applicant, applied for designation to provide official inspection services in the entire area specified in the September 5, 1995, Federal Register.

GIPSA requested comments on the applicant in the October 6, 1995, Federal Register (60 FR 52366). Comments were due by November 2, 1995. GIPSA received no comments by the deadline.

GIPSA evaluated all available information regarding the designation criteria in Section 7(f)(l)(A) of the Act; and according to Section 7(f)(l)(B), determined that Grand Forks is able to provide official services in the geographic area for which they applied. Effective January 1, 1996, and ending December 30, 1996, Grand Forks is designated to provide official inspection services in the geographic area specified in the September 5, 1995, Federal Register.

Official services may be obtained by contacting Grand Forks at 701–772–0151.

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

Dated: December 19, 1995

Neil E. Porter

Director, Compliance Division

[FR Doc. 95–31268 Filed 12–26–95; 8:45 am]

BILLING CODE 3410–EN–F

Cancellation of Designation for the South Texas Region (TX)

AGENCY: Grain Inspection, Packers and Stockyards Administration (GIPSA).

ACTION: Notice.

SUMMARY: Quanta Lab (Quanta) was scheduled to begin providing official inspection services January 1, 1996; however, Quanta has asked that this designation be canceled.

DATES: Effective Date January 1, 1996.

ADDRESSES: Janet M. Hart, Chief, Review Branch, Compliance Division, GIPSA, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart, telephone 202–720–8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the United States Grain Standards Act, as amended (Act) authorizes the GIPSA Administrator to designate a qualified applicant to

provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services.

GIPSA designated Quanta, main office located in Selma, Texas, to provide official services, under the Act on November 7, 1995, to be effective on January 1, 1996. The designation of Quanta was scheduled to end on December 30, 1996. However, Quanta asked GIPSA to cancel its designation effective January 1, 1996, due to concerns regarding the demand for service in the area. Accordingly, GIPSA is announcing the cancellation of Quanta s designation effective January 1, 1996.

Official services in South Texas will continue to be provided by the GIPSA Corpus Christi office, which can be contacted at 512–888–3461.

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

Dated: December 18, 1995

Neil E. Porter

Director, Compliance Division

[FR Doc. 95–31269 Filed 12–26–95; 8:45 am]

BILLING CODE 3410–EN–F

ASSASSINATION RECORDS REVIEW BOARD

Notice of Formal Determinations

AGENCY: Assassination Records Review Board.

SUMMARY: The Assassination Records Review Board (Review Board) met in a closed meeting on December 12 and 13, 1995, and made formal determinations on the release of records under the President John F. Kennedy Assassination Records Collection Act of 1992 (JFK Act). By issuing this notice, the Review Board complies with the section of the JFK Act that requires the Review Board to publish the results of its decisions on a document-by-document basis in the Federal Register within 14 days of the date of the decision. This notice pertains to the release of five records that were the subjects of prior Review Board determinations. A notice regarding new Review Board formal determinations will issue shortly.

FOR FURTHER INFORMATION CONTACT: T. Jeremy Gunn, General Counsel and Associate Director for Research and Analysis, Assassination Records Review Board, Second Floor, 600 E Street NW., Washington, D.C. 20530, (202) 724–0088, fax (202) 724–0457.

SUPPLEMENTARY INFORMATION: This notice complies with the requirements of the President John F. Kennedy Assassination Records Collection Act of 1992, 44 U.S.C. 2107.9(c)(4)(A) (1992).

On July 17 and 18, 1995, the Review Board made formal determinations regarding, *inter alia,* five FBI records that contained information provided by a foreign government. See 60 FR 39928 (Aug. 4, 1995). (The record identification numbers for the five records are listed below.) The FBI contested the Review Board's decision to release these records principally on the ground that the records contain information provided by the Swiss Government under an understanding of confidentiality. The Review Board withdrew from Presidential consideration its determinations regarding these records on August 30, 1995, and approached the Swiss Government through diplomatic channels regarding the release of these records. As a result of these efforts, the Swiss Government advised the Review Board that it does not now object to the release of these five records, provided that the names of Swiss citizens are redacted. At the December 12–13 meeting, the Review Board voted to release these records in full, except for the names of Swiss citizens. The FBI does not now object to the release of the records as redacted.

These assassination records are identified by the record identification number assigned in the President John F. Kennedy Assassination Records Collection database maintained by the National Archives. For each document, the number of releases of previously redacted information is noted as well as the number of sustained postponements.

REVIEW BOARD DETERMINATIONS—FBI DOCUMENTS

Record No.	ARRB releases	Sustained postponements	Status of document	Next review date
124–10023–10234	2	1	Postponed in Part	2017
124–10023–10235	2	1	Postponed in Part	2017
124–10023–10236	3	0	Open in Full	n/a
124–10023–10237	2	0	Open in Full	n/a
124–10023–10238	1	0	Open in Full	n/a

Dated: December 21, 1995.

David G. Marwell,

Executive Director.

[FR Doc. 95–31334 Filed 12–26–95; 8:45 am]

BILLING CODE 6118–01–P

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 26, 1996.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Wendy Taylor, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. 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.

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 3507 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. 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 prior to submission of these requests to OMB. 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. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated:

Gloria Parker,

Director, Information Resources Group.

Office of Postsecondary Education

Type of Review: Revision.

Title: Federal Direct Consolidation Loan Program Application Document.

Frequency: On Occasion.

Affected Public: Individuals or households; Business or other for-profit.

Reporting and Recordkeeping Burden:

Responses: 3,428,000.

Burden Hours: 1,484,200.

Abstract: These forms are the means by which a borrower applies for/promise to repay a Federal Direct Consolidation Loan and a lender verifies an eligible loan to be consolidated.

Type of Review: New.

Title: Repayment Plan Selection.

Frequency: On Occasion.

Affected Public: Individual or households.

Annual Reporting and Recordkeeping Hour Burden:

Responses: 525,000.

Burden Hours: 173, 250.

Abstract: Borrowers in the William D. Ford Federal Direct Program will use this form to choose a repayment plan for their loan(s).

[FR Doc. 95–31092 Filed 12–26–95; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Federal Energy Management and Planning Programs; Energy Savings Performance Contract Model Solicitations

AGENCY: Department of Energy.

ACTION: Notice.

SUMMARY: The Department of Energy gives notice of changes proposed for its energy savings performance contract model solicitations. The proposed approach will make it substantially simpler and easier for the Federal Government to procure and administer energy savings performance contracts. These changes provide the flexibility to purchase energy savings through guaranteed equipment performance or energy savings calculated through measured consumption data.

DATES: Comments should be received no later than January 26, 1996.

ADDRESSES: All written comments are to be submitted to: U.S. Department of Energy, Office of Federal Energy Management Programs, EE–92, 1000 Independence Avenue, SW, Washington, DC 20595–0121. Fax and e-mail comments will be accepted at (202) 586–3000 and tanya.sadler@hq.doe.gov, respectively.

FOR FURTHER INFORMATION CONTACT: Tanya Sadler, EE–92, U.S. Department of Energy, Office of Federal Energy Management Programs, EE–92, 1000 Independence Avenue, SW, Washington, DC 20585–0121, (202) 586–7755.

SUPPLEMENTARY INFORMATION: On April 10, 1995 (60 FR 18326), the Department of Energy (Department or DOE) published its notice of final rulemaking for energy savings performance contracts required by section 801 of the National Energy Conservation Policy Act (42 U.S.C. 8287). The preamble to the rule referenced model solicitations which provide uniform formats and standardized contract provisions recommended for Federal agency use in energy savings performance contracts. DOE uses these model solicitations in training workshops for agency technical and procurement professionals.

The Department's objective is to simplify the model solicitations. The overall goal is to streamline the energy savings performance contracting process and implement more projects. In order to accomplish these objectives, DOE recommends that the Government buy energy savings through guaranteed equipment performance. The contractor will guarantee the performance of the installed equipment; however, Federal agencies will also have the option to verify actual energy savings in order to determine contractor performance as provided by Federal Measurement and Verification Protocols. DOE has been leading an effort in close cooperation with industry to develop a national consensus industry protocol to improve consistency, reliability, and performance of energy efficiency installations. These Protocols will be available through the Department's Federal Energy Management Program Help Desk at 1–800–566–2877 in January 1996.

The model solicitations will place a new emphasis on measuring equipment performance or actual energy savings. The proposed changes include:

Baselines. The initial baseline condition is the reference from which the contractor's performance will be verified throughout the life of the project. Adjustments for changes in usage (e.g., occupancy, weather, etc.) generally will not be made during the payback term, when equipment performance is guaranteed.

Guaranteed Savings. Guaranteed savings is redefined to mean: (1) Cost savings based on guaranteed performance of energy conservation equipment and stipulated factors (e.g., hours of operation); or (2) actual cost savings which equal the measured cost of operation (pre-energy conservation measure installation) minus the measured cost of operation (post-energy conservation measure installation with baseline adjustments as required).

Payments. Payments to the contractor will be based on the Government's acceptance of equipment installation and continuation of the guaranteed equipment performance as specified in the contract (e.g., contractor continued compliance with measurement and verification and operations and maintenance plans).

Technical/Price Proposal Evaluation Criteria. The technical proposal may be weighted substantially more than the price proposal. Five technical factors should generally be considered in evaluating technical proposals:

Past Performance

Energy Conservation Measure Description and Savings Management Approach

Measurement and Verification Plan Operations and Maintenance

The proposed price will generally be evaluated for completeness, reasonableness, and realism.

Interested persons are invited to submit written comments on the Department's proposed changes to the energy savings performance contracting model solicitations. Written comments should be submitted to the address indicated in the **ADDRESSES** section of this notice.

Issued in Washington, D.C. on this 20th day of December 1995.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 95–31317 Filed 12–26–95; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. EF96–5091–000, et al.]

Western Area Power Administration, et al.; Electric Rate and Corporate Regulation Filings

December 15, 1995.

Take notice that the following filings have been made with the Commission:

1. Western Area Power Administration

[Docket No. EF96–5091–000]

Take notice that on November 2, 1995, the Deputy Secretary of the Department of Energy, by Rate Order No. WAPA–70, did confirm and approve on an interim basis, to be effective on November 1, 1995, the Western Area Power Administration's (Western) Rate Schedule BCP–F5 for firm power service from the Boulder Canyon Project.

The rate methodology in Rate Schedule BCP–F5 will be in effect pending the Federal Energy Regulatory Commission's (FERC) approval on a final basis, ending September 30, 2000, or until superseded.

The Power Repayment Spreadsheet Study indicated that the existing rate methodology results in collecting revenues in excess of that allowed by law through the Rate Year. The proposed rate schedule will yield appropriate revenues.

Upon completion of the Uprating Credit Procedures and receipt of revised Uprating Credit Schedules, the FY 1996 Energy Dollar and Capacity Dollar will be adjusted by the difference between the originally projected Annual Uprating Credit Payments and the revised Annual Uprating Credit Payments and spread over the remaining months of FY 1996 so the BCP Contractors will not pay more than the FY 1996 Annual Revenue Requirement.

The Administrator of Western certifies that the rate methodology is consistent with applicable law and provide the lowest possible rate consistent with sound business principles. The Deputy Secretary of the Department of Energy states that the rate schedule is submitted for confirmation and approval on a final basis for a period of November 1, 1995, and ending September 30, 2000, pursuant to authority vested in FERC by Delegation Order No. 0204–108, as amended.

Comment date: January 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

2. NRGenerating Holdings (No. 4) B.V.

[Docket No. EG96–23–000]

On December 8, 1995, NRGenerating Holdings (No. 4) B.V. (''Applicant''), with its principal office at c/o NRG Energy, Inc., Level 50, Rialto South Tower, 525 Collins Street, Melbourne, Victoria, 3000, Australia, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Applicant states that it holds an interest in a joint venture partnership organized under the laws of Australia, formed to acquire, own and operate an 1,450 megawatt brown coal-fired electric generating facility and adjacent brown coal open cut mine located in Victoria, Australia (the ''Facility''). Electric energy produced by the Facility will be sold at wholesale to the Victoria Power Exchange. In no event will any electric energy be sold to consumers in the United States.

Comment date: January 2, 1996, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. The Salt River Project Agricultural Improvement and Power District v. Tucson Electric Power Company

[Docket No. EL96–22–000]

Take notice that on December 1, 1995, the Salt River Project Agricultural Improvement and Power District (Salt River) filed a complaint under Sections 205, 206 and 306 of the Federal Power Act, 16 U.S.C. §§ 824d & 824e, against Tucson Electric Power Company (Tucson Electric). The complaint alleges that Tucson Electric overcharged Salt River for wholesale power.

Specifically, the complaint alleges that Tucson Electric improperly included fixed, capital lease costs for coal handling facilities, which were incurred by its corporate affiliate, in Tucson Electric's fuel account. The complaint also alleges that Tucson Electric improperly included financing costs, property taxes, management fees and costs identified only as ''other'' in its fuel account. According to the complaint, Tucson Electric unlawfully passed these affiliate costs through to Salt River in a formula energy rate designed to track fluctuations in the price of fuel and purchased power. To remedy the alleged overcharges, the complaint seeks approximately $3.9 million in refunds, plus interest.

Comment date: January 16, 1996, in accordance with Standard Paragraph E at the end of this notice. Answers to the complaint shall be due on or before January 16, 1996.

4. Western Systems Power Pool

[Docket No. ER91–195–022]

Take notice that on November 9, 1995, Western Systems Power Pool filed an amendment to their informational filing of October 30, 1995 in Docket No. ER91–195–000. Copies of Western Systems Power Pool's amendment are on file with the Commission and are available for public inspection.

5. NorAm Energy Services, Inc.

[Docket No. ER94–1247–006]

Take notice that on November 20, 1995, NorAm Energy Services, Inc. filed an amendment to their informational filing of October 20, 1995 in Docket No. ER94–1247–000. Copies of NorAm Energy Service's amendment are on file with the Commission and are available for public inspection.

6. Calpine Power Marketing, Inc., Proven Alternatives, Inc., Gateway Energy, Inc.

[Docket Nos. ER94–1545–003], ER95–473–002, ER95–1049–001 (not consolidated)]

Take notice that the following informational filings have been made with the Commission and are on file and available for inspection and copying in the Commission's Public Reference Room:

On December 5, 1995, Calpine Power Marketing, Inc. filed certain information as required by the Commission's March 9, 1995, order in Docket No. ER94–1545–000.

On December 4, 1995, Proven Alternatives, Inc. filed certain information as required by the Commission's March 29, 1995, order in Docket No. ER95–473–000.

On December 5, 1995, Gateway Energy, Inc. filed certain information as required by the Commission's August 4, 1995, order in Docket No. ER95–1049–000.

7. EnergyOnline, Inc.

[Docket No. ER96–138–000]

On November 20, 1995, EnergyOnline, Inc. tendered for filing an amendment to its filing in this docket.

This amendment pertains to a correction in the text of the original filing and to the ownership of the applicant.

Comment date: December 29, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. New England Power Company

[Docket No. ER96–335–000]

Take notice that on December 7, 1995, Massachusetts Electric Company tendered for filing an amendment in the above-referenced docket.

Comment date: December 29, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. Maine Public Service Company

[Docket No. ER96–370–000]

Take notice that on December 8, 1995, Maine Public Service Company tendered for filing an amendment in the above-referenced docket.

Comment date: December 29, 1995, in accordance with Standard Paragraph E at the end of this notice.

10. Commonwealth Edison Company

[Docket No. ER96–412–000]

Take notice that on December 13, 1995, Commonwealth Edison Company tendered for filing an amendment in the above-referenced docket.

Comment date: January 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

11. Wisconsin Electric Power Company

[Docket No. ER96–514–000]

Take notice that on December 4, 1995, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing revisions to its FERC Electric Tariff, Volume 1, Service Agreement No. 29.

Wisconsin Electric requests an effective date of November 15, 1995, in order to implement the Agreement's modifications, which do not result in revenue increases.

Comment date: December 29, 1995, in accordance with Standard Paragraph E at the end of this notice.

12. Kansas City Power & Light Company

[Docket No. ER96–515–000]

Take notice that on December 4, 1995, Kansas City Power & Light Company (KCPL), tendered for filing a Service Agreement dated September 13, 1995, by KCPL. KCPL proposes an effective date of September 13, 1995, and requests waiver of the Commission's notice requirement. This agreement provides for the rates and charges for Non-Firm Transmission Service by KCPL for wholesale transactions.

In its filing, KCPL states that the rates included in the above-mentioned Service Agreement are KCPL's rates and charges which were conditionally accepted by the Commission in Docket No. ER94–1045–000.

Comment date: December 29, 1995, in accordance with Standard Paragraph E at the end of this notice.

13. New England Power Company

[Docket No. ER96–517–000]

Take notice that on December 4, 1995, New England Power Company submitted for filing a letter agreement for firm transmission service to Electric Clearinghouse, Inc.

Comment date: December 29, 1995, in accordance with Standard Paragraph E at the end of this notice.

14. Commonwealth Electric Company

[Docket No. ER96–518–000]

Take notice that on December 4, 1995, Commonwealth Electric Company (Commonwealth) filed, pursuant to Section 205 of the Federal Power Act and the implementing provisions of Section 35.13 of the Commission's Regulations, a proposed change in rate under its currently effective Rate Schedule FERC No. 6.

Commonwealth states that said change in rate under Commonwealth's Rate Schedule FERC No. 6 has been computed according to the provisions of Section 6(b) of its Rate Schedule FERC No. 6. Such change is proposed to become effective January 1, 1996, thereby superseding the 23 kV Wheeling Rate in effect during the calendar year 1994. Commonwealth has requested that the Commission's notice requirements be waived pursuant to Section 35.11 of the Commission's Regulations in order to allow the tendered rate change to become effective as of January 1, 1996.

Copies of this filing have been served upon Boston Edison Company and the Massachusetts Department of Public Utilities.

Comment date: December 29, 1995, in accordance with Standard Paragraph E at the end of this notice.

15. Boston Edison Company

[Docket No. ER96–519–000]

Take notice that on December 4, 1995, Boston Edison Company (Boston Edison) tendered for filing a letter agreement between Boston Edison and Cambridge Electric Light Company (CEL). The tendered letter agreement extends the terms and conditions of the Substation 402 Agreement to and including March 31, 1996. The Substation 402 Agreement is designated as Boston Edison's FERC Rate Schedule No. 149. Boston Edison requests an effective date of December 31, 1995.

Comment date: December 29, 1995, in accordance with Standard Paragraph E at the end of this notice.

16. Commonwealth Electric Company, Cambridge Electric Light Company

[Docket No. ER96–520–000]

Take notice that on December 4, 1995, Commonwealth Electric Company (Commonwealth) on behalf of itself and Cambridge Electric Light Company (Cambridge), collectively referred to as the Companies, tendered for filing with the Federal Energy Regulatory Commission executed Service Agreements between the Companies and the following Customers:

Citizens Lehman Power Sales

Koch Power Services, Inc.

United Illuminating Company

Vermont Marble Power Division of OMYA, Inc.

These Service Agreements specify that the Customers have signed on to and have agreed to the terms and conditions of the Companies' Power Sales and Exchanges Tariffs designated as Commonwealth's Power Sales and Exchanges Tariff (FERC Electric, Tariff Original Volume No. 3) and Cambridge's Power Sales and Exchanges Tariff (FERC Electric Tariff Original Volume No. 5). These Tariffs, approved by FERC on April 13, 1995, and which have an effective date of March 20, 1995, will allow the Companies and the Customers to enter into separately scheduled transactions under which the Companies will sell to the Customers capacity and/or energy as the parties may mutually agree.

The Companies request an effective date as specified on each Service Agreement.

Comment date: December 29, 1995, in accordance with Standard Paragraph E at the end of this notice.

17. Commonwealth Electric Company, Boston Edison Company, Montaup Electric Company

[Docket No. ER96–521–000]

Take notice that on December 4, 1995, Commonwealth Electric Company (Commonwealth) tendered for filing on behalf of itself, Montaup Electric Company and Boston Edison Company supplemental data pertaining to their applicable investments and carrying charges including local tax rates, for the twelve-month period ending December 31, 1994. Commonwealth states that this supplemental data is submitted pursuant to a letter in Docket No. E–7981 dated April 26, 1973 accepting for filing Commonwealth's Rate Schedule FERC No. 21, Boston Edison Company's Rate Schedule FERC No. 67, and Montaup Electric Company's Rate Schedule No. 27.

Commonwealth states that these rate schedules have previously been similarly supplemented for the calendar years 1972 through 1993.

Copies of said filing have been served upon Boston Edison Company, Montaup Electric Company, New England Power Company and the Massachusetts Department of Public Utilities.

Comment date: December 29, 1995, in accordance with Standard Paragraph E at the end of this notice.

18. The Dayton Power and Light Company

[Docket No. ER96–522–000]

Take notice that on December 4, 1995, The Dayton Power and Light Company (Dayton), tendered for filing, an executed Interconnection Agreement between Dayton and Ohio Valley Electric Corporation (OVEC).

Pursuant to the rate schedules attached to the Agreement, Dayton will provide to OVEC power and/or energy for resale. Dayton and OVEC are currently parties to a Inter-Company Power Agreement for the sale of surplus power and energy to Dayton from OVEC.

Comment date: December 29, 1995, in accordance with Standard Paragraph E at the end of this notice.

19. Ohio Edison Company, Pennsylvania Power Company

[Docket No. ER96–523–000]

Take notice that on December 4, 1995, Ohio Edison Company tendered for filing on behalf of itself and Pennsylvania Power Company, an Agreement for System Power Transactions with LG&E Power Marketing Inc. This initial rate schedule will enable the parties to purchase and sell capacity and energy in accordance with the terms of the Agreement.

Comment date: December 29, 1995, in accordance with Standard Paragraph E at the end of this notice.

20. Texas Utilities Electric Company

[Docket No. ER96–524–000]

Take notice that on December 5, 1995, Texas Utilities Electric Company (TU Electric), tendered for filing two executed transmission service agreements (TSA's) with Western Gas Resources Power Marketing, Inc. and Destec Power Services, Inc. for certain Economy Energy Transmission Service under TU Electric's Tariff for Transmission Service To, From and Over Certain HVDC Interconnections.

TU Electric requests an effective date for the TSA's that will permit them to become effective on or before the service commencement date under each of the two TSA's. Accordingly, TU Electric seeks waiver of the Commission's notice requirements. Copies of the filing were served on Western Gas Resources Power Marketing, Inc. and Destec Power Services, Inc., as well as the Public Utility Commission of Texas.

Comment date: December 29, 1995, in accordance with Standard Paragraph E at the end of this notice.

21. Utility Management and Consulting, Inc.

[Docket No. ER96–525–000]

Take notice that on December 5, 1995, Utility Management and Consulting Inc. (UMAC), tendered for filing pursuant to Rule 207 of the Commission's Rules of Practice and Procedure, 18 CFR 385.207, a petition for waivers and blanket approvals under various regulations of the Commission, and an order accepting its Rate Schedule No. 1, to be effective on February 1, 1996.

UMAC intends to engage in electric power and energy transactions as a marketer and broker. In transactions where UMAC purchases power, including capacity and related services from electric utilities, qualifying facilities, and independent power producers, and resells such power to other purchasers, UMAC will be functioning as a marketer. In UMAC's marketing transactions, UMAC proposes to charge rates mutually agreed upon by the parties. Sales will be at arms-length, and no sales will be made to affiliated entities. In transactions where UMAC does not take title for the electric energy and/or power, UMAC will be limited to the role of a broker and charge a fee for its services. UMAC is not in the business of producing roe transmitting electric energy. UMAC does not currently have or contemplate acquiring title to any electric power transmission facilities.

Rate Schedule No. 1 provides for the sale of energy and capacity at agreed prices. Rate Schedule No. 1 also provides that no sales may be made to affiliates.

Comment date: December 29, 1995, in accordance with Standard Paragraph E at the end of this notice.

22. Florida Power Corporation

[Docket No. ER96–526–000]

Take notice that on December 1, 1995, Florida Power Corporation (FPC), tendered for filing service agreements providing for service to thirty-three (33) entities pursuant to its open access transmission tariff (the T–2 Tariff). Florida Power requests that the Commission waive its notice of filing requirements and allow the agreements to become effective on November 1, 1995.

Comment date: December 29, 1995, in accordance with Standard Paragraph E at the end of this notice.

23. Indiana Michigan Power Company

[Docket No. ER96–527–000]

Take notice that on December 4, 1995, American Electric Power Service Corporation (AEPSC), tendered for filing a transmission service agreement for service being made available to Indiana Municipal Power Agency pursuant to AEPSC FERC Electric Tariff Original Volume No. 1. Waiver of Notice requirements was requested to accommodate an effective date of November 3, 1995.

A copy of the filing was served upon IMPA and the affected state regulatory commission.

Comment date: December 29, 1995, in accordance with Standard Paragraph E at the end of this notice.

24. Atlantic City Electric Company

[Docket No. ER96–528–000]

Take notice that on December 5, 1995, Atlantic City Electric Company (ACE), tendered for filing an Agreement for Short-Term Energy Transactions between ACE and Industrial Energy Applications (IEA). ACE requests that the Agreement be accepted to become effective December 6, 1995.

Copies of the filing were served on IEA and the New Jersey Board of Regulatory Commissioners.

Comment date: December 29, 1995, in accordance with Standard Paragraph E at the end of this notice.

25. Idaho Power Company

[Docket No. ER96–529–000]

Take notice that on December 5, 1995, Idaho Power Company (IPC), tendered for filing with the Federal Energy Regulatory Commission a Service Agreement under Idaho Power Company FERC Electric Tariff Original Volume No. 2 between CENERGY, Inc. and Idaho Power Company.

Comment date: December 29, 1995, in accordance with Standard Paragraph E at the end of this notice.

26. Idaho Power Company

[Docket No. ER96–530–000]

Take notice that on December 5, 1995, Idaho Power Company (IPC), tendered for filing with the Federal Energy Regulatory Commission a Service Agreement under Idaho Power Company FERC Electric Tariff, Second Revised, Volume No. 1 between CENERGY, Inc. and Idaho Power Company and a Certificate of Concurrence.

Comment date: December 29, 1995, in accordance with Standard Paragraph E at the end of this notice.

27. PECO Energy Company

[Docket No. ER96–538–000]

Take notice that on December 6, 1995, PECO Energy Company (PECO) filed a Service Agreement dated November 22, 1995, with Tenneco Energy Marketing Company (TEMC) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds TEMC as a customer under the Tariff.

PECO requests an effective date of November 22, 1995 for the Service Agreement.

PECO states that copies of this filing have been supplied to TEMC and the Pennsylvania Public Utility Commission.

Comment date: December 29, 1995, in accordance with Standard Paragraph E at the end of this notice.

28. PECO Energy Company

[Docket No. ER96–539–000]

Take notice that on December 6, 1995, PECO Energy Company (PECO) filed a Service Agreement dated November 22, 1995, with KCS Power Marketing, Inc. (KCS Power Marketing) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds KCS Power Marketing as a customer under the Tariff.

PECO requests an effective date of November 22, 1995 for the Service Agreement.

PECO states that copies of this filing have been supplied to KCS Power Marketing and the Pennsylvania Public Utility Commission.

Comment date: December 29, 1995, in accordance with Standard Paragraph E at the end of this notice.

29. PECO Energy Company

[Docket No. ER96–540–000]

Take notice that on December 6, 1995, PECO Energy Company (PECO) filed a Service Agreement dated November 28, 1995, with American Electric Power Service Company (AEP) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds AEP as a customer under the Tariff.

PECO requests an effective date of November 28, 1995 for the Service Agreement.

PECO states that copies of this filing have been supplied to AEP and the Pennsylvania Public Utility Commission.

Comment date: December 29, 1995, in accordance with Standard Paragraph E at the end of this notice.

30. PECO Energy Company

[Docket No. ER96–541–000]

Take notice that on December 6, 1995, PECO Energy Company (PECO) filed a Service Agreement dated November 29, 1995, with Florida Power & Light Company (FPL) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds FPL as a customer under the Tariff.

PECO requests an effective date of November 29, 1995 for the Service Agreement.

PECO states that copies of this filing have been supplied to FPL and the Pennsylvania Public Utility Commission.

Comment date: December 29, 1995, in accordance with Standard Paragraph E at the end of this notice.

31. PECO Energy Company

[Docket No. ER96–542–000]

Take notice that on December 6, 1995, PECO Energy Company (PECO) filed a Service Agreement dated November 28, 1995, with East Kentucky Power Cooperative (East Kentucky Power Cooperative) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds East Kentucky Power Cooperative as a customer under the Tariff.

PECO requests an effective date of November 28, 1995 for the Service Agreement.

PECO states that copies of this filing have been supplied to East Kentucky Power Cooperative and the Pennsylvania Public Utility Commission.

Comment date: December 29, 1995, in accordance with Standard Paragraph E at the end of this notice.

32. CINERGY Services, Inc.

[Docket No. ER96–546–000]

Take notice that CINERGY Services, Inc. (CINERGY Services) on December 7, 1995, tendered for filing on behalf of its operating company, PSI Energy, Inc. (PSI), a First Supplemental Agreement, dated October 1, 1995, to the Interconnection Agreement, dated April 1, 1994 between AES Power, Inc. (AES) and PSI.

The First Supplemental Agreement revises the definitions for Emission allowances and provides for Cinergy Services to act as agent for PSI. The following Exhibit has also been revised:

B Power Sales by CINERGY

CINERGY Services and AES have requested an effective date of January 1996.

Copies of the filing were served on AES Power, Inc., the Virginia State Corporation Commission, the Kentucky Public Service Commission, Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: January 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

33. UtiliCorp United Inc.

[Docket No. ER96–547–000]

Take notice that on December 7, 1995, UtiliCorp United Inc. tendered for filing on behalf of its operating division, Missouri Public Service, a Service Agreement under its Power Sales Tariff, FERC Electric Tariff Original Volume No. 10, with Northern Indiana Public Service Company. The Service Agreement provides for the sale of capacity and energy by Missouri Public Service to Northern Indiana Public Service Company pursuant to the tariff.

UtiliCorp requests waiver of the Commission's Regulations to permit the Service Agreement to become effective in accordance with its terms.

Comment date: January 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

34. CINERGY Services, Inc.

[Docket No. ER96–548–000]

Take notice that CINERGY Services, Inc. (CINERGY) on December 7, 1995, tendered for filing on behalf of its operating companies, The Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI), an Interchange Agreement, dated October 1, 1995, between CINERGY and the City of Tallahassee (Tallahassee).

The Interchange Agreement provides for the following service between CINERGY and Tallahassee.

1. Exhibit A—Power Sales by Tallahassee
2. Exhibit B—Power Sales by CINERGY

CINERGY and Tallahassee have requested an effective date of January 1, 1996.

Copies of the filing were served on the City of Tallahassee, the Florida Public Service Commission, the Kentucky Public Service Commission, the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: January 2 1996, 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, 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 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. 95–31279 Filed 12–26–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. RP96–82–000]

Algonquin Gas Transmission Co.; Notice of Proposed Changes In FERC Gas Tariff

December 20, 1995.

Take notice that on December 14, 1995, Algonquin Gas Transmission Company (Algonquin) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following revised tariff sheets, with a proposed effective date of January 15, 1996:

Twenty-fifth Revised Sheet No. 20A

Original Sheet No. 99E

Algonquin states that the purpose of this filing is to flow through a refund from National Fuel Gas Supply Corporation related to its Account Nos. 191 and 186, as filed in National Fuel's Docket No. RP95–373–002.

Algonquin states that copies of this filing were mailed to all firm customers of Algonquin and interested states commissions.

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 NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. Pursuant to Section 154.210 of the Commission's Regulations, all such motions or protests must be filed not later than 12 days after the date of the filing noted above. 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. 95–31286 Filed 12–26–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–103–000]

ANR Pipeline Company; Notice of Request Under Blanket Authorization

December 20, 1995.

Take notice that on December 15, 1995, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP96–103–000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to add, construct, and operate a turbine meter at an existing interconnection with Wisconsin Power & Light Company (WPL) for delivery of natural gas to WPL in Fond du Lac County, Wisconsin, under the blanket certificate issued in Docket No. CP82–682–000, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

ANR states that the proposed facilities consist of an 8-inch turbine meter and approximately 10 feet of 8-inch pipe. ANR estimates that the facilities would cost approximately $170,000. ANR indicates that the proposed facilities would increase the capacity of the metering station from 3,800 Mcf per hour to 5,300 Mcf per hour. ANR also indicates that the volumes to be delivered at the modified facility would be within the certificated entitlements of WPL.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, 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 § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, 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 Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–31289 Filed 12–26–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–84–000]

Columbia Gulf Transmission Co.; Notice of Filing

December 20, 1995.

Take notice that on December 14, 1995, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing the following report.

Pursuant to Section 34 (Crediting of Excess Revenues) of the General Terms and Conditions (GTC) of Columbia Gulf's FERC Gas Tariff, Second Revised Volume No. 1, Columbia Gulf calculated revenues applicable to Rate Schedules ITS–1 and ITS–2 (Applicable Rate Schedules) for the twelve-month period ended October 31, 1995. Based upon the calculations, the revenues generated were not sufficient to result in any Excess Revenues of crediting.

Columbia Gulf is also filing a negative adjustment applicable to the Excess Revenues previously calculated and credited to customers' bills for the twelve-month period ended October 31, 1994, for which it filed its report pursuant to Section 34 on December 14, 1994, in Docket No. RP95–92. This adjustment, which reduces the amount of Excess Revenues credited in 1994, reflects billing adjustments applicable to the services under the Applicable Rate Schedules for that period, which adjustments were made during the twelve-month period ended October 31, 1995. The total adjustment reduces 1994 Excess Revenues by a total of

$138,822.94, and Columbia Gulf is reflecting the effect of this adjustment on customers' bills concurrently with the filing of this report.

Any person desiring to be heard or to protest this filing 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 §§ 385.214 and 385.211 of the Commission's Rules and Regulations. Pursuant to § 154.210 of the Commission's Regulations, all such motions or protests must be filed not later than 12 days after the date of the filing noted above. 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. 95–31284 Filed 12–26–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–83–000]

Columbia Gas Transmission Corp.; Notice of Filing

December 20, 1995.

Take notice that on December 14, 1995, Columbia Gas Transmission Corporation (Columbia) tendered for filing the following report.

Pursuant to Section 37 (Crediting of Excess Revenues) of the General Terms and Conditions (GTC) of Columbia's FERC Gas Tariff, Second Revised Volume No. 1, Columbia calculated Excess Revenues applicable to Rate Schedules ITS and SIT (Applicable Rate Schedules) for the twelve-month period ended October 31, 1995. In accordance with GTC Section 37, Columbia is returning such Excess Revenues through dollar credits to applicable Firm Transportation Customers' bills concurrently with the filing of this report in the total amount of $1,681,204.35. Columbia collected no Excess Revenues under Rate Schedule ISS during this time period.

Columbia is also filing a negative adjustment applicable to the Excess Revenues previously calculated and credited to customers' bills for the twelve-month period ended October 31, 1994, for which Columbia filed its report pursuant to Section 37 on December 14, 1994, in Docket No. RP95–91. This adjustment which reduces the amount of Excess Revenues credited in 1994, reflects billing adjustments applicable to the services under the Applicable Rate Schedules for that period, which adjustments were made during the twelve-month period ended October 31, 1995. The total adjustment reduces 1994 Excess Revenues by a total of $132,476.52, and Columbia is reflecting the effect of this adjustments on customers' bills concurrently with the filing of this report.

Any person desiring to be heard or to protest this filing should file a motion to inter even or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. Pursuant to Section 154.210 of the Commission's Regulations, all such motions or protests must be filed not later than 12 days after the date of the filing noted above. 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. 95–31285 Filed 12–26–95; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 11516–000–MI]

Commonwealth Power Company; Notice not Ready for Environmental Analysis Notice Requesting Interventions and Protests, and Notice of Scoping Pursuant to the National Environmental Policy Act of 1969

December 20, 1995.

On October 25, 1995, the Federal Energy Regulatory Commission (Commission) issued a letter accepting the Commonwealth Power Company's application for the Irving Hydroelectric Project, located on the Thornapple River in Barry County, Michigan.

The Irving Dam's principal project features would consist of an existing 6-foot-high gravity-earth filled dam, an existing reservoir with a surface area of 25 acres at a maximum pool elevation of 738.5 feet USGS and a storage capacity of 100 acre-feet, a 1,200-foot-long head race canal, and a powerhouse containing one generating unit with a rated capacity of 600 Kw. The project would have an average annual generation of 1,800,000 Kwh. The project site is owned by Commonwealth Power Company.

The application is not ready for environmental analysis at this time. A public notice will be issued in the future indicating its readiness for environmental analysis and soliciting comments, recommendations, terms and conditions, or prescriptions on the application and the applicant's reply comments.

The purpose of this notice is to: (1) Invite interventions and protests; (2) advise all parties as to the proposed scope of the staff's environmental analysis, including cumulative effects, and to seek additional information pertinent to this analysis; and (3) advise all parties of their opportunity for comment.

Interventions and Protests

All filings must: (1) Bear in all capital letters the title ''PROTEST,'' ''MOTION TO INTERVENE,'' ''NOTICE OF INTENT TO FILE COMPETING APPLICATION,''or ''COMPETING APPLICATION;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 C.F.R. 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, D.C. 20426.

An additional copy must be sent to: Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

All filings for any protest or motion to intervene must be received 60 days from the issuance date of this notice.

Scoping Process

The Commission's scoping objectives are to:

- identify significant environmental issues;
- determine the depth of analysis appropriate to each issue;
- identify the resource issues not requiring detailed analysis; and
- identify reasonable project alternatives.

The purpose of the scoping process is to identify significant issues related to the proposed action and to determine what issues should be covered in the environmental document pursuant to the National Environmental Policy Act of 1969. The document entitled ''Scoping Document I'' (SDI) will be circulated shortly to enable appropriate federal, state, and local resource agencies, developers, Indian tribes, non-governmental organizations (NGOs), and other interested parties to effectively participate in and contribute to the scoping process. SDI provides a brief description of the proposed action, project alternative, the geographic and temporal scope of a cumulative effects analysis, and a list of preliminary issues identified by staff.

The Commission will decide, based on the application, and agency and public comments to scoping, whether licensing the Irving Hydroelectric Project constitutes a major federal action significantly impacting the quality of the human environment. The Commission staff will not hold scoping meetings unless the Commission decides to prepare an environmental impact statement, or the response to SDI warrants holding such meetings.

Individuals, organizations, and agencies with environmental expertise and concerns are encouraged to comment on SDI and assist the staff in defining and clarifying the issues to be addressed.

All filings should contain an original and 8 copies. Failure to file an original and 8 copies may result in appropriate staff not receiving the benefit of your comments in a timely manner. See 18 CFR 4.34(h). In addition, commentors *may* submit a copy of their comments on a 3½-inch diskette formatted for MS-DOS based computers. In light of our ability to translate MS-DOS based materials, the text need only be submitted in the format and version that it was generated (i.e., MS Word, WordPerfect 5.1/5.2, ASCII, etc.). It is not necessary to reformat word processor generated text to ASCII. For MacIntosh users, it would be helpful to save the documents in Macintosh word processor format then write them to files on a diskette formatted for MS-DOS machines. All comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, and should show the following captions on the first page: Irving Hydroelectric Project, FERC No. 11516.

Further, interested persons are reminded of the Commission's Rules of Practice and Procedures, requiring parties or interceders (as defined in 18 CFR 385.2010) to file documents on each person whose name is on the official service list for this proceeding. See CFR 4.34(b).

The Commission staff will consider all written comments and may issue a Scoping Document II (SDII). SDII will include a revised list of issues, based on the scoping process.

For further information regarding the scoping process, please contact Ms. Julie Bernt, Federal Energy Regulatory Commission, Office of Hydropower Licensing, 888 First Street NE., Washington, D.C. 20426 at (202) 219–2814.

Lois D. Cashell,

Secretary.

[FR Doc. 95–31287 Filed 12–26–95; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 11120–002–MI]

Commonwealth Power Company; Notice Not Ready for Environmental Analysis Notice Requesting Interventions and Protests, and Notice of Scoping Pursuant to the National Environmental Policy Act of 1969

December 20, 1995.

On November 29, 1995, the Federal Energy Regulatory Commission (Commission) issued a letter accepting Commonwealth Power Company's application filed on March 4, 1994, as amended December 29, 1994, for the Middleville Hydroelectric Project, located in the Thornapple River in Barry County, Michigan.

The Middleville Project's principal project features would consist of an existing 125-foot-high concrete gravity dam, an existing reservoir with a storage capacity of 30 acres and a normal maximum surface elevation of 708.5 feet msl, a 25-foot-long penstock, an existing powerhouse containing one generating unit with a rated capacity of 350 kW and an existing 100-foot-long transmission line. The project would have an average annual generation of 1,400,000 kWh. The project site is owned by the applicant.

The application is not ready for environmental analysis at this time. A public notice will be issued in the future indicating its readiness for environmental analysis and soliciting comments, recommendations, terms and conditions, or prescriptions on the application and the applicant's reply comments.

The purpose of this notice is to: (1) Invite interventions and protests; (2) advise all parties as to the proposed scope of the staff's environmental analysis, including cumulative effects, and to seek additional information pertinent to this analysis; and (3) advise all parties of their opportunity for comment.

Inverventions and Protests

All filings must: (1) bear in all capital letters the title ''PROTEST,'' ''MOTION TO INTERVENE,'' ''NOTICE OF INTENT TO FILE COMPETING APPLICATION,'' or ''COMPETING APPLICATION;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies my obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, D.C. 20426.

An additional copy must be sent to: Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

All filings for any protest or motion to intervene must be received 60 days from the issuance date of this notice.

Scoping Process

The Commission's scoping objectives are to:

- identify significant environmental issues;
- determine the depth of analysis appropriate to each issue;
- identify the resource issues not requiring detailed analysis; and
- identify reasonable project alternatives.

The purpose of the scoping process is to identify significant issues related to the proposed action and to determine what issues should be covered in the environmental document pursuant to the National Environmental Policy Act of 1969. The document entitled ''Scoping Document I'' (SDI) will be circulated shortly to enable appropriate federal, state, and local resource agencies, developers, Indian tribes, non-governmental organizations (NGOs), and other interested parties to effectively participate in and contribute to the scoping process. SDI provides a brief description of the proposed action, project alternative, the geographic and

temporal scope of a cumulative effects analysis, and a list of preliminary issues identified by staff.

The Commission will decide, based on the application, and agency and public comments to scoping, whether licensing the Middleville Hydroelectric Project constitutes a major federal action significantly impacting the quality of the human environment. The Commission staff will not hold scoping meetings unless the Commission decides to prepare an environmental impact statement, or the response to SDI warrants holding such meetings.

Individuals, organizations, and agencies with environmental expertise and concerns are encouraged to comment on SDI and assist the staff in defining and clarifying the issues to be addressed.

All filings should contain an original and 8 copies. Failure to file an original and 8 copies may result in appropriate staff not receiving the benefit of your comments in a timely manner. See 18 CFR 4.34(h). In addition, commenters *may* submit a copy of their comments on a 3½-inch diskette formatted for MS-DOS based computers. In light of our ability to translate MS-DOS based materials, the text need only be submitted in the format and version that it was generated (i.e., MS Word, WordPerfect 5.1/5.2, ASCII, etc.). It is not necessary to reformat word processor generated text to ASCII. For Macintosh users, it would be helpful to save the documents in Macintosh word processor format then write them to files on a diskette formatted for MS-DOS machines. All comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, and should show the following captions on the first page: Middleville Hydroelectric Project, FERC No. 11120–002.

Further, interested persons are reminded of the Commission's Rules of Practice and Procedures, requiring parties or interceders (as defined in 18 CFR 385.2010) to file documents on each person whose name is on the official service list for this proceeding. See CFR 4.34(b).

The Commission staff will consider all written comments and may issue a Scoping Document II (SDII). SDII will include a revised list of issues, based on the scoping process.

For further information regarding the scoping process, please contact Ms. Julie Bernt, Federal Energy Regulatory Commission, Office of Hydropower Licensing, 888 First Street NE., Washington, D.C. 20426 at (202) 219–2814.

Lois D. Cashell,

Secretary.

[FR Doc. 95–31288 Filed 12–26–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER95–1096–000]

PacifiCorp Power Marketing, Inc.; Notice of Filing

December 15, 1995.

Take notice that on December 14, 1995, PacifiCorp Power Marketing, Inc., tendered for filing an amendment in the above-referenced docket.

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 18 CFR 385.214). All such motions or protests should be filed on or before January 2, 1996. 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. 95–31282 Filed 12–26–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–74–002]

Texas Eastern Transmission Corp.; Notice of Petition to Amend

December 20, 1995.

Take notice that on December 18, 1995, Texas Eastern Transmission Corporation (Texas Eastern), 5400 Westheimer Court, Houston, Texas 77056–5310, filed in Docket No. CP95–74–002 pursuant to Section 7(c) of the Natural Gas Act a petition to amend the authorization issued June 6, 1995, in Docket No. CP95–74–000, in order to ''firm-up'' service for two shippers under Rate Schedules FTS–7 and FTS–8 and to delete one shipper from the group of shippers for which additional firm long-term incremental transportation service was previously authorized for another FTS–7/FTS–8 shipper as well as to construct and operate different incremental facilities from those previously authorized, all as more fully set forth in the amendment on file with the Commission and open to public inspection.

Texas Eastern states that the June 6, 1995, order authorized it to provide firm, additional, long-term, incremental transportation service of natural gas under Rate Schedules FTS–7 and/or FTS–8 of up to a total of 8,776 Dekatherms per day (Dthd) for the Customers as follows:

	FTS–7 DTH/d	FTS–8 DTH/d
NJN	1,449	3
PGW	318	7
Colonial	6,984	15
Total	8,751	25

In order to provide the addition service the order also authorized Texas Eastern to construct and operate facilities consisting of approximately 2.39 miles of 36-inch pipeline looping in two separate segments in the state of Pennsylvania. The specific facilities included:

- 1.0 miles of 36-inch pipeline looping between Texas Eastern's Delmont Compressor Station in Westmoreland County, Pennsylvania and
- 1.39 miles of 36-inch pipeline looping between Texas Eastern's existing Shermans Dale and Grantsville Compressor Stations in Dauphin County, Pennsylvania.

The estimated total cost of the proposed facilities (in 1996 dollar was $8,203,000.

Finally, Texas Eastern was authorized to adjust the reservation charges applicable to Rate Schedules FTS–7 and FTS–8 to reflect the impact of ''rolling in'' the costs association with the expanded facilities, although Texas Eastern was required to make a limited Section 4 filing to place the rates into effect.

In the instant amendment, Texas Eastern proposes to modify the facilities required to provide the service and to reflect a change in the group of parties participating in the project. Texas Eastern states that it has been informed by Colonial that it no longer requires the additional service authorized for it. Additionally, Texas Eastern states that it was notified that other Rate Schedules FTS–7 and/or FTS–8 customers, namely Commonwealth Gas Company (commonwealth) and Providence Gas Company (Providence), sought to participate in the project and have since executed long term service agreements. As a result of these requests, Texas Eastern states it has identified changes to existing facilities which can be made with will result in the ability to provide

the requested service at a significantly lower cost and with much less environmental impact. Specifically, Texas Eastern now proposes to implement the following construction activities:

(1) Relay approximately 2.08 miles of Line No. 1 with new 36-inch pipeline, looping Texas Eastern's existing 36-inch Line 2 from approximately Milepost 1056.10 to approximately Milepost 1058.18 in Somerset County, Pennsylvania between the existing Uniontown (Station 21–A) and Bedford (Station 22–A) Compressor Stations; and

(2) Relay approximately 0.86 miles of Line No. 1 with 0.86 miles of new 36-inch pipeline, looping Texas Eastern's existing 36-inch Line No. 2 from approximately Milepost 1110.01 to approximately Milepost 1110.87 in Bedford County, Pennsylvania between the existing Bedford (Station 22–A) and Chambersburg (Station 23) Compressor Stations.

The participating customers and service allocations to each under Rate Schedules FTS–7 and FTS–8, and reflected in the amendment, are as follow:

	FTS–7DTH/d	FTS–8DTH/d
NJN	1,449	3
PGW	318	7
Commonwealth	266	4,227
Providence	538	4,745
Total	2,571	9,032

Based on the annual cost of service for the amended facilities, Texas Eastern, consistent with the determination in Texas Eastern's previous ''firm-up proceedings, proposes a revised reservation charge of $6.925 per dekatherm for Rate Schedule FTS–7 and $7.206 per dekatherm for Rate Schedule FTS–8.

Texas Eastern estimates that the construction will cost $7,689,000, a reduction of approximately $514,000 from the estimated cost of the facilities authorized in the June 6, 1995, order.

Any person desiring to be heard or to make any protect with reference to said petition to amend should or on before January 11, 1996, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the petition to amend is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Texas Eastern to appear or be represented at the hearing.

Lois D. Cashell.

Secretary

[FR Doc. 95–31282 Filed 12–26–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM96–3–29–001]

Transcontinental Gas Pipe Line Corp; Notice of Proposed Changes in FERC Gas Tariff

December 20, 1995.

Take notice that on December 14, 1995, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, First Revised Sheet No. 335. Such tariff sheet is proposed to be effective January 12, 1996.

Transco states that the purpose of the instant filing is to revise currently effective tariff provisions to comply with the November 29, 1995, order in Docket No. TM96–3–29–000, which directed Transco to file, within 15 days of such order, an explanation of when the Annual Charge Adjustment (ACA) charge is applied to storage injections. Specifically, Transco has revised Section 27.1 of the General Terms and Conditions of Transco's Volume No. 1 Tariff to clarify Transco's policy of assessing the ACA charge only once on the same volume of gas when Transco provides service under multiple transaction arrangements.

Transco states that it is serving copies of the instant filing to its customers, State Commissions and interested parties.

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 § 385.211 of the Commission's Rules and Regulations. Pursuant to § 154.210 of the Commission's Regulations, all such protests must be filed not later than 12 days after the date of the filing noted above. 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. 95–31283 Filed 12–26–95; 8:45 am]

BILLING CODE 6717–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Determination of Insufficiency of Assets to Satisfy All Claims of Certain Financial Institutions in Receivership

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice.

SUMMARY: In accordance with the authorities contained in 12 U.S.C. 1821(c), the Federal Deposit Insurance Corporation (FDIC) was duly appointed receiver for the financial institution specified in **SUPPLEMENTARY INFORMATION.** The FDIC has determined that the proceeds which can be realized from the liquidation of the assets of the below listed receivership estate are insufficient to wholly satisfy the priority claims of depositors against the receivership estates. Therefore, upon satisfaction of secured claims, depositor claims and claims which have priority over depositors under applicable law, no amount will remain or will be recovered sufficient to allow a dividend, distribution or payment to any creditor of lessor priority, including but not limited to, claims of general creditors. Any such claims are hereby determined to be worthless

FOR FURTHER INFORMATION CONTACT: Tina A. Lamoreaux, Counsel, Legal Division, FDIC, 550 17th Street, NW., Room H–11027, Washington, D.C. 20429. Telephone: (202) 736–3134.

SUPPLEMENTARY INFORMATION: Financial Institution in Receivership Determined

to Have Insufficient Assets to Satisfy All Claims

Northside Bank, #4269 San Antonio, Texas

Dated: December 20, 1995.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 95–31262 Filed 12–26–95; 8:45 am]

BILLING CODE 6714–01–M

FEDERAL RESERVE SYSTEM

Carol M. Axness, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have 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 the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they 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 that notice or to the offices of the Board of Governors. Comments must be received not later than January 10, 1996.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Carl M. Axness, Blair, Wisconsin; to acquire a total of 25.81 percent; Paul W. Dettloff, Arcadia, Wisconsin, to acquire an additional 25.15 percent, for a total of 48.38 percent; and Dennis J. Stephenson, Blair, Wisconsin, to acquire a total of 25.81 percent, of the voting shares of H. R. Financial, Inc., Blair, Wisconsin, and thereby indirectly acquire Union Bank of Blair, Blair, Wisconsin.

B. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. A.B. Bayouth and/or Suad Bayouth, Skiatook, Oklahoma; to acquire an additional 45.20 percent, for a total of 56.7 percent; James M. Patrick and/or Margaretta Patrick, Okarche, Oklahoma, to acquire a total of 4.5 percent; The Rudolph J. Wolf Revocable Trust, Rudolph J. Wolf, Trustee, Skiatook, Oklahoma, to acquire a total of 4.5 percent; Matthew J. Kane, Jr., Pawhuska, Oklahoma, to acquire an additional .4 percent, for a total of 5.4 percent; Carolyn Kane, Pawhuska, Oklahoma, to acquire an additional 4.3 percent, for a total of 5.4 percent; Nezra Koury, and Elaine Shartouni Abdo, and/or Elie Shartuni Abdo, all of Tulsa, Oklahoma, to acquire an additional 2.2 percent, for a total of 7.4 percent of the voting shares of Skiatook Bancshares, Inc., Skiatook, Oklahoma, and thereby indirectly acquire The Exchange Bank, Skiatook, Oklahoma.

In addition, John Kane, Pawhuska, Oklahoma, has also applied to retain a total of 1.0 percent of the voting shares of Skiatook Bancshares, Inc., Skiatook, Oklahoma, and thereby indirectly retain The Exchange Bank, Skiatook, Oklahoma.

C. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Robert Dirks, George West, Texas; to acquire an additional 4.1 percent, for a total of 12.17 percent; Paul Dirks, Live Oak County, Texas, to acquire an additional 1.71 percent, for a total of 5.08 percent; and Marcia Wallace, Wimberly, Texas, to acquire an additional .84 percent, for a total of 2.51 percent, of the voting shares of Charlotte Bancshares, Inc., Charlotte, Texas, and thereby indirectly acquire The Country Bank, Charlotte, Texas.

Board of Governors of the Federal Reserve System, December 20, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–31303 Filed 12–26–95; 8:45 am]

BILLING CODE 6210–01–F

Banknorth Group, 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 January 19, 1996.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. Banknorth Group, Inc., Burlington, Vermont; to acquire 100 percent of the voting shares of First Massachusetts Bank, N.A., Worcester, Massachusetts (in organization).

2. Beacon Bancorp, Taunton, Massachusetts; to become a bank holding company by acquiring 100 percent of the voting shares of Bristol County Savings Bank, Taunton, Massachusetts.

B. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. First Southern Bancorp, Inc., Stanford, Kentucky; to acquire 100 percent of the voting shares of Casey County Bancorp, Inc., Liberty, Kentucky, and thereby indirectly acquire Casey County Bank, Liberty, Kentucky.

2. Pittsburgh Home Financial Corp., Pittsburgh, Pennsylvania; to become a bank holding company by acquiring 100 percent of the voting shares of Pittsburgh Home Savings Bank, Pittsburgh, Pennsylvania.

C. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Harbor Springs Financial Corporation, Harbor Springs, Michigan, to acquire 100 percent of the voting shares of Select Bank, Grand Rapids, Michigan (in organization).

D. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. CNB Bancshares, Inc., Evansville, Indiana; to acquire 100 percent of the voting shares of DuQuoin Bancorp, Inc., DuQuoin, Illinois, and thereby indirectly acquire DuQuoin National Bank, DuQuoin, Illinois.

E. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Bancshares of Nichols Hills, Inc., Ponca City, Oklahoma; to become a bank holding company by acquiring 100

percent of the voting shares of Bank of Nichols Hills, Oklahoma City, Oklahoma (in organization).

In connection with this application, Pioneer Bancshares, Inc., Employee Stock Ownership Plan, Ponca City, Oklahoma, and its subsidiary, Pioneer Bancshares, Inc., Ponca City, Oklahoma; have applied to become bank holding companies by acquiring 100 percent of the voting shares of Bancshares of Nichols Hills, Inc., Oklahoma City, Oklahoma, proposed parent of Bank of Nichols Hills, Oklahoma City, Oklahoma (in organization).

2. Platte Valley Bancshares, Inc., Kansas City, Missouri, and Peoples Bancshares of Schuyler County, Kansas City, Missouri, through their subsidiary Lindsey Bancshares, Inc., Harrisonville, Missouri; to acquire 100 percent of the voting shares of Harrisonville Bancshares, Inc., Harrisonville, Missouri, and thereby indirectly acquire Allen Bank & Trust Co., Harrisonville, Missouri.

In connection with this application, Peoples Bancshares of Schuyler County and Lindsey Bancshares, Inc., also have applied to become bank holding companies.

F. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. FNB Bancorp, Los Angeles, California; to acquire Founders National Bank of Los Angeles, Los Angeles, California. Consummation of this application must be recevied by January 16, 1996.

Board of Governors of the Federal Reserve System, December 20, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–31304 Filed 12–26–95; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

Notice of Maine Exemption From The Fair Debt Collection Practices Act

AGENCY: Federal Trade Commission.

ACTION: Exemption from Sections 803–812 of the Fair Debt Collection Practices Act granted to State of Maine.

SUMMARY: The Commission is hereby publishing its decision to grant the State of Maine an exemption from Sections 803–812 of the Fair Debt Collection Practices Act for various classes of debt collection practices conducted in Maine, in accordance with Section 817 of that Act.

EFFECTIVE DATE: March 26, 1996.

FOR FURTHER INFORMATION CONTACT: John F. LeFevre, Division of Credit Practices, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580; (202) 326–3224.

SUPPLEMENTARY INFORMATION: The Fair Debt Collection Practices Act, 15 U.S.C. 1691 *et seq.* (''FDCPA''), prohibits a number of deceptive, unfair and abusive practices by third party debt collectors.

Section 817 of the FDCPA requires that the Commission exempt from its requirements any class of debt collection practices within any State if, upon application, the Commission determines that under the law of the State, the class of debt collection practices is subject to requirements substantially similar to those imposed by the FDCPA, and that there is adequate provision for enforcement. The State of Maine Bureau of Consumer Credit Protection (''Applicant'') has filed an application seeking exemption from the FDCPA for various classes of debt collection practices in Maine.

The FDCPA prohibits debt collectors from using false or misleading statements, harassing or abusive conduct or any unfair methods to collect debts. Among the practices which are specifically prohibited are making false threats to coerce payment (such as false threats of suit); using deceptive collection notices that falsely appear to be from an attorney or court; and engaging in any sort of harassment, such as threatening violence, using profanity and obscenities, or making continuous phone calls. The FDCPA also restricts the extent to which debt collectors may call a consumer at work and prohibits them from making calls to consumers very early in the morning or late at night. With a few narrow exceptions, it prohibits collectors from contacting third parties and revealing the existence of a consumer's debt. In addition, the FDCPA prohibits collectors form adding charges to a debt unless the consumer involved agrees to them or they are permitted by law, and from filing suit against a consumer outside of the district of the consumer's residence or where the contract creating the debt was signed.

Under the FDCPA, if a consumer disputes the debt in writing, the collector is required to stop all collection efforts until the debt is verified. The FDCPA also states that if the consumer demands in writing that the debt collector cease all further collection efforts, the debt collector must comply even if the debt is valid. Finally, the FDCPA gives a consumer the right to bring suit against a debt collector in any court for violations of the FDCPA and, if successful, to receive actual damages and additional damages up to $1,000, as well as costs and attorney's fees.

The FDCPA is enforced primarily by the Federal Trade Commission. A violation of the FDCPA is deemed an unfair or deceptive practice in violation of the Federal Trade Commission Act. All of the functions and powers of the Federal Trade Commission Act are available to the Commission to enforce compliance with the FDCPA by any person. The Commission may enforce the provisions of the FDCPA in federal court, seeking civil penalties and injunctive and other relief as appropriate.

The Commission has promulgated procedures for state applications for exemption form the provisions of the FDCPA, which are published in 16 C.F.R. 901 (1995) (''Procedures''). Section 901.2 of the Procedures provides that any state may apply to the Commission for a determination that, under the laws of that State, (1) any class of debt collection practices within that State is subject to requirements that are substantially similar to, or provide greater protection for consumers than, those imposed under Sections 803 through 812 of the FDCPA; and (2) there is adequate provision for state enforcement of such requirements. Section 901.4 of the Procedures describes the criteria for making the determination. Section 901.4(a) requires that (1) the definitions and rules of construction in the state law import the same meaning and have the same application as those prescribed by the FDCPA; (2) debt collectors provide all the applicable notifications under the state law that are required by the FDCPA; (3) debt collectors under the state law take all affirmative actions and abide by obligations substantially similar to, or more extensive than, those prescribed by the FDCPA; (4) debt collectors under the state law abide by the same or more stringent prohibitions as are prescribed by the FDCPA; (5) obligations and responsibilities imposed on consumers under the state law are no more costly, lengthy, or burdensome than corresponding obligations or responsibilities imposed on consumers by the FDCPA; and (6) consumers' rights and protections under the state law are substantially similar to, or more favorable than, those provided by the FDCPA. Section 901.4(b) requires that the Commission consider (1) the facilities, personnel and funding devoted to administrative enforcement of the state law; (2) provisions in the state law for civil liability (for actions brought in the private sector) as

compared with Section 813 of the FDCPA; and (3) the statute of limitations for civil liability in the state law (for actions brought in the private sector) which should be substantially similar or longer than that in the FDCPA. The Commission must consider each provision of the state law in comparison with each corresponding provision in Sections 803 through 812 of the FDCPA, and not the state law as a whole in comparison with the FDCPA as a whole.

Section 901.3 of the Procedures requires that an application be accompanied by a variety of documents including (1) the state law; (2) a comparison of the provisions of the state law with various sections of the FDCPA; (3) a copy of the full text of the law that provides for its enforcement; (4) a comparison of provisions of the law that provides for enforcement with the provisions of Section 814 of the FDCPA; and (5) a statement identifying the state office designated to administer the state law, along with a description of the ability of that office to effectively administer the statute. If an application is filed in accordance with the Procedures, Section 901.5 states that the filing shall be published in the Federal Register. Section 901.6 provides that the Commission may grant an exemption under the provisions of the Procedures.

Maine's application requests exemption from the provisions of the FDCPA for various classes of debt collection practices in Maine governed by Title 32 of the Maine Revised Statutes, Section 11001 *et seq.* Maine seeks an exemption for the following classes of practices: Collection by means of the mails and other interstate and intrastate written communications; collection by use of telephone and other electronic means of transmission; in-person collection; and repossession or other ''enforcement of security interest'' activity. In filing the application, Maine complied with Section 901.3 of the Procedures.

On May 27, 1993, Applicant filed an addendum to it application of February 25, 1993, stating that certain changes had been made to Title 32 of the Maine Revised Statutes, Section 11002.6. The definition of the term ''debt collector'' was broadened to include attorneys whose principal activities include collection of debts for clients. Subsection 6 was further amended by including within the definition of ''debt collector'' any person who regularly engages in the enforcement of security interests securing debts, but excluding any person who retrieves collateral when a consumer has voluntarily surrendered possession. A new Section 11017 authorizes a debt collector to take possession of collateral after default under certain conditions.

Applicant asserts that the provisions of Maine's Fair Debt Collection Practices Act (''Maine Act''), Me. Rev. Stat. Ann., Title 32 Section 11011 *et seq.*, and related statutes are substantially similar to, or provide greater protection for consumers than, the equivalent provisions of the FDCPA, and that the State of Maine is able to provide adequate enforcement of the Maine Act's requirements. Applicant's request was published in the Federal Register for sixty days of comment.[1]

After evaluating the request and the comments received, the Commission has determined that an exemption from Sections 803–812 of the FDCPA for debt collection practices conducted within Maine should be granted. Pursuant to Section 817 of the FDCPA, the Commission analyzed whether the level of protection to consumers under the Maine Act is substantially equivalent to that provided in the FDCPA and whether there is adequate provision for enforcement of the Maine Act by the State. In making this determination, the Commission considered each provision of the Maine Act and compared it with the corresponding provision in the FDCPA, in accordance with 16 C.F.R. 901.4, as discussed below. The exemption proceeding as a whole was conducted pursuant to 16 C.F.R. 901 *et seq.*

Comments

Two comments were received. One comment was from a consumer from Virginia who objected to ''certain provisions of the debt collection act being waived'' and expressed concern over ''state licensing to avoid the Federal Debt Collection Practices Act'' and the monitoring of state requirements. The second comment was from Harry W. Giddinge, Deputy Superintendent of the Bureau of Consumer Credit Protection of the State of Maine, addressing each question posed in the Commission's Request for Comment and concluding in each case that the protection afforded consumers by the Maine Act are substantially similar to, or greater than, those provided by the FDCPA.

I. The Level of Protection to Consumers Provided by the Maine Act Is Substantially Equivalent to or Greater Than That Provided by the FDCPA

Generally, the Maine Act either replicates the language of the FDCPA or provides greater protection than the FDCPA. In the Federal Register notice of Maine's application for exemption, the Commission highlighted the language differences between the various sections of the Maine Act and the FDCPA, each of which discussed is below.

A. Definitions (Section 803 of the FDCPA; Sections 11002, 11003, 11012 of the Maine Act)

1. Conducting Business Within the State

Section 11002.2 of the Maine Act limits the coverage of the Maine Act to those conducting business in Maine; it has no precise counterpart in the FDCPA because the FDCPA's jurisdiction is nationwide. The jurisdiction of the Maine Act extends to violations by debt collectors physically located in Maine and to non-residents doing business in Maine, to the extent that the State's long-arm statute affords jurisdiction over non-resident defendants.[2]

The definition reflects the limits of Maine's jurisdiction in policing debt collectors as compared to the nationwide jurisdiction of the Commission in policing debt collectors. The language limiting the scope of Maine's enforcement only to violations committed in the State by resident debt collectors as well as non-resident collectors acting within the State does not affect the level of protection afforded to Maine residents by the Maine Act as compared to the protection afforded to Maine residents by the FDCPA.

2. Definition of Debt Collector

Maine's definition of debt collector in its Act is identical to section 803(6) of the FDCPA, except that section 11002.6 of the Maine Act also includes:

> Persons who furnish collection systems carrying a name which simulates the name of the debt collector and who supply forms or form letters to be used by the creditor even though the forms direct the debtor to make payments directly to the creditor.

Applicant views this provision as a logical extension of the portion of section 803(6) that includes creditors using names other than their own within the definition of debt collector. The State provision functions to prevent creditors from using collection systems that create the false impression in the mind of the consumer that a debt

[1] 59 FR 24,159 (May 10, 1994).

[2] Maine's jurisdiction would extend, therefore, to those transacting any business within the State to the extent permitted by the due process clause of the Fourteenth Amendment of the U.S. Constitution. Me. Rev. Stat. Ann., Title 14 §§ 704–A.1—A.2.A (1975).

collector is involved in the collection process rather than the creditor.[3]

As compared to section 803(6) of the FDCPA, therefore, section 11002.6 of the Maine Act provides greater protection to the consumer because it specifically includes those who routinely provide creditors with the means of misrepresent the involvement of a debt collector in the creditor's collection activities.

3. Collection Activities Related to a Business

Section 11003.8 of the Maine Act excludes from the definition of ''debt collector'' those whose collection activities are confined or directly related to the operation of a business other than that of a debt collector, such as a financial institution already regulated under title 9–B of the Maine Banking Code. The FDCPA does not contain this precise exclusion, although section 803(6) does exclude creditors collecting their own debts in their own names, as well as other designated groups such as government employees, process servers, non-profit organizations and mortgage servicers.[4] The section 11003.8 exclusion appears to be directed to persons who are not collection agencies but collect their own debts on occasion. Presumbly, these groups are employees or officers of creditors such as financial institutions who collect only for themselves or others whose principal business is not debt collection but who sometimes engage in collection activity. These groups are also excluded by section 803(6) of the FDCPA. Thus, the scope of the section 11003.8 exclusion in the Maine Act is no greater than that provided by section 803(6) of the FDCPA. The coverage of the two Acts, therefore, remains ''substantially similar.''

4. Attorneys

Section 11002.6 of the Maine Act specifically includes within the definition of debt collector ''any attorney-at-law whose principal activities include collecting debts as an attorney on behalf of and in the name of clients.[5] Section 803(6) of the FDCPA defines debt collectors as persons who regularly collect debts for others or who are engaged in a business the principal purpose of which is debt collection. An attorney could fall within this definition. The FDCPA, however, does not specifically cover attorneys, as a group, as does Section 11002.6 of the Maine Act. In any event, the principle in both is the same: a party must regularly collect debts for others or run a debt collection business to be covered.

The Maine Act[6] differs from the FDCPA only in that it specifically identifies attorneys who collect debts for clients as ''debt collectors.''

Because is specifically addresses attorneys, the definition of debt collector in the Maine Act is more precise as to attorneys than section 803(6) of the FDCPA. Its coverage may be slightly more restrictive than that of the FDCPA, depending upon how the phrase ''principal activities include collecting debts'' is interpreted. We do not regard this latter difference as significant. Neither Act excludes attorneys. As far as attorneys are concerned, the requirements are substantially similar and the level of protection afforded by the Maine Act is essentially the same as that of the FDCPA.

5. Enforcement of Security Interests

Section 11002.6 of the Maine Act includes within the definition of ''debt collector'' any person regularly engaged in the enforcement of security interests. According to the Applicant, this includes persons who have engaged in this activity more than five times in the current or previous calendar year. The definition expressly excludes persons who routinely retrieve collateral when a person has voluntarily surrendered possession. Similarly, the FDCPA's definition of ''debt collector'' (Section 803 (6) (A)) includes any ''person * * * in any business the principal purpose of which is the enforcement of security interests.''

The Maine Act is more specific than the FDCPA and arguably more strict since it would expressly include persons enforcing security interests as infrequently as six times per year, whether or not that activity is the ''principal purpose'' of the business, as set forth the in FDCPA. Additionally, the FDCPA has never been interpreted to include parties who are hired simply to ''pick up'' collateral. The coverage of the Maine Act in this area is at least equal to, and probably greater than, that of the FDCPA. Thus, the level of protection provided is also at least equal to, and probably greater than, that provided by the FDCPA.

6. Repossession Activity

Section 11017 of the Maine Act defines how repossession is to take place and requires (1) that the debt collector/repossessor take inventory of any unsecured property that it acquires along with the repossessed property; and (2) that it notify the consumer that the unsecured collateral will be available at the consumer's convenience. There is no comparable definition in the FDCPA. Since Section 11017 of the Maine Act places additional requirements on the debt collector to supply information to the consumer, it provides greater protection to the consumer in this area than does the FDCPA.

7. Conclusion

These comparisons reveal that the definitions of terms in the Maine Act as a whole import the same meaning and have the same application as those prescribed by Sections 803-812 of the FDCPA, in accordance with Section 901.4(a) (1) of the Procedures. Therefore, as a whole, they function to provide substantially similar or greater protection to consumers than do the analogous definitions in the FDCPA.

B. Acquisition of Location Information (Section 804 of the FDCPA; Section 11011 of the Maine Act)

Section 11011 of the Maine Act is virtually identical to Section 804 of the FDCPA; therefore, its requirements are ''substantially similar'' to those in the FDCPA and debt collectors' obligations and prohibitions under the Maine Act are the same as those prescribed in the FDCPA, as mandated by Sections 901.4(a) (3) and (4) of the Procedures.

C. Debt Collection Communications (Section 805 of the FDCPA; Section 11012 of the Maine Act)

Section 805 of the FDCPA and Section 11012 of the Maine Act are virtually identical, with the exception of non-substantive language differences and dissimilar references to related state and federal laws. Thus, Maine's requirements in this area also meet the ''substantially similar'' test and debt collectors' obligations and prohibitions under the Maine Act satisfy the requirements of Sections 901.4(a) (3) and (4) of the Procedures. Section 11012 of the Maine Act also satisfies Section 901.4(a)(6) of the Procedures since the consumer's cease communication rights

[3] As such, Section 11002.6 also provides much the same protection as Section 812 of the FDCPA (which addresses form-sellers).

[4] Section 11003.1 of the Maine Act also excludes creditors collecting in their own names.

[5] Section 11003.1 of the Maine Act, which previously excluded attorneys from the definition of ''debt collector,'' was repealed following Maine's initial request for exemption of February 25, 1993. Maine submitted an addendum to its application, dated May 27, 1993, reporting that Section 11002.6 of the Maine Act had been modified by the legislature to include attorneys at law collecting debts on behalf of their clients (Maine Public Law 126, May 18, 1993). The modification became effective in September 1993.

[6] The Maine Act requires that the attorney's ''principal activities'' include collecting debts.

under that Section are the same as those in Section 805(c) of the FDCPA.

D. Harassment and Abuse (Section 806 of the FDCPA; Section 11013.1 of the Maine Act)

1. Publication of Debtor Lists

Like Section 806(3) of the FDCPA, Section 11013.1.C of the Maine Act prohibits publication of lists of consumers who refuse to pay debts. Both state and federal laws, however, except publications to consumer reporting agencies or persons meeting the requirements of their respective credit reporting acts, as defined in Sections 603(f) or 604(3) of the federal Fair Credit Reporting Act (''federal FCRA'') for the FDCPA and Title 10 of the Maine Fair Credit Reporting Act (''Maine FCRA'') for the Maine Act.

The definition of a consumer reporting agency (Section 603(f), federal FCRA; Section 1312.9, Maine FCRA) and the parties who have a permissible purpose to receive the lists at issue (Section 604(3), federal FCRA; Section 13121.33, Maine FCRA) are essentially the same in both statutes. In fact, the Maine FCRA is based upon, and was designed to supplement, the federal FCRA.[7] Since the definitions are the same, the limits on distribution of debtor lists are also the same. Thus, the state law referenced in Section 11013.1 of the Maine Act is substantially similar to Sections 603(f) and 604(3) of the federal FCRA; it follows that the Maine Act's reference to the Maine FCRA does not adversely affect the level of protection afforded by the Maine Act as compared to Section 806(3) of the FDCPA.

2. Reports to Consumer Reporting Agencies [Sections 806(3) and 807(8) of the FDCPA; Section 11013.4 of the Maine Act]

There is nothing in the FDCPA that prohibits a collection agency from reporting credit information to a consumer reporting agency. As discussed above, Section 806(3) expressly permits distribution of debtor lists to credit bureaus; Section 807(8) prohibits the communication of false credit information and requires that a disputed debt be reported as disputed. The Maine Act contains the same prohibitions. In addition, however, Section 11013.4 of the Maine Act prohibits a debt collector from reporting a debt solely in its own name and requires instead that the name of the original creditor also be included. The FDCPA contains no comparable requirement. The additional Maine provision is designed to allow consumers who review their credit reports to determine the source of a listed trade line rather than require them to contact the collection agency to determine the identity of the original creditor. Thus, the provision makes it easier for consumers to verify the existence of debts as well as the parties to whom they are owed. It provides greater protection in this area than does the FDCPA.

3. Shame Automobiles and Shame Cards

Section 11013.1G. of the Maine Act specifically prohibits the use of shame cards, shame automobiles and similar devices.[8] Section 806 of the FDCPA contains no comparable prohibition. In all other respects. Section 11013.1 of the Maine Act and Section 806 of the FDCPA are identical. Thus, to the extent that ''shame'' devices are still in use, the Maine Act arguably provides greater protection in this area than does the FDCPA.

4. Compliance With Section 901.(4)(a) of the Procedures

The obligations and prohibitions applicable to debt collectors required by Section 806 of the FDCPA are substantially the same as those required by Section 11013.1 of the Maine Act. Therefore, Sections 901.4(a)(3) and (4) of the Procedures are satisfied.

E. False and Misleading Representations (Section 807 of the FDCPA; Section 11013.2 of the Maine Act)

The two Acts prohibit the same false, deceptive or misleading representations in the same manner except for the following:

1. Reference to the Maine Consumer Credit Code

Both Section 807(6) of the FDCPA and Section 11013.2.F(2) of the Maine Act address false representations of the effect of a sale or transfer of interest in a debt on the consumer. The two provisions are the same, except that the Maine Act refers to practices prohibited by Title 9–A of the Maine Consumer Credit Code and the FDCPA does not.[9] Title 9–A of the Maine Consumer Credit Code prohibits a number of actions that are not prohibited by the FDCPA, including confessions of judgment, post-dated instruments, use of cross-collateral and wage assignments. These and other similar provisions all inure uniquely to the benefit of consumer-debtors in the State of Maine. Reference to these practices in Section 11013.2.F(2) of the Maine Act, therefore, provides an added measure of protection not present in Section 807(6) of the FDCPA.

2. Reference to Maine Fair Credit Reporting Act

Section 11013.2.P. of the Maine Act prohibits the false representation or implication that a debt collector operates or is employed by a ''consumer reporting agency,'' as defined by Title 10, Section 1312, Subsection 4, of the Maine Fair Credit Reporting Act. Section 807(16) of the FDCPA contains identical language, except that it refers to a ''consumer reporting agency'' as defined by the federal Fair Credit Reporting Act, 15 U.S.C. 1681a(f). As discussed previously, the definitions of ''consumer reporting agency'' in both the Maine Act and FDCPA are basically the same and the term has the same meaning in both statutes.[10] Thus, Section 11013.2.P. of the Maine Act is substantially similar to Section 807(16) of the FDCPA.

3. Compliance With Section 901.4(a) of the Procedures

Section 807(11) requires that debt collectors clearly disclose the nature and purpose of all communications made to collect a debt. The Maine Act contains an identical requirement. Since the same notification is mandated by both Acts, Section 901.4(a)(2) of the Procedures, which requires that all notifications be the same, is satisfied insofar as Section 807(11) is concerned. Similarly, since the FDCPA and the Maine Act are identical in this area, with the exception of references to state law, Sections 901.4(a) (2), (3) and (4) of

[7] Maine points out that in most cases in Maine FCRA is more restrictive than the federal FCRA. The Maine FCRA (1) limits the cost of credit reports; (2) limits the time in which a credit reporting agency must investigate and verify or delete trade lines; and (3) requires compliance by any credit reporting agencies serving users in the State of Maine. The law also requires registration of credit reporting agencies operating within the State.

[8] A shame car is an automobile with the name of the collection company emblazoned on the door that is parked in front of the debtor's residence and left there. A shame card is a calling card containing the name of the collection agency that is left posted on the debtor's door or other conspicuous spot that can be observed by others.

[9] The Maine Act prohibits: The false representation or implication that a sale, referral or other transfer of any interest in a debt shall cause the consumer to: (1) Lose any claim or defense to payment of the debt; or (2) Become subject to any practice prohibited by the Act *or the Maine Consumer Credit Code, Title 9–A.* (Emphasis added.) The FDCPA is the same except for the underlined portion.

[10] The definition of ''consumer reporting agency'' in the Maine Act refers to ''investigative consumer reports'' as well as ''consumer reports'' while the definition in the FDCPA refers only to ''consumer reports.'' For these purposes, they are the same.

the Procedures, requiring the same or more stringent notifications, obligations and prohibitions, are satisfied.

F. Unfair Practices (Section 808 of the FDCPA; Section 11013.3 of the Maine Act)

Section 808 of the FDCPA prohibits eight specified unfair practices; the preamble to Section 808 prohibits unfairness generally. Section 11013.3 of the Maine Act prohibits precisely the same practices as the FDCPA, plus several additional practices that are not included in the FDCPA,[11] and also contains a general prohibition against unfairness. The inclusion of several additional practices in the Maine Act increases the level of protection provided by the Maine Act, as compared with the FDCPA. As such, the Maine Act provides for more extensive obligations and more stringent prohibitions in this area than does the FDCPA, in compliance with Sections 901.4(a)(3) and (4) of the Procedures.

G. Debt Validation (Section 809 of the FDCPA; Section 11014 of the Maine Act)

Section 809 of the FDCPA requires disclosure of the amount of the debt and the creditor, and requires a validation notice. It also requires the debt collector to verify the debt if the consumer disputes it within thirty days. Section 11014 of the Maine Act is identical. Section 901.4(a)(2–4) of the Procedures, requiring that all applicable notifications, obligations and prohibitions be the same or more stringent, are satisfied since the requirements are identical. Therefore, the protection they provide is ''substantially similar.''

H. Multiple Debts (Section 810 of the FDCPA; Section 11015 of the Maine Act)

Section 810 of the FDCPA directs debt collectors to apply payments for multiple debts in accordance with the directions of the consumer. Section 11015 of the Maine Act is identical. Those requirements are, therefore, also ''substantially similar'' and the protection they provide is the same. In the same manner, Sections 901.4(a)(3), (4) and (6) of the Procedures are satisfied.

I. Legal Actions by Debt Collectors (Section 811 of the FDCPA; Section 11013.3.N of the Maine Act)

Section 811 of the FDCPA permits debt collectors to bring legal actions against consumers, but only in certain venues.[12] Section 11013.3.N of the Maine Act prohibits debt collectors from instituting suit in their own names or on behalf of others in any venue. Since no suits are permitted, no venue provisions are appropriate. Since the Maine Act insulates consumer from debt collector lawsuits in Maine, the Maine Act provides greater protection to consumers than does the FDCPA, which permits them. The fact that no suits are permitted also means that the obligations and prohibitions applicable to debt collectors in Maine are more stringent than those contained in the FDCPA, in compliance with Sections 901.4(a)(3) and (4) of the Procedures.

J. Furnishing Deceptive Forms (Section 812 of the FDCPA; Section 11016 of the Maine Act)

Section 812 of the FDCPA prohibits furnishing collection forms, knowing that they would be used to create a false impression that a third party is involved in the collection of the debt. Section 11016 of the Maine Act is identical. Since both statutes are substantively the same, Sections 901.4(a)(3) and (4) of the Procedures are satisfied and the level of protection provided to Maine consumers by the Maine Act is the same as that provided by the FDCPA.

K. Civil Liability (Section 813 of the FDCPA; Section 11054 of the Maine Act

Section 901.6(d) of the Procedures specifies that no exemption shall extend to the civil liability provisions of Section 813 of the FDCPA, which authorizes aggrieved consumers to sue debt collectors that violate the Act privately. Therefore, Section 813 of the FDCPA is not included within the scope of the exemption granted by the Commission in response to Maine's request.[13]

L. Compliance With Sections 901.4(a)(5) and (6) of the Procedures

Section 901.4(a)(5) and (6) require that (1) the obligations and responsibilities of consumers be no more costly, lengthy or burdensome under the Maine Act than they are under the FDCPA; and (2) consumers' rights and protections be substantially similar to or greater under the Maine Act than those provided by the FDCPA. The Commission has already determined that the protections provided by the Maine Act are the same or greater than those provided by the FDCPA. In addition, consumers must do nothing more under the Maine Act to receive these protections than they do under the FDCPA. Therefore, the Commission determines that the obligations and responsibilities of consumers under the Maine Act are no greater than those imposed by the FDCPA. Thus, the Maine application complies with Sections 901.4(a)(5) and (6) of the Procedures.

M. Conclusion

Comparison of Sections 803–812 of the FDCPA with pertinent portions of the Maine Act supports the following findings which meet the minimum requirements of Section 901.4(a) of the Procedures: (1) Definitions and rules of construction in the two laws import the same meaning and have the same or similar application; (2) Debt collectors provide all applicable notifications required by the FDCPA under the Maine Act; (3) Debt collectors are required by the Maine Act to take affirmative actions and abide by obligations that are substantially similar to those required by the FDCPA within the same or similar time periods; (4) Debt collectors must abide by the same or more stringent prohibitions under the Maine Act as those under the FDCPA; (5) Obligations and responsibilities of consumers under the Maine Act are no more costly, lengthy or burdensome than those under the FDCPA; and (6) The rights and protections of consumers under the Maine Act are substantially similar to or more favorable than those provided by the FDCPA. Therefore, the provisions of the Maine Act in general are substantially similar to, or provide greater protection than, the provisions of the FDCPA.

II. Enforcement of the Maine Act Is Adequate

In order for an exemption to be granted pursuant to Section 901.6 of the Procedures, the Commission must find that provisions for enforcement of the Maine Act by the State are adequate. In order to make this finding, the Commission must determine that the Maine Act makes sufficient provision for: (1) Administrative enforcement, including the necessary facilities, personnel and funding; (2) civil liability under Section 813 for failure to comply; and (3) a statute of limitations for civil liability of similar or longer duration than that in Section 813 of the FDCPA.[14]

[11] These include use of a notary to collect, commingling the funds of the debt collector and its client, failing to return collected funds to the creditor, and soliciting loans to pay a debt.

[12] Proper venues are where the real property is located or, if no real property is involved, where the consumer lives or signed the contract.

[13] The civil liability provisions of Section 11054 of the Maine Act are identical to those in Section 813. This is also true for the statute of limitations provided in Section 11054.4 of the Maine Act (one year) which is the same as that provided in Section 813(d) of the FDCPA for private suits.

[14] Procedures, Section 901.4(b). See also footnote 13. The civil liability provisions and corresponding statute of limitations for private suits are the same.

A. Authority

Section 814 of the FDCPA authorizes the Commission to exercise all its functions and powers under the Federal Trade Commission Act in enforcing the FDCPA. A violation of the FDCPA constitutes an unfair or deceptive act or practice in violation of the Federal Trade Commission Act. The Federal Trade Commission Act authorizes a civil penalty of up to $10,000 for each violation of the FDCPA done with actual or implied knowledge of the FDCPA. Additionally, the Commission is empowered to seek various forms of injunctive relief, as appropriate. The Statute of limitations for actions brought by the Commission against debt collectors is five years. 28 U.S.C. 2462.

Under the FDCPA, the Commission has no licensing or other regulatory powers and cannot ''promulgate trade regulation rules or other regulations with respect to the collection of debt collectors * * *.'' [15] Nor does the Commission have the power to pursue criminal liability or impose criminal penalties for FDCPA violations. The Commission's jurisdiction extends to any debt collector, as defined, located in the United States.

Subchapters III and IV of the Maine Act govern the licensing of Maine's debt collectors as well as the administration and enforcement of the Maine Act. In fact, a significant portion of Maine's authority to administer and enforce its debt collection law lies in its licensing power. No debt collector may conduct business in the State without a license, which must be renewed every two years. In order to get a license, a debt collector must submit financial statements and references and agree to an investigation of its personnel and business practices. Changes in ownership or management require a new license.[16] Licensees must be bonded.[17] The State is responsible for the safety and soundness of licensed debt collectors, as well as for subsequent management if they become insolvent, much like a receiver.[18] Unlicensed debt collectors operating in the State are subject to criminal penalties.[19]

The State may make rules, in addition to those in the Maine Act, pertaining to the operation of a debt collector's business to safeguard the public interest [20] and may issue ''advisory rulings'' concerning the Maine Act.[21] All form letters used by licensed debt collectors in Maine must be approved by the State. Additionally, consumers must be able to contact licensed Maine debt collectors at least 20 hours per week.

The Maine Act authorizes the State, through the Maine Attorney General, to bring an action for civil penalties, not to exceed $5,000 per count, against any person who willfully violates the Maine Act, no more than two years after the violation occurred.[22] Additionally, the State may, after appropriate investigation and examination of a licensee's records, file a complaint with the State's administrative court to suspend or revoke a debt collector's license for violation of the Maine Act.[23] There is no statute of limitations for a license revocation proceeding. Finally, the State may also seek injunctive relief, as appropriate.[24]

While the civil penalties authorized by the Maine Act are smaller than those authorized by the FDCPA and the statute of limitations for actions brought by the State of Maine is shorter, there are also significant strengths in the Maine Act that are not present in the FDCPA. Overall, we believe that the strengths more than offset the weakness to meet the test of adequacy in Section 817 of the FDCPA.

Principal in Maine's enforcement powers is its ability to suspend or revoke a debt collector's license, effectively putting the collector out of business in the State. There is no comparable power granted in the FDCPA. In addition, the State can proceed against a debt collector for civil penalties (albeit not as large as available under the FDCPA) and injunctive relief and can criminally prosecute a debt collector for operation without a license, which can result in a jail term. The latter remedy also has no counterpart in the FDCPA. Maine's general supervisory powers are also more extensive than the Commission's powers. Aside from the State's investigatory authority in determining whether to issue a license, it is responsible for monitoring the financial stability of its licensees and may issue additional rules and regulations governing their conduct—a power specifically denied the Commission by Section 814(d) of the FDCPA.

Typically, the State takes action against an offending debt collector fairly quickly after a violation is discovered.[25] Because of this, the average civil penalty recovered by the State is only $1,000–1,500. Time-consuming investigations are rare; one or two violative letters often trigger the commencement of an inquiry. Because the State takes a ''hands-on'' approach to enforcement, an inquiry can often be resolved expeditiously before much damage is done. This is an extra benefit to the public and is in contrast to the more extensive investigations pursued by the Commission where larger penalties are usually more appropriate. We do not believe that the State's more limited civil penalty authority and shorter statute of limitations significantly impede its ability to enforce the Maine Act. Given its other powers and the speed of its investigations, the State's overall enforcement authority and effectiveness appear to be at least as great as that possessed by the Commission in administering and enforcing the FDCPA.

B. Personnel and Facilities

The FDCPA is administered and enforced primarily by the staff of the Division of Credit Practices in the Bureau of Consumer Protection. Enforcement actions are typically pursued not only by headquarters staff but also by regional office personnel. At any given time, the Commission has several debt collection matters in investigative stages or in the courts. Like other Commission staff, attorneys working on debt collection cases have the resources of the federal government from which to draw support.

The Bureau of Consumer Credit Protection in the State of Maine enforces the Maine Act, Maine's Fair Credit Reporting Act and the Maine Consumer Credit Code. The Bureau is staffed by fifteen employees, including office staff, plus five field examiners. Its examiners review collection agency practices and conduct investigations for the purpose of licensing collection agencies. The examiners are trained in financing and consumer credit and most have employment experience with banks or mortgage companies. Examiners also attend a school for examiners conducted by the National Association of Consumer Credit Administrators to learn both state and federal debt collection statutes. Examiner trainees accompany experienced examiners for an eight month period of on-the-job-training. In exercising their responsibilities, examiners spend about

[15] Section 814(d), FDCPA.

[16] Section 11031, Subchapter III, Maine Act.

[17] Section 11032, Subchapter III, Maine Act.

[18] Section 11038, Subchapter III, Maine Act.

[19] Section 11040, Subchapter III, Maine Act.

[20] Section 11034, Subchapter III, Maine Act.

[21] Section 11035, Subchapter III, Maine Act.

[22] Section 11053, Subchapter III, Maine Act.

[21] Section 11052, Subchapter III, Maine Act.

[21] Maine Rules of Civil Procedure § 65 (1967).

[25] Interview, William Lund, Superintendent, Maine Bureau of Consumer Credit Protection, September 6, 1994.

fifteen percent of their time enforcing the Maine Act. Debt collector licensing is also the primary responsibility of the Superintendent and Deputy Superintendent of the Bureau of Consumer Credit Protection.

The Maine Bureau reviews the financial posture of collection firms applying for licenses and handles numerous written debt collector complaints each year, along with hundreds of telephone complaints and questions. Three additional individuals in the office (consumer assistance specialists) are trained to respond to these inquiries about the activities of debt collectors, with regard to both federal and state debt collection law; they also routinely petition the administrator to initiate enforcement proceedings to deal with suspected violations of the Maine Act. The agency has been involved in at least four court actions in the past two years relating to unlicensed practice or license revocation. In addition, the Maine Bureau has obtained voluntary Assurances of Discontinuance from ten debt collectors during the same time period. The Maine Bureau publishes its enforcement actions and mails the information to all licensed companies as a deterrent to further violative practices.

All license fees and examination reimbursement costs accrue to the agency as dedicated revenue within the State's budget process. In addition, a portion of creditor and lender ''volume fees'' based upon the amount of consumer credit extended is also dedicated to enforcement activities of the Maine Bureau, on the theory that the hiring of collection agencies by consumer creditors justifies the funding by those creditors of a portion of the cost of regulating them. Approximately $100,000 of the Maine Bureau's total budget of $800,000 is derived from sources of revenue related to debt collection activity and directed toward enforcement of the Maine Act.

Thus, the personnel, facilities and funding devoted to administering and enforcing the Maine Act are comparable to the resources expended by the Commission in enforcing the FDCPA. The fact that these resources will be directed at the activities of debt collectors in one state supports Maine's contention that it will have a greater enforcement presence in the State of Maine under the Maine Act than the Commission does nationally under the FDCPA.

C. Conclusion

After consideration of the facilities, personnel and funding devoted to administrative enforcement of the Maine Act and the Maine Act's provisions for civil liability and appropriate statutes of limitations for both private and governmental actions, the Commission finds that provisions for enforcement of the Maine Act are adequate, as required by Section 901.4(b) of the Procedures.

Action Taken

Based on the submissions of the Maine Bureau of Consumer Credit Protection in support of its request for an exemption and upon the comments received, the Commission concludes that the Maine Act is substantially similar to, and in some instances provides greater protection than, the FDCPA and contains provisions for adequate enforcement. As such, it meets all of the criteria set forth in Section 901.4 (a) and (b) of the Procedures. The Commission has granted to the State of Maine an exemption from Sections 803–812 of the FDCPA for debt collection practices conducted within the State on that basis, in accordance with Section 817 of the FDCPA. The exemption will remain in effect as long as state law continues to afford substantially equivalent protection to that of the FDCPA.

To ensure that the conditions for an exemption continue to be met, the State of Maine must provide notice to the Commission of any change in its law, policies or procedures, including court decisions, that would significantly affect whether the state law continues to afford substantially equivalent protection and whether the State is effectively enforcing the Maine Act. In any event, the State of Maine must provide a report to the Commission not later than two years after the date this exemption becomes effective, and every two years thereafter, concerning the manner in which the State has enforced its law. The Commission reserves the right to revise this reporting requirement at a later date if circumstances warrant or to request additional information as needed.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 95–31316 Filed 12–26–95; 45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committees; Notice of Meetings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

FDA has established an Advisory Committee Information Hotline (the hotline) using a voice-mail telephone system. The hotline provides the public with access to the most current information on FDA advisory committee meetings. The advisory committee hotline, which will disseminate current information and information updates, can be accessed by dialing 1–800–741–8138 or 301–443–0572. Each advisory committee is assigned a 5-digit number. This 5-digit number will appear in each individual notice of meeting. The hotline will enable the public to obtain information about a particular advisory committee by using the committee's 5-digit number. Information in the hotline is preliminary and may change before a meeting is actually held. The hotline will be updated when such changes are made.

MEETINGS: The following advisory committee meetings are announced:

Allergenic Products Advisory Committee

Date, time, and place. January 22, 1996, 3 p.m., Food and Drug Administration, Bldg. 29, conference room 121, 8800 Rockville Pike, Bethesda, MD.

Type of meeting and contact person. This meeting will be held by a telephone conference call. A speaker telephone will be provided in the conference room to allow public participation in the meeting. Open public hearing, 3 p.m. to 4 p.m., unless public participation does not last that long; open committee discussion, 4 p.m. to 4:40 p.m.; closed committee deliberations, 4:40 p.m. to 5:30 p.m.; William Freas or Sheila D. Langford, Center for Biologics Evaluation and Research (HFM–21), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–0314, or

FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Allergenic Products Advisory Committee, code 12388.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of allergenic biological products intended for use in the diagnosis, prevention, or treatment of human disease.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before January 16, 1996, then submit a brief statement of the general nature of the evidence or arguments they wish to present, the name and addresses of the proposed participants, and the indication of the approximate time to make comments.

Open committee discussion. The committee will discuss issues relevant to an extension of the deadline for the distribution of standardized and nonstandardized grass pollen extracts.

Closed committee deliberations. The committee will review trade secret and/or confidential commercial information relevant to three investigational new drug applications. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Vaccines and Related Biological Products Advisory Committee

Date, time, and place. January 29, 30, and 31, l996, 8 a.m., Parklawn Bldg., conference rooms D and E, 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Closed committee deliberations, January 29, 1996, 8 a.m. to 9 a.m.; open committee discussion, 9 a.m. to 6:30 p.m.; open public hearing, January 30, l996, 8 a.m. to 8:30 a.m., unless public participation does not last that long; open committee discussion, 8:30 a.m. to 3 p.m.; open public hearing, 3 p.m. to 3:30 p.m., unless public participation does not last that long; open committee discussion, 3:30 p.m. to 5:30 p.m.; closed committee deliberations, January 31, l996, 8 a.m. to 10 a.m.; open public hearing, 10 a.m. to 10:15 a.m., unless public participation does not last that long; open committee discussion, 10:15 a.m. to 1 p.m.; Nancy T. Cherry or Sandy M. Salins, Scientific Advisors and Consultants Staff (HFM–21), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–0314, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Vaccines and Related Biological Products Advisory Committee, code 12388.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of vaccines intended for use in the diagnosis, prevention, or treatment of human diseases.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before January 22, 1996, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On January 29, 1996, the committee will review safety and efficacy data relating to a product licensing application for a rabies vaccine by Behringwerke A. G. and a product licensing application for a combined diphtheria, tetanus, and acellular pertussis (whooping cough) vaccine with infant indication from Connaught Laboratories. On January 30, l996, the committee will discuss the influenza virus vaccine formulation for 1996–1997 and sequential schedules of inactivated polio vaccines and oral polio vaccines. On January 31, l996, the committee will review safety and efficacy data relating to a product licensing application from Merck for an inactivated Hepatitis A vaccine.

Closed committee deliberations. On January 29 and 31, l996, the committee will review trade secret and/or confidential commercial information relevant to pending product licensing applications. These portions of the meeting will be closed to permit discussion of this information (5 U.S.C 552b(c)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this Federal Register notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting may be requested in writing from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

The Commissioner has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA) (5 U.S.C. app. 2, 10(d)), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, deliberation to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: December 18, 1995.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 95–31292 Filed 12–26–95; 8:45 am]

BILLING CODE 4160–01–F

Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meeting and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

FDA has established an Advisory Committee Information Hotline (the hotline) using a voice-mail telephone system. The hotline provides the public with access to the most current information on FDA advisory committee meetings. The advisory committee hotline, which will disseminate current information and information updates, can be accessed by dialing 1–800–741–8138 or 301–443–0572. Each advisory committee is assigned a 5–digit number. This 5–digit number will appear in each individual notice of meeting. The hotline will enable the public to obtain information about a particular advisory committee by using the committee's 5–digit number. Information in the hotline is preliminary and may change before a meeting is actually held. The hotline will be updated when such changes are made.

MEETING: The following advisory committee meeting is announced:

Cardiovascular and Renal Drugs Advisory Committee

Date, time, and place. January 25, 1996, 8:30 a.m., and January 26, 1996, 9 a.m., National Institutes of Health, Clinical Center, Bldg. 10, Jack Masur Auditorium, 9000 Rockville Pike, Bethesda, MD 20892. Parking in the Clinical Center Visitor area is reserved for clinical center patients and their visitors. If you must drive, please use an outlying lot such as Lot 41B. Free shuttle bus service is provided from Lot 41B to the Clinical Center every 8 minutes during rush hour and every 15 minutes at other times.

Type of meeting and contact person. Open public hearing, January 25, 1996, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 5:30 p.m.; open committee discussion, January 26, 1996, 9 a.m. to 4:30 p.m.; Joan C. Standaert (HFD–110), 419–259–6211; or Valerie M. Mealy (HFD–21), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4695, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area) Cardiovascular Drugs Advisory Committee, code 12533.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in cardiovascular and renal disorders.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before January 13, 1996, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On January 25, 1996, the committee will discuss a Current Controversy: Calcium Channel Blockers. On January 26, 1996, the committee will review the Center for Biologics Evaluation and Research's product license application 95–1210, imciromaba pentetate (Myoscint, Centocor), a monoclonal antibody for use as an imaging agent for diagnosis of cardiac necrosis.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized,

however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this Federal Register notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting may be requested in writing from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: December 18, 1995.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 95–31293 Filed 12–26–95; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 95N–253S]

Procedures for Handling Confidential Information in Rulemaking

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a statement regarding the procedures generally followed by the agency with respect to the use of confidential commercial information, trade secrets, and other confidential or sensitive information during rulemaking. In brief, FDA does not place into a public docket trade secret, confidential commercial information, or information whose disclosure would constitute a clearly unwarranted invasion of privacy or would reveal the identity of confidential sources. FDA tries to assure that clearly proprietary information is not unwittingly made available to the public, but also advises that information submitted to a public docket during a rulemaking proceeding does not carry a reasonable expectation of confidentiality.

FOR FURTHER INFORMATION CONTACT: Philip L. Chao, Office of Policy (HF–23), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3380.

SUPPLEMENTARY INFORMATION: FDA has received several inquiries regarding certain information that FDA used in developing the proposed rule and notice pertaining to nicotine-containing cigarettes and smokeless tobacco products. The proposed rule, entitled ''Regulations Restricting the Sale and Distribution of Cigarettes and Smokeless Tobacco Products to Protect Children and Adolescents,'' and an accompanying document entitled ''Nicotine in Cigarettes and Smokeless Tobacco Products is a Drug and These Products are Nicotine Delivery Devices Under the Federal Food, Drug, and Cosmetic Act,'' appeared in the Federal Register on August 11, 1995 (60 FR 41314 and 60 FR 41453 at 41454, respectively). In general, the cigarette and smokeless tobacco companies have questioned or sought to limit FDA's ability to use or to receive certain information, particularly documents that were prepared by industry officials but not submitted by the industry to FDA during rulemaking.

In response, the agency has developed a statement describing the procedures generally followed by the agency with respect to confidential information in a rulemaking docket. In brief, FDA does not place trade secret, confidential commercial information, or information whose disclosure would constitute a clearly unwarranted invasion of privacy or would reveal the identity of confidential sources, into a public docket. FDA tries to assure that clearly proprietary information is not unwittingly made available to the public, but also advises that information submitted to a public docket during a rulemaking proceeding does not carry a reasonable expectation of confidentiality.

Although the agency has developed this written statement to address concerns raised in the tobacco proceedings, the positions expressed in the statement reflect docket management procedures that the agency has long used in other rulemaking proceedings. Consequently, FDA is publishing the statement in the Federal Register.

The statement is as follows:

Statement of Procedures for Handling Confidential Information in Rulemaking

FDA has received several inquiries regarding the agency's procedures for handling confidential information in the dockets compiled for the agency's proposed regulation restricting the sale and distribution of cigarettes and smokeless tobacco products to protect children and adolescents, and the accompanying legal analysis and factual findings, both of which were published in the Federal Register on August 11, 1995. This notice describes the procedures followed by FDA generally with respect to confidential information in a rulemaking docket.

FDA compiled the docket for the proposed regulation restricting the sale and distribution of cigarettes and smokeless tobacco products to protect children and adolescents (the proposed rule) and the document entitled ''Nicotine in Cigarettes and Smokeless Tobacco Products is a Drug and These Products are Nicotine Delivery Devices Under the Federal Food, Drug, and Cosmetic Act'' (the document) in accordance with the requirements of the Administrative Procedure Act, 5 U.S.C. 551, *et seq.* (APA), and FDA's existing regulations at 21 CFR 10.40. This docket includes existing factual information and submitted information relied upon by the agency decisionmakers in support of the analysis and the proposed rule. The agency has also included in the docket factual material and submitted information considered by agency decisionmakers, except for the limited group of documents discussed below.

FDA did not place in the public docket trade secret and confidential commercial information, or information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. An index listing these documents was created by the agency and is available to the public. However, unless the information in these documents was inextricably intertwined with the other information contained in the document, FDA redacted the trade secret, confidential commercial, or privacy information and placed the remainder of the document in the public docket.

In addition, FDA did not include in the public docket certain documents developed during the course of the agency's investigation of the tobacco industry because these documents could disclose the identity of sources that furnished information to the agency on a confidential basis. The agency's policy with respect to confidential sources in this investigation was discussed at the hearings before the House Subcommittee on Health and the Environment (see Regulation of Tobacco Products (Part 1) (March 25, 1994), pp. 35–37; Regulation of Tobacco Products (Part 3) (June 21, 1994), pp. 87–96).

In the agency's view, there can be no reasonable expectation of confidentiality for information submitted to a public docket in a rulemaking proceeding. Therefore, an agency is under no legal obligation to scrutinize documents submitted to a public docket to determine whether they may contain proprietary information. However, because it is aware of the sensitivity and importance of such information, FDA has long followed certain procedures to try to ensure that clearly proprietary information is not unwittingly made available to the public. FDA scans documents submitted to a docket for obvious trade secrets (e.g., formulas) or personal privacy information. In addition, any document marked confidential is referred to the appropriate Center Freedom of Information Act officer for a determination as to whether it would be exempt from public disclosure under Exemption 4 of the Freedom of Information Act (trade secrets and commercial or financial information obtained from a person and privileged or confidential). Before documents containing such information are placed on the record, the Center consults with the submitter to determine whether the submitter intended to make the document publicly available by placing it on the record. The agency is following these procedures in the tobacco proceeding.

Dated: December 21, 1995.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 95–31368 Filed 12–22–95; 11:18 am]

BILLING CODE 4160–01–F

Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meeting and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

FDA has established an Advisory Committee Information Hotline (the hotline) using a voice-mail telephone system. The hotline provides the public with access to the most current information on FDA advisory committee meetings. The advisory committee hotline, which will disseminate current information and information updates, can be accessed by dialing 1–800–741–8138 or 301–443–0572. Each advisory committee is assigned a 5-digit number. This 5-digit number will appear in each individual notice of meeting. The hotline will enable the public to obtain information about a particular advisory committee by using the committee's 5-digit number. Information in the hotline is preliminary and may change before a meeting is actually held. The hotline will be updated when such changes are made.

MEETING: The following advisory committee meeting is announced:

Subcommittee Meeting of the National Mammography Quality Assurance Advisory Committee

Date, time, and place. January 10 and 11, 1996, 9 a.m., Hyatt Regency—Bethesda, Baccarat Suite, One Bethesda Metro Center, Bethesda, MD. A limited number of overnight accommodations have been reserved at the hotel. Attendees requiring overnight accommodations may contact the hotel at 301–657–1234, and reference the FDA Committee meeting block. Reservations will be confirmed at the group rate based on availability.

Type of meeting and contact person. Open public hearing, January 10, 1996, 9 a.m. to 10 a.m., unless public participation does not last that long; open subcommittee discussion, 10 a.m. to 5 p.m.; open subcommittee discussion, January 11, 1996, 9 a.m. to 1 p.m.; Charles K. Showalter, Center for Devices and Radiological Health (HFZ–240), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–594–3332, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), National Mammography Quality Assurance Advisory Committee, code 12397.

General function of the committee. The committee advises on developing appropriate quality standards and regulations for the use of mammography facilities.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before January 3, 1996, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open subcommittee discussion. On January 10 and 11, 1996, the Access to Mammography Services subcommittee will meet. The subcommittee will discuss the ongoing work which is necessary to make the determinations and subsequently prepare the reports as mandated in the Mammography Quality Standards Act. Upon completion, the subcommittee report will be reviewed by the committee prior to submission to the Secretary and Congress.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public

administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this Federal Register notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting may be requested in writing from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: December 19, 1995.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 95–31369 Filed 12–22–95; 11:19 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–070–95–1220–00]

Emergency Closure of Public Roads in Powell County, Montana

AGENCY: Bureau of Land Management, DOI.

ACTION: Notice of emergency closure of public access roads in Powell County, Montana.

SUMMARY: Notice is hereby given that certain public access roads in Powell County, Montana, are temporarily closed to all public use, including vehicle operation, winter recreational activities, and hiking and sightseeing from December 18, 1995, through March 15, 1996. The closure is made under the authority of 43 CFR 8364.1.

The public roads affected by this emergency closure are specifically identified as follows: BLM Road No. 2864 as it enters public lands and all spur roads accessed by this road.

The following persons, operating within the scope of their official duties, are exempt from the provisions of this closure order: BLM employees; local, state, and Federal law enforcement and fire protection personnel; the BLM timber purchaser, and its employees and subcontractors, within the area accessed by the closed road. Access by additional parties may be allowed, but must be approved in advance in writing by the Authorized Officer.

Any person who fails to comply with the provisions of this closure order may be subject to the penalties provided in 43 CFR 8360.0–7, which include a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months.

The public roads temporarily closed to public use under this order will be posted with signs at points of public access.

The purpose of this emergency temporary closure is to protect persons from potential harm from logging operations, particularly the hazards associated with log hauling on winter roads.

DATES: This closure is effective from December 18, 1995, through March 15, 1996.

ADDRESSES: Copies of the closure order and maps showing the location of the closed roads are available from the Garnet Resource Area office, 3255 Fort Missoula Road, Missoula, Montana 59801.

FOR FURTHER INFORMATION CONTACT: Darrell Sall, Garnet Resource Area Manager, at (406) 329–3914.

Dated: December 15, 1995.

Darrell C. Sall,

Garnet Resource Area Manager.

[FR Doc. 95–31257 Filed 12–26–95; 8:45 am]

BILLING CODE 4310–DN–P

[OR–943–1430–01; GP6–0047]

Publication of List of Nationally Significant Lands To Be Retained and Confirmed to the United States Pursuant to the Act of July 2, 1993 and Final List of Base Land Parcels Relinquished to the United States Pursuant to the Act of June 4, 1897

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: On July 2, 1993, Congress enacted Public Law 103–48 entitled ''An Act to Resolve the Status of Certain Lands Relinquished to the United States Under the Act of June 4, 1897 (30 Stat. 11, 36) and for Other Purposes.'' In compliance with the Act, notice is given of the following actions: (1) The list of Nationally Significant lands retained by the United States is incorporated in this notice as ''Table 1.'' By publication of this notice, all right, title, and interest in these lands is now vested and confirmed in the United States. (2) The Final List of base land parcels relinquished to the United States pursuant to the Act of June 4, 1897, is incorporated in this notice as ''Table 2.'' By publication of this notice, the United States quitclaims to the listed owners or entrymen or their successors all right, title, and interest of the United States in and to these parcels.

EFFECTIVE DATE: December 27, 1995.

ADDRESSES: Requests for additional information or other comments should be addressed to the Director (350), Bureau of Land Management, United States Department of the Interior, 1849 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Jeff Holdren in the Bureau of Land Management (BLM) Washington Office (202) 452–7779, Bill Bliesner in the BLM Oregon/Washington State Office (503) 952–6157, or John Beck in the BLM California State Office (916) 979–2858.

SUPPLEMENTARY INFORMATION:

Background

In compliance with the Act of July 2, 1993, Public Law 103–48, (hereafter referred to as the Act) the Bureau of Land Management (BLM) published in the December 30, 1993 issue of the Federal Register (58 FR 69402), the Initial List of base land parcels that were

relinquished or were purported to be relinquished, to the United States pursuant to the Act of June 4, 1897 (as amended), and for which selection or other rights under that Act or supplemental legislation were not realized or exercised. The Act further provided that for a period of 180 days from the date of publication of the Initial List, any persons asserting an interest in any base land parcel omitted from the Initial List could request the addition of the omitted parcel to the Initial List in order to be considered for relief pursuant to the Act. No such requests were received by the BLM and therefore no additional parcels are included (on that basis) on the Final List published in this notice. One parcel (Parcel No. 27) was inadvertently omitted by the BLM from the Initial List and has now been added to the List of Nationally Significant Lands. In addition, one parcel (Parcel No. 16A) which was previously included by the United States Forest Service as Parcel No. 56 on its Initial List also published under the Act, has been determined to be outside of current National Forest boundaries. This parcel is more appropriately included on the BLM Initial List and has been added to the Final List.

Current Action—Nationally Significant Lands. The Act provides that the BLM compile a list of Nationally Significant Lands. These are defined as those lands included on the Initial List which are ''located wholly or partially within any conservation system unit and all other listed lands which Congress has designated for specific management or which the Secretary concerned decides in the concerned Secretary's sole discretion, should be retained in order to meet public resource protection, or administrative needs.'' Such Nationally Significant Lands are not listed on the Final List and are not quitclaimed to the owner or entryman or his heirs, devisees, successors, and assigns as are other lands listed on the Final List. The list of Nationally Significant Lands is described as follows:

TABLE 1.—NATIONALLY SIGNIFICANT LANDS

Parcel No.	Owner or entryman	Legal description
		Bonner County, Idaho (Boise Meridian)
1	Conrad Kohrs	T. 58 N., R. 3 W., Sec. 13, NE¼NE¼.
2	Conrad Kohrs	T. 58 N., R. 3 W., Sec. 15, NE¼NW¼.
10	W.J. Carney	T. 63 N., R. 4 W., Sec. 27, SW¼NW¼.
		Coconino County, Arizona (Gila and Salt River Meridian)
18C	Aztec Land & Cattle	T. 18 N., R. 11 E., Sec. 11, N½SW¼
		Fresno County, California (Mt. Diablo Meridian)
19	Walter N. Bush	T. 11 S., R. 30 E., Sec. 16, SW¼SE¼; Sec. 36, NW¼SW¼.
		Tulare County, California (Mt. Diablo Meridian)
20	F.A. Hyde	T. 14 S., R. 32 E., Sec. 36, NW¼NE¼.
		Kern County, California (Mt. Diablo Meridian)
27	F.A. Hyde	T. 27 S., R. 33 E., Sec. 16, E½SW¼.
28	Marcus Hart	T. 28 S., R. 35 E., Sec. 16, S½SW¼.
		Mason County, Washington (Willamette Meridian)
75	F. Stabenfeldt	T. 21 N., R. 5 W., Sec. 32, SE¼SW¼.
		Clallam County, Washington (Willamette Meridian)
85	Herbert Upper	T. 28 N., R. 14 W., Sec. 30, NW¼SE¼.

Subject to valid existing rights, all right, title, and interest in the above described Nationally Significant Lands is hereby vested and confirmed in the United States. The list will be recorded in the appropriate county land ownership records and the official BLM records will be noted accordingly.

Anyone claiming that the identification of Nationally Significant Lands under the Act was a ''taking'' of property will be allowed a one-year opportunity to file a petition in the United States Claims Court for monetary compensation. Identification of Nationally Significant Lands does not of itself entitle any party to compensation. The burden of proof is on the claimant to prove a compensable claim under the Act.

Current Action—Final List. The Act also provides that on or before 24 months after the date of publication of the Initial List, a Final List be published consisting of lands included on the Initial List, but which are not identified on the list of Nationally Significant Lands described above in this notice. The BLM Final List is described as follows:

TABLE 2.—FINAL LIST

Parcel No.	Owner or entryman	Legal description
		Bonner County, Idaho (Boise Meridian)
3	N. Pacific R.R. Co	T. 59 N., R. 4 W., Sec. 1, Lots 1 & 2, NW¼, NE¼SE¼ and S½SE¼.
4	N. Pacific R.R. Co	T. 59 N., R. 4 W., Sec. 15, NE¼NE¼, W½NW¼ and SE¼NW¼.
9	N. Pacific R.R. Co	T. 63 N., R. 4 W., Sec. 11, NW¼NE¼.
		Boundary County, Idaho (Boise Meridian)
5	N. Pacific R.R. Co	T. 62 N., R. 3 W., Sec. 13, S½NW¼.
6	N. Pacific R.R. Co	T. 63 N., R. 3 W., Sec. 17, N½.

TABLE 2.—FINAL LIST—Continued

Parcel No.	Owner or entryman	Legal description
7	N. Pacific R.R. Co	T. 63 N., R. 3 W., Sec. 19, W½NW¼ and SE¼.
8	N. Pacific R.R. Co	T. 63 N., R. 3 W., Sec. 31, NW¼.
	El Paso County, Colorado (6th Principal Meridian)	
11	W.E. Moses	T. 11 S., R. 67 W., Sec. 5, N¾ of NW¼NW¼.
	Douglas County, Colorado (6th Principal Meridian)	
11A	Donald McIntosh	T. 9 S., R. 68 W., Sec. 2, SW¼SW¼; Sec. 3, E½SE¼; Sec. 10, NE¼NE¼.
	Custer County, South Dakota (Black Hills Meridian)	
15	V. Vallenthine	T. 3 S., R. 6 E., Sec. 31, SE¼NW¼.
16	V. Vallenthine	T. 3 S., R. 6 E., Sec. 32, NE¼NW¼.
16A	William Roy	T. 2 S., R. 6 E., Sec. 8, SW¼SW¼.
	Lincoln County, New Mexico (New Mexico Principal Meridian)	
17	W.E. Moses LS&R Co.	T. 8 S., R. 15 E., Sec. 27, NW¼SW¼.
18	Jefferson D. Thomas	T. 7 S., R. 14 E., Sec. 17, E½SW¼.
18A	Jesse H. Sherman	T. 10 S., R. 10 E., Sec. 29, S½NE¼.
	Catron County, New Mexico (New Mexico Principal Meridian)	
18B	Henry N. Porter	T. 9 S., R. 13 W., Sec. 26, SW¼SE¼.
	Tulare County, California (Mt. Diablo Meridian)	
21	Jacob H. Cook	T. 22 S., R. 30 E., Sec. 31, Lot 4 (Tr. 37).
22	E.O. Miller	T. 23 S., R. 30 E., Sec. 16, SW¼NW¼.
	Kern County, California (Mt. Diablo Meridian)	
23	Frank S. Fugitt	T. 26 S., R. 33 E., Sec. 11, N½S½SW¼.
24	Hiram M. Hamilton	T. 26 S., R. 33 E., Sec. 29, Part of E½NW¼.
26	C.E. Glover	T. 27 S., R. 37 E., Sec. 36, SW¼ and W½SE¼.
	Mono County, California (Mt. Diablo Meridian)	
29	J. C. Irwin	T. 5 S., R. 30 E., Sec. 25, NW¼SE¼.
	Inyo County, California (Mt. Diablo Meridian)	
30	A.W. Foster	T. 21 S., R. 37 E., Sec. 16, S½NE¼.
	Santa Barbara County, California (San Bernardino Meridian)	
31	John D. Ackerman	T. 11 N., R. 28 W., Sec. 31, Lots 1 and 2.
	Los Angeles County, California (San Bernardino Meridian)	
32	J.D. Stoddard	T. 8 N., R. 18 W., Sec. 20, SE¼.
33	E.M. Durant	T. 7 N., R. 14 W., Sec. 5, W½ of Lot 2 and SW¼NE¼.
34	E.M. Durant	T. 7 N., R. 15 W., Sec. 5, SW¼NW¼.
35	E.M. Durant	T. 7 N., R. 15 W., Sec. 3, S½NW¼.
36	H. A. Cowen	T. 7 N., R. 15 W., Sec. 5, NE¼NE¼.
37	Alfred A. Vickery	T. 5 N., R. 10 W., Sec. 36, All.
38	William G. Goslin	T. 5 N., R. 12 W., Sec. 30, Lot 1 and S½ of Lot 2.
39	C.A. Johnson	T. 5 N., R. 13 W., Sec. 20, N½SW¼.
40	Cora Graybill	T. 5 N., R. 13 W., Sec. 22, NE¼SE¼.
41	John Woods	T. 5 N., R. 13 W., Sec. 22, SE¼SE¼.
42	Isaac Liebes	T. 5 N., R. 15 W., Sec. 36, SW¼.
43	Gabino Comichio	T. 4 N., R. 13 W., Sec. 7, N½SE¼SE¼ and NE¼SW¼SE¼.
44	W.C. Burgstrom	T. 4 N., R. 15 W., Sec. 30, Lots 1 and 2.
45	E.M. Durant	T. 4 N., R. 16 W., Sec. 11, Lots 1, 2, and 3.
46	Charles Overlook	T. 4 N., R. 16 W., Sec. 12, NE¼NE¼ and NW¼SW¼.
47	E.M. Durant	T. 4 N., R. 16 W., Sec. 25, Lots 1, 2, 3 and 4.
48	Alice M. Hall	T. 4 N., R. 17 W., Sec. 16, NW¼.
49	Big Blackfoot Milling	T. 4 N., R. 10 W., Sec. 2, Lot 2 of NW¼.
50	L.A. Grimminger	T. 4 N., R. 15 W., Sec. 6, NW¼SE¼ and SW¼SW¼.
51	J. Furniwell	T. 4 N., R. 15 W., Sec. 19, Lot 1.
52	John F. Campbell	T. 4 N., R. 15 W., Sec. 19, W½SE¼NE¼, N½SW¼NE¼ and N½NE¼.
53	Wm. Erwin	T. 4 N., R. 15 W., Sec. 20, N½S½SE¼.
54	Lewis A. Black	T. 4 N., R. 15 W., Sec. 31, SE¼NW¼.
	San Diego County, California (San Bernardino Meridian)	
57	Lewis A. Black	T. 9 S., R. 2 E., Sec. 15, Lot 3.
	Snohomish County, Washington (Willamette Meridian)	
60	Gary Peavey	T. 32 N., R. 8 E., Sec. 2, E½SW¼.
61	Stephen A. Thayer	T. 32 N., R. 9 E., Sec. 9, N½SE¼.
62	Stephen A. Thayer	T. 32 N., R. 9 E., Sec. 10, N½SW¼.
63	A.J. Hazeltine	T. 32 N., R. 9 E., Sec. 8, SE¼SE¼.

TABLE 2.—FINAL LIST—Continued

Parcel No.	Owner or entryman	Legal description
64	A.J. Hazeltine	T. 32 N., R. 9 E., Sec. 9, SW¼SW¼, NE¼SW¼ and SE¼SW¼.
65	Stephen A. Thayer	T. 30 N., R. 8 E., Sec. 7, W½NE¼.
		Lewis County, Washington (Willamette Meridian)
66	Marion Edwards	T. 12 N., R. 7 E., Sec. 15, Lot 6.
67	N. Pacific R.R. Co	T. 12 N., R. 7 E., Sec. 13, Lot 2.
68	N. Pacific R.R. Co	T. 12 N., R. 7 E., Sec. 7, SE¼SE¼; Sec. 19, Lot 1.
69	N. Pacific R.R. Co	T. 12 N., R. 8 E., Sec. 1, Lot 1.
70	N. Pacific R.R. Co	T. 12 N., R. 8 E., Sec. 11, Lot 5.
71	N. Pacific R.R. Co	T. 12 N., R. 8 E., Sec. 17, Lot 12.
		Mason County, Washington (Willamette Meridian)
72	Jacob Lockbaum	T. 21 N., R. 5 W., Sec. 34, E½SW¼.
73	Charles Borgeson	T. 21 N., R. 5 W., Sec. 34, SE¼.
74	Harold Waltz	T. 21 N., R. 6 W., Sec. 33, S½SW¼.
		Clallam County, Washington (Willamette Meridian)
76	James Kerr	T. 28 N., R. 13 W., Sec. 7, Lot 7.
77	Gideon McDonald	T. 28 N., R. 13 W., Sec. 17, SE¼NE¼.
78	Mary Coffin	T. 28 N., R. 14 W., Sec. 24, Lot 1.
79	W.J. Williams	T. 28 N., R. 14 W., Sec. 8, SE¼SE¼.
80	Virgil E. Rice	T. 28 N., R. 14 W., Sec. 34, E½NE¼.
81	Fred Pape	T. 28 N., R. 14 W., Sec. 15, Lots 4 & 5.
82	Carl E. Clemens	T. 28 N., R. 14 W., Sec. 15, Lot 3.
83	Carl E. Clemens	T. 28 N., R. 14 W., Sec. 10, Lot 6.
84	Carl E. Clemens	T. 28 N., R. 14 W., Sec. 10, Lot 4, NW¼SW¼ and SW¼SE¼.
86	Charles Cobb	T. 28 N., R. 14 W., Sec. 20, SE¼NE¼; Sec. 21, SW¼NW¼.
87	Carl Clemens	T. 28 N., R. 14 W., Sec. 10, Lot 5.
88	W.A. Clark	T. 28 N., R. 15 W., Sec. 13, S½SW¼.
89	W.A. Clark	T. 28 N., R. 15 W., Sec. 14, W½NE¼ and S½SW¼.
90	W.A. Clark	T. 28 N., R. 15 W., Sec. 24, N½NE¼, SE¼NE¼ and NE¼SE¼.
91	W.A. Clark	T. 29 N., R. 4 W., Sec. 12, SW¼SE¼ and SE¼SW¼; Sec. 13, NW¼NE¼ and NE¼NW¼.
92	Herbert Upper	T. 29 N., R. 3 W., Sec. 7, W½SE¼ and SE¼SE¼.
93	Jacob Kintz	T. 30 N., R. 12 W., Sec. 22, NW¼NW¼.
94	Jacob Kintz	T. 30 N., R. 12 W., Sec. 21, E½NE¼.
95	Jeramiah Collins	T. 30 N., R. 13 W., Sec. 25, Lot 4.
96	Jeramiah Collins	T. 30 N., R. 13 W., Sec. 26, SE¼NE¼.
97	Virgil Rice	T. 30 N., R. 14 W., Sec. 5, SE¼SE¼;Sec. 8, E½NE¼.
98	Virgil Rice	T. 30 N., R. 14 W., Sec. 9, Lot 4.
99	William Caldwell	T. 31 N., R. 15 W., Sec. 35, SW¼NE¼.
99A	Gideon McDonald	T. 28 N., R. 15 E., Sec. 14, NW¼SE¼.
		Yakima County, Washington (Willamette Meridian)
100	N. Pacific R.R. Co	T. 12 N., R. 14 E., Sec. 5, All.

Pursuant to the Act, and subject to any valid existing rights, the United States hereby quitclaims to the listed owner or entryman, his heirs, devisees, successors, and assigns, all right, title, and interest of the United States in and to the lands described in the Final List given above, effective on the date of publication of this notice.

As further provided by the Act, the BLM will, within 6 months after the date of publication of this notice, issue documents of disclaimer of interest confirming the quitclaim made by publication of the Final List. Each confirmatory document of disclaimer of interest shall operate to estop the United States from making any claim of right, title, or interest in and to the land described in the document of disclaimer. The disclaimers shall be issued in the name of the listed owner or entryman, his heirs, devisees, successor, and assigns, and shall be suitable for recordation. The disclaimer documents shall be filed for recordation by the BLM with the recorder of deeds or other like official of the county or counties within which the lands covered by the disclaimer are located.

Acceptance of benefits under the Act or the failure to seek the benefits provided by this Act within the time allotted with respect to any lands listed will be considered a waiver of any claims against the United States with respect to those and any revenues therefrom.

Dated: December 20, 1995.

Charles E. Wassinger,

Acting State Director, Oregon/Washington.

[FR Doc. 95–31313 Filed 12–26–95; 8:45 am]

BILLING CODE 4310–33–P

INTERSTATE COMMERCE COMMISSION

Agricultural Cooperative Notice to the Commission of Intent to Perform Interstate Transportation for Certain Nonmembers

December 21, 1995.

The following Notices were filed in accordance with section 10526(a)(5) of the Interstate Commerce Act. These rules provide that agricultural cooperatives intending to perform nonmember, non-excempt, interstate transportation must file the Notice, Form BOP 102, with the Commission within 30 days of its annual meeting each year. Any subsequent change concerning officers, directors, and location of transportation records shall

require the filing of a supplemental Notice within 30 days of such change.

The name and address of the agricultural cooperative (1) and (2), the location of the records (3), and the name and address of the person to whom inquiries and correspondence should be addressed (4), are published here for interested persons. Submission of information which could have bearing upon the propriety of a filing should be directed to the Commission's Office of Compliance and Consumer Assistance, Washington, D.C. 20423. The Notices are in a central file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C.

(1) Agway, Inc.
(2) 333 Butternut Dr., DeWitt, NY 13214
(3) 333 Butternut, Dr., DeWitt NY 13214 and P.O. Box 4746, Syracuse, NY 13221
(4) Larry Clark, P.O. Box 4746, Syracuse, NY 13221

Vernon A. Williams,

Secretary.

[FR Doc. 95–31323 Filed 12–26–95; 8:45 am]

BILLING CODE 7035–01–M

[Ex Parte No. 523 (Sub-No. 1)]

Railroad Cost of Capital—1995

AGENCY: Interstate Commerce Commission.

ACTION: Notice of decision instituting a proceeding to determine the railroads' 1995 cost of capital.

SUMMARY: The Commission is instituting a proceeding to determine the railroad industry's cost of capital for 1995. The decision solicits comments on: (1) The railroads' 1995 cost of debt capital; (2) the railroads' 1995 current cost of preferred stock equity capital; (3) the railroads' 1995 cost of common stock equity capital; and (4) the 1995 capital structure mix of the railroad industry on a market value basis.

DATES: Notices of intent to participate are due no later than December 29, 1995. A service list will then be prepared and issued by January 13, 1996. Statements of the railroads are due by March 8, 1996. Statements of other interested persons are due by April 5, 1996. Rebuttal statements by the railroads are due by April 19, 1996.

ADDRESSES: Send an original and 15 copies of statements and an original and 1 copy of the notice of intent to participate to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, 1201 Constitution Avenue, N.W., Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Leonard J. Blistein, (202) 927–6171. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Legislation to sunset the Commission on December 31, 1995, and transfer remaining functions is now under consideration in Congress. Until further notice, parties submitting pleadings should continue to use the current name and address contained herein. Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to, call, or pick up in person from: DC NEWS & DATA, INC., Interstate Commerce Commission Building, 1201 Constitution Avenue, N.W., Room 2229, Washington, DC 20423. Telephone: (202) 289–4357. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

Environmental and Energy Considerations

We preliminarily conclude that the proposed action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Authority: 49 U.S.C. 10704(a).

Decided: December 15, 1995.

By the Commission, Chairman Morgan, Vice Chairman Owen, and Commissioner Simmons.

Vernon A. Williams,

Secretary.

[FR Doc. 95–31322 Filed 12–26–95; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 32834]

Georgia & Florida Railroad Co., Inc.; Amended Trackage Rights Exemption; Georgia Southern and Florida Railway Company

Georgia Southern and Florida Railway Company (GS&F), a subsidiary of Norfolk Southern Railway Company (NS), has agreed to amend the incidental overhead trackage rights previously granted to Georgia & Florida Railroad Co., Inc. (G&F) by NS.[1] The proposed amendment will expand G&F's overhead trackage rights to enable G&F to handle traffic to or from a rail line, known as the Foley line,[2] (1) to or from points north of Sparks, GA, or (2) to or from Valdosta, GA, for the sole purpose of interchanging with GS&F at Valdosta, or to connect with the G&F line from Nashville, GA, to Valdosta. The trackage rights were to become effective on or after December 15, 1995.

This transaction is related to Finance Docket No. 32812, *Georgia & Florida Railroad Co., Inc.—Operation Exemption—Live Oak, Perry & Georgia Railroad Company*, a concurrently filed notice of exemption under 49 CFR 1150.31, in which G&F seeks to operate over approximately 83.05 miles of railroad in Georgia and Florida owned by Live Oak, Perry & Georgia Railroad Company.[3] This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Any comments must be filed with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423. A copy of any pleading filed with the Commission should be sent to applicant's representative: Mark H. Sidman, Suite 800, 1350 New York Ave., NW, Washington, DC 20005–4797.[4]

As a condition to the use of this exemption, any employees adversely affected by the trackage rights will be protected under *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in Mendocino Coast Ry., Inc.—Lease and Operate, 360 I.C.C. 653 (1980).

Decided: December 20, 1995.

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[1] By notice of an acquisition, lease, and operation exemption given by the Commission in *Georgia & Florida Railroad Co., Inc.—Acquisition, Lease, and Operation Exemption—Norfolk Southern Railway Company*, Finance Docket No. 32680 (ICC served May 5, 1995), G&F was granted approximately 29.8 miles of incidental overhead trackage rights between milepost 125.2 at Sparks, Cook County, GA, and milepost 155.0 at Valdosta, in Lowndes County, GA.

[2] The Foley line extends from milepost GB 1.0 in Adel, GA, to milepost 77.3 in Perry, FL, and from milepost LO 45.75 in Perry, to milepost LO 39.0 in Foley, FL.

[3] Also, a concurrently filed related petition for exemption has been filed in Finance Docket No. 32813, *H. Peter Claussen and Linda C. Claussen—Continuance in Control Exemption—Live Oak, Perry & Georgia Railroad Company, Inc.;* and a concurrently filed related notice of exemption has been filed in Finance Docket No. 32811, *Live Oak, Perry & Georgia Railroad Company, Inc.—Acquisition and Operation Exemption—A Portion of Line of Georgia Southern and Florida Railway Company and Norfolk Southern Railway Company.*

[4] Legislation to sunset the Commission on December 31, 1995, and transfer remaining functions is now under consideration in Congress. Until further notice, parties submitting pleadings should continue to use the current name and address.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–31319 Filed 12–26–95; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32795]

Plainview Terminal Company; Purchase and Operation Exemption; Floydada and Plainview Railroad Company

The Plainview Terminal Company (PTC) has filed a notice of exemption to acquire the operating rights of Floydada and Plainview Railroad Company to provide local switching service on an approximately 4.6-mile line of railroad owned by The Atchison, Topeka and Santa Fe Railway Company (ATSF) between Plainview Subdivision milepost 627 plus 1791.7 feet at Plainview, TX (Santa Fe Railway Connection), and Floydada Subdivision milepost 4 plus 3160 feet at Plainview, TX. The proposed transaction was expected to be consummated on October 25, 1995. PTC certified that its projected revenues do not exceed those that would qualify it as a class III carrier.

PTC owns no railroad lines and conducts no rail operations subject to the Commission's jurisdiction. RailAmerica, Inc. (RAI) owns 100% of PTC's stock. RAI owns or controls six other class III shortline railroads.

This transaction is related to a notice of exemption filed in *RailAmerica, Inc.—Continuance in Control Exemption—West Texas and Lubbock Railroad Company, Inc. and Plainview Terminal Company,* Finance Docket No. 32797, for RAI to continue in control of PTC and West Texas and Lubbock Railroad Company (WTLR) and five other class III railroads upon PTC and WTLR becoming class III rail carriers.

Any comments must be filed with the Commission [1] and served on: Robert A. Wimbish, Rea, Cross and Auchinclass, 1920 N. Street, NW, Suite 420, Washington, DC 20036.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: December 19, 1995.

[1] Legislation to sunset the Commission on December 31, 1995, and transfer remaining functions is now under consideration in Congress. Until further notice, parties submitting pleadings should continue to use the current name and address.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams, Secretary.

[FR Doc. 95–31321 Filed 12–26–95; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32797]

RailAmerica, Inc.; Continuance in Control Exemption; West Texas and Lubbock Railroad Company, Inc. and Plainview Terminal Company

RailAmerica has filed a notice of exemption to continue in control of the West Texas and Lubbock Railroad Company, Inc. (WTLR) and the Plainview Terminal Company (PTC) upon WTLR and PTC becoming active class III shortline rail carriers.

WTLR has filed a notice of exemption in *West Texas and Lubbock Railroad Company, Inc.—Purchase and Operation Exemption—Seagraves, Whiteface and Lubbock Railroad Company,* Finance Docket No. 32796, to acquire and operate 113.0 route miles of interconnected rail lines from the Seagraves, Whiteface and Lubbock Railroad Company (SWGR). WTLR will also obtain ancillary overhead trackage rights held by SWGR over certain lines and yard tracks of The Atchison, Topeka and Santa Fe Railway Company (ATSF) at Lubbock Subdivision and in ATSF's Lubbock yards.

PTC has filed a notice of exemption in *Plainview Terminal Company—Purchase and Operation Exemption—Floydada and Plainview Railroad Company,* Finance Docket No. 32795, to acquire operating rights over a 4.6 mile line of railroad at Plainview, TX.

RAI controls five other carriers: The Delaware Valley Railway Company, Inc. (DVRY), the Huron and Eastern Railway Company, Inc. (HESR) the Saginaw Valley Railway Company, Inc. (SGVR), the South Central Tennessee Railroad Company (SCTR), and Dakota Rail, Inc. (DRI).

RAI certifies that: (1) The WTLR and PTC do not interconnect, nor do they interconnect with any other rail carrier it controls; (2) the continuance in control is not part of a series of anticipated transactions that would connect the railroads with each other or any railroad in their corporate family; and (3) the transaction does not involve a class I carrier. The transaction, therefore, is exempt from the prior approval requirements of 49 U.S.C. 11343. See 49 CFR 1180.2(d)(2).

As a condition to use of this exemption, any employees affected by the transaction will be protected by the conditions set forth in *New York Dock Ry.—Control—Brooklyn Eastern Dist.,* 360 I.C.C. 60 (1979).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Pleadings must be filed with the Commission [1] and served on: Robert A. Wimbish, Rea, Cross & Auchincloss, 1920 N Street, NW, Suite 420, Washington, D.C. 20036.

Decided: December 19, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–31320 Filed 12–26–95; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32760]

Union Pacific Corporation, Union Pacific Railroad Company, and Missouri Pacific Railroad Company—Control and Merger—Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and the Denver and Rio Grande Western Railroad Company

AGENCY: Interstate Commerce Commission.

ACTION: Decision No. 9; Notice of Acceptance of Application.[1]

[1] Legislation to sunset the Commission on December 31, 1995, and transfer remaining functions is now under consideration in Congress. Until further notice, parties submitting pleadings should continue to use the current name and address.

[1] This designation embraces the following: (1) Finance Docket No. 32760 (Sub-No. 1), *Union Pacific Railroad Company, Missouri Pacific Railroad Company, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and The Denver and Rio Grande Western Railroad Company—Trackage Rights Exemption—Burlington Northern Railroad Company and The Atchison, Topeka and Santa Fe Railway Company;* (2) Finance Docket No. 32760 (Sub-No. 2), *Burlington Northern Railroad Company and The Atchison, Topeka and Santa Fe Railway Company—Petition for Exemption—Acquisition and Operation of Trackage in California, Texas, and Louisiana;* (3) Finance Docket No. 32760 (Sub-No. 3), *Union Pacific Corporation, Union Pacific Railroad Company, Missouri Pacific Railroad Company, Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and The Denver and Rio Grande Western Railroad Company—Control Exemption—The Alton & Southern Railway Company;* (4) Finance Docket No. 32760 (Sub-No. 4), *Union Pacific Corporation, Union Pacific Railroad Company, Missouri Pacific Railroad Company, Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and The Denver and Rio Grande Western Railroad Company—Control Exemption—Central California Traction Company;* (5) Finance Docket No. 32760 (Sub-No. 5), *Union Pacific Corporation,*

SUMMARY: The Commission is accepting for consideration the application filed November 30, 1995,[2] by Union Pacific Corporation (UPC), Union Pacific Railroad Company (UPRR), Missouri Pacific Railroad Company (MPRR), Southern Pacific Rail Corporation (SPR), Southern Pacific Transportation Company (SPT), St. Louis Southwestern Railway Company (SSW), SPCSL Corp. (SPCSL), and The Denver and Rio Grande Western Railroad Company (DRGW)[3] (collectively applicants), seeking Commission approval and authorization under 49 U.S.C. 11343–45 for: (1) The acquisition of control of SPR by UP Acquisition Corporation (Acquisition), an indirect wholly owned subsidiary of UPC; (2) the merger of SPR into UPRR; and (3) the resulting common control of UP and SP by UPC.[4] Applicants are directed to provide certain additional information.

DATES: The effective date of this decision is December 27, 1995. Parties must file notification of intent to participate in this proceeding by January 16, 1996. Descriptions of inconsistent and responsive applications, and petitions for waiver or clarification regarding those applications, must be filed by January 29, 1996. Inconsistent and responsive applications, written comments, including comments of the United States Department of Justice (DOJ) and the United States Department of Transportation (USDOT), protests, requests for conditions, and any other opposition evidence and argument must be filed by March 29, 1996. For further information, see the attached procedural schedule.[5]

ADDRESSES: An original and 20 copies of all documents must refer to Finance Docket No. 32760 and be sent to the Office of the Secretary, Case Control Branch, Attn: Finance Docket No. 32760, Interstate Commerce Commission, 1201 Constitution Avenue, N.W., Washington, DC 20423.[6]

In addition, one copy of all documents in this proceeding must be sent to each of applicants' representatives: (1) Arvid E. Roach II, Esq., Covington & Burling, 1201 Pennsylvania Avenue, N.W., P.O. Box 7566, Washington, DC 20044; and (2) Paul A. Cunningham, Esq., Harkins Cunningham, 1300 Nineteenth Street, N.W., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Julia Farr, (202) 927–5352. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: On November 30, 1995, pursuant to 49 U.S.C. 11343–45 and our rules at 49 CFR 1180.4, applicants filed an application for approval of: (1) The acquisition of control of SPR by Acquisition; (2) the merger of SPR into UPRR; and (3) the resulting common control of UP and SP by UPC. Applicants also filed several related applications, petitions for exemption, and notices of exemption.[7]

Applicants filed a notice of exemption for settlement-related trackage rights pursuant to an agreement they reached with Burlington Northern Railroad Company and The Atchison, Topeka, and Santa Fe Railway Company (collectively, BN/Santa Fe) [Finance Docket No. 32760 (Sub-No. 1)].[8] The trackage rights are to be effective when and if applicants receive and exercise

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Union Pacific Railroad Company, Missouri Pacific Railroad Company, Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and The Denver and Rio Grande Western Railroad Company—Control Exemption—The Ogden Union Railway & Depot Company; (6) Finance Docket No. 32760 (Sub-No. 6), Union Pacific Corporation, Union Pacific Railroad Company, Missouri Pacific Railroad Company, Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and The Denver and Rio Grande Western Railroad Company—Control Exemption—Portland Terminal Railroad Company; (7) Finance Docket No. 32760 (Sub-No. 7), *Union Pacific Corporation, Union Pacific Railroad Company, Missouri Pacific Railroad Company, Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and The Denver and Rio Grande Western Railroad Company—Control Exemption—Portland Traction Company;* (8) Finance Docket No. 32760 (Sub-No. 8), *Union Pacific Corporation, Union Pacific Railroad Company, Missouri Pacific Railroad Company, Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and The Denver and Rio Grande Western Railroad Company—Control Exemption—Overnite Transportation Company, Southern Pacific Motor Trucking Company, and Pacific Motor Transport Company;* (9) Finance Docket No. 32760 (Sub-No. 9), *Burlington Northern Railroad Company and The Atchison, Topeka and Santa Fe Railway Company—Terminal Trackage Rights—Kansas City Southern Railway Company;* (10) Docket No. AB–3 (Sub-No. 129X), *Missouri Pacific Railroad Company—Abandonment Exemption—Gurdon-Camden Line In Clark, Nevada, and Ouachita Counties, AR;* (11) Docket No. AB–3 (Sub-No. 130), *Missouri Pacific Railroad Company—Abandonment—Towner-NA Junction Line In Kiowa, Crowley, and Pueblo Counties, CO,* and Docket No. AB–8 (Sub-No. 38), *The Denver and Rio Grande Western Railroad Company—Discontinuance of Trackage Rights—Towner-NA Junction Line In Kiowa, Crowley, and Pueblo Counties, CO;* (12) Docket No. AB–3 (Sub-No. 131), *Missouri Pacific Railroad Company—Abandonment—Hope-Bridgeport Line In Dickinson and Saline Counties, KS,* and Docket No. AB–8 (Sub-No. 37), *The Denver and Rio Grande Western Railroad Company—Discontinuance of Trackage Rights—Hope-Bridgeport Line In Dickinson and Saline Counties, KS;* (13) Docket No. AB–3 (Sub-No. 132X), *Missouri Pacific Railroad Company—Abandonment Exemption—Whitewater-Newton Line In Butler and Harvey Counties, KS;* (14) Docket No. AB–3 (Sub-No. 133X), *Missouri Pacific Railroad Company—Abandonment Exemption—Iowa Junction-Manchester Line In Jefferson Davis and Calcasieu Parishes, LA;* (15) Docket No. AB–3 (Sub-No. 134X), *Missouri Pacific Railroad Company—Abandonment Exemption—Troup-Whitehouse Line In Smith County, TX;* (16) Docket No. AB–8 (Sub-No. 36X), *The Denver and Rio Grande Western Railroad Company—Discontinuance Exemption—Sage-Leadville Line In Eagle and Lake Counties, CO,* and Docket No. AB–12 (Sub-No. 189X), *Southern Pacific Transportation Company—Abandonment Exemption—Sage-Leadville Line In Eagle and Lake Counties, CO;* (17) Docket No. AB–8 (Sub-No. 39), *The Denver and Rio Grande Western Railroad Company—Discontinuance—Malta-Cañon City Line In Lake, Chaffee and Fremont Counties, CO,* and Docket No. AB–12 (Sub-No. 188), *Southern Pacific Transportation Company—Abandonment—Malta-CaNon City Line In Lake, Chafee, and Fremont Counties, CO;* (18) Docket No. AB–12 (Sub-No. 184X), *Southern Pacific Transportation Company—Abandonment Exemption—Wendel-Alturas Line In Modoc and Lassen Counties, CA;* (19) Docket No. AB–12 (Sub-No. 185X), *Southern Pacific Transportation Company—Abandonment Exemption—Suman-Bryan Line In Brazos and Robertson Counties, TX;* (20) Docket No. AB–12 (Sub-No. 187X), *Southern Pacific Transportation Company—Abandonment Exemption—Seabrook-San Leon Line In Galveston and Harris Counties, TX;* (21) Docket No. AB–33 (Sub-No. 93X), *Union Pacific Railroad Company—Abandonment Exemption—Whittier Junction-Colima Junction Line In Los Angeles County, CA;* (22) Docket No. AB–33 (Sub-No. 94X), *Union Pacific Railroad Company—Abandonment Exemption—Magnolia Tower-Melrose Line In Alameda County, CA;* (23) Docket No. AB–33 (Sub-No. 96), *Union Pacific Railroad Company—Abandonment—Barr-Girard Line In Menard, Sangamon, and Macoupin Counties, IL;* (24) Docket No. AB–33 (Sub-No. 97X), *Union Pacific Railroad Company—Abandonment Exemption—DeCamp-Edwardsville Line In Madison County, IL;* (25) Docket No. AB–33 (Sub-No. 98X), *Union Pacific Railroad Company—Abandonment Exemption—Edwardsville-Madison Line In Madison County, IL;* (26) Docket No. AB–33 (Sub-No. 99X), *Union Pacific Railroad Company—Abandonment Exemption—Little Mountain Jct.-Little Mountain Line In Box Elder and Weber Counties, UT.*

[2] We are also accepting for consideration applicants' supplement to the primary application, filed on or about December 21, 1995.

[3] UPC, UPRR, and MPRR are referred to collectively as Union Pacific. UPRR and MPRR are referred to collectively as UP. SPR, SPT, SSW, SPCSL, and DRGW are referred to collectively as Southern Pacific. SPT, SSW, SPCSL, and DRGW are referred to collectively as SP.

[4] SPT is a wholly owned subsidiary of SPR. SPCSL and DRGW are wholly owned subsidiaries of SPT. SPT owns 99.9% of SSW.

[5] WWe adopted the procedural schedule set forth below in Decision No. 6, served October 19, 1995. There have been minor adjustments to dates falling on Saturdays, Sundays, or legal holidays.

[6] Legislation to sunset the Commission on December 31, 1995, and to transfer remaining functions is now under consideration in Congress. Until further notice, parties submitting pleadings should continue to use the current name and address.

[7] Under 49 CFR 1180.4(c)(2)(vi), all directly related applications, petitions, and notices of exemption must be filed concurrently with the primary control and merger application.

[8] Applicants originally reached an agreement with BN/Santa Fe on September 25, 1995. They reached a supplemental agreement on November 18, 1995, which governs the grants of trackage rights.

the control authority requested in Finance Docket No. 32760.

Applicants and BN/Santa Fe filed a petition for exemption from regulation under 49 U.S.C. 10505 for the acquisition and operation of trackage in the states of California, Texas, and Louisiana [Finance Docket No. 32760 (Sub-No. 2)]. This petition is also filed pursuant to the settlement agreements applicants reached with BN/Santa Fe.

Applicants seek exemption from regulation under 49 U.S.C. 10505 for the merged entity to control the Alton & Southern Railway Company [Finance Docket No. 32760 (Sub-No. 3)], Central California Traction Company [Finance Docket No. 32760 (Sub-No. 4)], The Ogden Union Railway & Depot Company [Finance Docket No. 32760 (Sub-No. 5)], Portland Terminal Railroad Company [Finance Docket No. 32760 (Sub-No. 6)], and Portland Traction Company [Finance Docket No. 32760 (Sub-No. 7)]. Applicants also seek exemption from regulation under section 10505 for the merged entity to control the following motor carriers: Overnite Transportation Company, Southern Pacific Motor Trucking Company, and Pacific Motor Transport Company [Finance Docket No. 32760 (Sub-No. 8)].

Applicants and BN/Santa Fe also filed an application for terminal rights requesting that we enter an order under 49 U.S.C. 11103 permitting BN/Santa Fe to use two segments of Kansas City Southern Railway Company terminal trackage in Shreveport, LA, and Beaumont, TX [Finance Docket No. 32760 (Sub-No. 9)]. Applicants and BN/Santa Fe allege that BN/Santa Fe's use of these tracks is necessary for BN/Santa Fe to promote stronger rail competition to a merged UP/SP system in the Houston-Memphis and Houston-New Orleans corridors, pursuant to the settlement agreements.

Various applicants seek exemption from regulation under 49 U.S.C. 10505 for abandonments related to the primary application. MPRR seeks exemption for two related abandonments [Docket No. AB–3 (Sub-Nos. 129X and 133X); SPT for two related abandonments [Docket No. AB–12 (Sub-Nos. 184X and 185X)], and UPRR for one related abandonment [Docket No. AB–33 (Sub-No. 98X)]. DRGW and SPT filed a merger-related petition for exemption from regulation under section 10505 to abandon and discontinue service on another line [Docket No. AB–8 (Sub-No. 36X) and Docket No. AB–12 (Sub-No. 189X)].

MPRR filed notices of exemption pursuant to 49 CFR 1152, Subpart F, for two abandonments related to the primary application [Docket No. AB–3 (Sub-Nos. 132X and 134X); SPT filed a notice for one related abandonment [Docket No. AB–12 (Sub-No. 187X)]; and UPRR filed notices for four related abandonments [Docket No. AB–33 (Sub-Nos. 93X, 94X, 97X, and 99X)].

MPRR and DRGW filed two applications for abandonment and discontinuance of trackage rights pursuant to 49 CFR 1152.22 [Docket No. AB–3 (Sub-No. 130) and Docket No. AB–8 (Sub-No. 38)], [Docket No. AB–3 (Sub-No. 131) and Docket No. AB–8 (Sub-No. 37)].

DRGW and SPT filed an application pursuant to 49 CFR 1152.22 to permit discontinuance of operations on and abandonment of a portion of railroad [Docket No. AB–8 (Sub-No. 39) and Docket No. AB–12 (Sub-No. 188)]. UPRR filed an application pursuant to 49 CFR 1152.22 to permit abandonment of and discontinuance of service on a railroad line [Docket No. AB–33 (Sub-No. 96)].

According to applicants, the proposed transaction involves the acquisition and exercise of control of SPR and its subsidiaries, including those which are carriers by rail, by UPC and its wholly owned subsidiaries, UPRR and MPRR.[9] Applicants submitted an operating plan detailing how they will consolidate UP and SP rail operations upon consummation of the transaction. UPC, Acquisition, UPRR, and SPR are parties to an Agreement and Plan of Merger dated August 3, 1995 (the Merger Agreement).[10] Applicants state that the Merger Agreement calls for Acquisition to acquire all of the common stock of SPR, and for SPR to be merged with and into UPRR. The separate corporate existence of SPR will cease and UPRR will be the surviving corporation.[11]

Pursuant to the Merger Agreement, Acquisition made a tender offer on August 9, 1995, for up to 25% of SPR common stock at $25.00 per share in cash. On September 7, 1995, the tender offer was completed for 39,034,471 shares. On September 15, 1995, Acquisition purchased the shares accepted for payment under the tender offer for approximately $976 million.[12] These shares are being held in a voting trust pending approval of the merger.

According to applicants, upon satisfaction of all conditions to the merger, SPR's stockholders will have the right to submit a request specifying the number of shares that they desire to have converted into (a) .4065 shares of the common stock of UPC per share, and (b) the right to receive $25.00 per share in cash, without interest. The aggregate number of shares to be converted into cash consideration at the time of the merger, together with shares tendered in the tender offer, will be equal as nearly as possible to 40% of all shares outstanding as of the date immediately prior to the date on which the merger becomes effective, applicants state. To the extent that SPR stockholders elect in the aggregate to receive either cash consideration or stock consideration in excess of such proportions, the Merger Agreement requires the cash or stock component to be prorated in order to achieve the specified proportions. Applicants request that, pursuant to *Schwabacher* v. *United States,* 334 U.S. 192 (1948), we determine that the agreed-upon terms for the purchase of the common stock of SPR by Acquisition are fair to both the stockholders of UPC and the stockholders of SPR.[13]

[9] SPT, and its majority owned railroad subsidiaries— SPCSL, DRGW, and SSW—are an integrated, single system railroad. As such, the acquisition of control of SPR by UPRR involves the control of a single carrier within the meaning of 49 U.S.C. 11343. See *Robert W. Bethge & Raymond K. Wilson—Control Exemption—Canal Cartage Co.,* Finance Docket No. MC–F–19525 (ICC served Nov. 29, 1989); *Burlington Northern, Inc.—Control and Merger—St. Louis-San Francisco Ry.,* 366 I.C.C. 862, *aff'd sub nom. Brotherhood of Ry. & Airline Clerks* v. *Burlington Northern Inc.,* 722 F.2d 380 (8th Cir. 1983); *Katy Indus., Inc.—Control—Missouri-Kansas-Texas R.R.,* 331 I.C.C. 405, 410–411 (1967); *Kansas City Southern Indus. Inc.—Control—Kansas City S. Ry.,* 317 I.C.C. 1, 4 (1962); *Woods Indus., Inc.—Control—United Transports, Inc.,* 85 M.C.C. 672, 675 (1960); *Louisville & Jeffersonville B. & R. Co. Merger,* 295 I.C.C. 11, 17–18 (1955), *aff'd sub nom. Alleghany Corp.* v. *Breswick & Co.,* 353 U.S. 151 (1957).

[10] Applicants state that, at a special meeting of stockholders expected to be held in December 1995, SPR stockholders will consider the merger pursuant to the Merger Agreement.

[11] As noted, applicants intend to consolidate the railroad operations of UP and SP through the merger of SPR into UPRR. However, they state that, depending upon tax, financial and other circumstances, they may effect the consolidation by other means, including, for example, the merger of SPR into MPRR or the lease of all of SP's properties to UPRR and/or MPRR. Applicants also maintain that they intend to merge SPT, SSW, SPCSL and DRGW into UPRR, although these SPR subsidiaries may retain their separate existence for some time. Further, applicants state that it is possible that, instead of the expected mergers, some or all of the entities will be merged into, or their assets leased to, MPRR, or applicants may use other means to accomplish their consolidation into the merged system.

[12] In *Union Pacific Corp.—Securities Exemption (Tender Offer),* Finance Docket No. 32761 (ICC served Aug. 21, 1995), we granted an exemption for the issuance of debt securities to finance the purchase price of these shares.

[13] According to applicants, SSW has a small number of minority equity holders, and the Federal Railroad Administration also holds certain SSW redeemable preference shares. At this time, applicants state, they are not requesting a fairness determination pursuant to *Schwabacher* with respect to the compensation that might be paid to SSW security holders in connection with a merger of SSW into UPRR or MPRR because tax and other considerations need to be resolved before applicants can determine whether such a merger

Applicants allege that borrowings in connection with the purchase by Acquisition of the remaining common stock of SPR will add ''modestly'' to UPC's fixed charges, and state that UPC will be able to absorb these additional charges.

According to applicants, UPC will pay approximately $600 million in additional cash consideration to complete the Merger. UPC intends initially to finance such amount through (a) the issuance of public or private long-term or short-term borrowings, which may be evidenced by securities (the Debt Securities), (b) the issuance of preferred stock or UPC common stock (the Equity Securities) or, (c) the issuance of a combination of Debt Securities and Equity Securities. Applicants state that these security issuances may require authorization under 49 U.S.C. 11301. Alternatively, UPC may initially finance the additional cash consideration under the Merger with borrowings under one or more new credit or other facilities to be established with various banks or other parties and/or certain existing credit facilities (the Credit Facilities) under which the indebtedness borrowed will not be evidenced by notes or other securities subject to 49 U.S.C. 11301. If the Credit Facilities are used initially to finance such amount, borrowings thereunder will be refinanced through the issuance of Debt Securities or Equity Securities or a combination thereof, applicants state. The proceeds from the Debt Securities and/or Equity Securities may also be used to finance interest accrued on the Credit Facilities or the Debt Securities. In applicants' view, based on the amount of SPR common stock outstanding on September 30, 1995, UPC will also be required to issue approximately 38 million shares of UPC common stock [14] in order to pay the stock consideration required to complete the Merger (together with the Debt Securities and Equity Securities, the Securities).

Applicants state that, in the event of the merger of SPR, SPT, SSW, SPCSL, or DRGW into UPRR or MPRR, UPRR or MPRR will assume obligations associated with certain debt securities or obligations related to securities then outstanding of the entities, to the extent permitted or required by applicable agreements and instruments and provided such obligations are not redeemed or retired at that time.

Applicants note that, although not a carrier, UPC must ''file applications under 49 U.S.C. 11301 and 11302 for those issuances of securities and assumptions of obligations which may relate to or affect the activities of carrier subsidiaries.'' [15] UPRR, as a carrier, is also subject to such provisions with respect to the issuance of securities and assumption of debt obligations, applicants state. To the extent Commission authorization may be required under 49 U.S.C. 11301, applicants request an exemption from such requirements for the issuance of the Securities in order to complete the merger and for the assumption of or succession to any assumed obligations pursuant to subsidiary mergers or similar transactions, pursuant to 49 U.S.C. 10505. Alternatively, applicants request that we approve such issuance of the Securities and assumption of or succession to any assumed obligations pursuant to 49 U.S.C. 11301.

According to applicants, UPRR operates approximately 13,646 miles of railroad in the Western United States, consisting of approximately 9,820 miles of main line and approximately 3,826 miles of branch line. The main lines run from the Pacific Coast ports and terminals of Seattle, WA, Portland, OR, and Oakland and Los Angeles, CA, to Chicago, IL, and Missouri River gateways including Kansas City and Omaha/Council Bluffs. Routes over main lines extend from the Pacific Northwest through the States of Washington, Oregon, Idaho, and Utah to Ogden/Salt Lake City, UT, from Northern California through Nevada and Utah to Ogden/Salt Lake City, and from Southern California through Nevada and Utah to Ogden/Salt Lake City. UPRR's double-track main line connects Omaha/Council Bluffs at the East with Ogden/Salt Lake City at the West, and runs through Nebraska, Colorado, Wyoming, and Utah.

With the recent merger of Chicago and North Western Railway Company (CNW) into UPRR, state applicants, UPRR's lines also run from Chicago, IL, to Milwaukee, WI, and then to Winona, MN, and (via trackage rights over Wisconsin Central Ltd.) Duluth/Superior, and from Duluth/Superior to Minneapolis/St. Paul (via trackage rights over BN) and then to Des Moines, IA, and Kansas City. In addition, applicants note, UPRR transports low-sulfur coal from the Southern Powder River Basin in Wyoming in unit trains. These are principally destined for electric generating plants, the majority of which are located in the Southwest and Midwest. UPRR also provides commuter service in the Chicago area under a purchase-of-service contract with Metra. A UPRR line extends from a point near Green Bay, WI, to Ishpeming and Escanaba, MI, while UPRR's Milwaukee-to-St. Louis line passes through Chicago. UPRR has a network of branch lines in Iowa and Southern Minnesota, and a line extending from Northwestern Nebraska into South Dakota and Wyoming.

MPRR operates approximately 8,361 miles of railroad in the Midwestern and the Southwestern United States, consisting of approximately 7,508 miles of main line and approximately 853 miles of branch line. MPRR's lines connect the major midwest gateways of Chicago, Omaha, St. Louis, Memphis, and Kansas City with the principal ports and the terminals of New Orleans and Lake Charles, LA, and Galveston, Houston, Beaumont, Corpus Christi, Brownsville, and Laredo, TX. MPRR also serves interior Texas points including Dallas, Fort Worth, San Antonio, Austin, Midland/Odessa, and El Paso. Its lines extend into the grain producing regions of Kansas and Nebraska and as far west as Pueblo, CO.

SPT operates approximately 11,000 miles of railroad in the Western United States, consisting of approximately 8,700 miles of main line and approximately 2,300 miles of branch line in eight states. The main lines run from Portland, to Oakland, to Los Angeles, and thence to San Antonio, Houston and New Orleans, including physical interchanges at five principal gateways to Mexico. SPT lines extend from San Antonio and Houston to Fort Worth, with operations over trackage rights from Fort Worth to Pueblo and Kansas City. The Fort Worth-Pueblo line connects with SSW at Stratford and Dalhart, TX, and to DRGW at Pueblo. The Fort Worth-Kansas City line connects with SSW at Kansas City and Hutchinson, KS. SPT's Central Corridor main line runs from Northern California to Ogden, UT, where it connects with DRGW. SPT's principal facilities are located at Eugene, OR, Roseville, Oakland, Los Angeles, Long Beach and West Colton, CA, Tucson, AZ, and El Paso, San Antonio and Houston, TX.

SSW operates approximately 2,200 miles of railroad in the Central United States, consisting of approximately 1,700 miles of main line and

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will occur, and if so, on what terms. Applicants state that, if they determine to carry out such a merger, they will request a finding from us regarding the fairness of the terms or a declaratory order that no such finding is required.

[14] In the Merger Agreement, SPR agrees that no more than 158,316,398 shares of SPR common stock will be outstanding at the time of the Merger. If the maximum were outstanding, this would result in the issuance of approximately 39 million shares of UPC common stock.

[15] *Union Pacific—Control—Missouri Pacific; Western Pacific*, 366 I.C.C. 459, 640 (1982), *aff'd in part & remanded in part sub nom. Southern Pacific Transportation Co.* v. *ICC*, 736 F.2d 708 (D.C. Cir. 1984), *cert. denied*, 469 U.S. 1208 (1985).

approximately 500 miles of branch line in nine states. SSW's main line runs from Santa Rosa, NM, to Kansas City and St. Louis, MO. Operations between Topeka and St. Louis are over trackage rights on UP. SSW main lines extend from St. Louis south to Shreveport, LA, and Corsicana, TX. SSW's lines connect with SPT in Corsicana, Dalhart and Stratford, TX, Hutchinson and Kansas City, KS, Shreveport, LA, and Santa Rosa, NM, with DRGW at Herington, KS, and with SPCSL at Kansas City, MO and East St. Louis, IL. At East St. Louis, IL, Memphis, TN, and Kansas City, KS, SSW connects with major eastern rail carriers. SSW's principal facilities are located in Kansas City, KS, and Pine Bluff, AR.

SPCSL operates approximately 1,200 miles of main line railroad in the states of Illinois, Iowa, and Missouri, between St. Louis, Chicago, and Kansas City, KS. This mileage includes trackage rights between Kansas City and Chicago on BN/Santa Fe. SPCSL is the link to the Chicago gateway for the SP system.

DRGW operates approximately 2,300 miles of railroad in the states of Colorado, Utah, and Kansas, consisting of approximately 1,900 miles of main line and approximately 400 miles of branch line. The main line runs from Ogden, UT, in the West, where it connects with SPT, through Denver, CO, to Herington, KS, where it connects with SSW. DRGW has rights to operate from Herington to Kansas City over SSW and UP. Operations between Pueblo and Herington are over trackage rights on UP. DRGW also connects with SPT at Pueblo. DRGW's principal facilities are located at Salt Lake City, UT, and Denver, Pueblo, and Grand Junction, CO.

Applicants assert that the proposed transaction is clearly in the public interest, and that quantified public benefits will be in excess of $750 million per year. The rail mode will become more competitive against truck and water carriers, applicants state, and rail customers will penetrate new markets, economic activity will increase, and resources will be used more efficiently. The public benefits will include new and improved routes, reductions in terminal delay, more reliable service, improved equipment utilization and availability, savings from facility consolidations and lower overheads, and increased capital investments. It is applicants' position that the UP/SP merger, together with the settlement agreement with BN/Santa Fe, will intensify rail competition in the West, and will increase source competition.

We are accepting the application for consideration because it complies with the applicable regulations, waivers, and requirements. See 49 U.S.C. 11343–45; 49 CFR Part 1180. We reserve the right to require the filing of supplemental information from applicants or any other party or individual, as necessary to complete the record in this matter. We are also accepting all related applications. We note that we will process the abandonment applications in accordance with the overall merger procedural schedule, rather than applying the deadlines found at 49 U.S.C. 10904; it would be premature to process the abandonment applications without having ruled on the merits of the merger application, when applicants state that the abandonments are related to, and contingent upon, the proposed UP/SP consolidation.[16] Similarly, we will not publish the notices of exemption in the 20-day period called for by our regulations at 49 CFR 1152.50(d)(3). Those abandonments are likewise contingent on approval of the overall merger transaction; we will not publish the notices and they will not become effective unless and until we approve the overall merger transaction.

We are requesting additional information regarding Docket No. AB–12 (Sub-No. 185X). The description of the line at issue (milepost 117.6 to milepost 101.4 of the Suman-Bryan Line in Brazos and Robertson Counties, TX) indicates that it is used primarily for through train service. The sole shipper on the line is located at milepost 104.5. If the line can be served from either end, and the 3.1-mile segment from milepost 101.4 to milepost 104.5 maintained, the shipper could still be served. It is possible that bifurcation of the line segment may be appropriate.

We request that, within 20 days from the effective date of this decision, applicants provide traffic data and pro forma operating results for the bifurcated section (milepost 101.4 to 104.5) for the most recent 12-month period, preferably through November 1995. The data submitted should include the following: (1) Traffic (carloads) transported; (2) crew consist needed; (3) number of train trips required; (4) service time required per trip; (5) number of locomotives needed to move the traffic; and (6) the opportunity costs for the segment.

We also request that applicants submit a complete set of operating timetables for each applicant carrier's operations to facilitate our review of the operating plan submitted with the application.

In Decision No. 6, served October 19, 1995, we adopted an expedited procedural schedule, and we have attached it here to give notice to all interested persons. All of the filing deadlines are in accordance with the statute and governing regulations, as modified by that schedule.[17] We advise applicants and all other parties to this proceeding that, for purposes of this proceeding, they must strictly comply with all requirements. If questions arise concerning an interpretation of a requirement, they may contact the Commission's Office of Proceedings at (202) 927–7513 for assistance. See 49 CFR 1180.4(c)(6)(iii).

The application and accompanying exhibits are available for inspection in the Public Docket Room, Room 1221, at the offices of the Interstate Commerce Commission in Washington, DC.

Any interested persons, including DOJ and USDOT, may file written comments, protests, requests for conditions, and inconsistent and responsive applications no later than March 29, 1996. This deadline applies to all replies, comments, and protests

[16] Parties commenting on or protesting an abandonment may file their submissions on March 29, 1996. The applicants may respond to those comments and protests on April 29, 1996. We will not allow parties objecting to an abandonment to file rebuttal submissions; however, all parties may file briefs in support of their positions on June 3, 1996. In the past, we have deviated from the section 10904 deadlines when circumstances have justified doing so. See *Union Pacific Corporation, Union Pacific Railroad Company and Missouri Pacific Railroad Company—Control—Missouri-Kansas-Texas Railroad Company*, Finance Docket No. 30800 (ICC served Mar. 30, 1987). See, *e.g.*, *Chelsea Property Owners—Abandonment—Portion of the Consolidated Rail Corporation's West 30th Street Secondary Track in New York, NY*, Docket No. AB–167 (Sub-No. 1094) (ICC served Nov. 24, 1989) at p.2, n.6.

[17] On November 27, 1995, Mr. Scott Manatt filed a petition to reopen and reconsider the procedural schedule (Decision No. 6) and the protective order, which we entered in Decision No. 2, served September 1, 1995. Mr. Manatt also filed a ''demand for notice'' requesting that he receive notice of all hearings, communications, orders, and motions filed in this proceeding. He requests that copies of all pleadings filed with the Commission be delivered to his office in Corning, AR. He further seeks an opportunity to engage in meaningful discovery, and to appear live before the Commission to testify in opposition to the merger. He demands that he be placed on the mailing list of all parties opposing the merger and that he receive copies of their communications and filings. On December 1, 1995, applicants replied to Mr. Manatt's petition to reopen and reconsider the protective order and the procedural schedule, noting that he raises arguments that we have already considered and rejected. On December 14, 1995, Mr. Manatt filed a response to applicants' reply. We will not consider Mr. Manatt's reply; under our regulations, replies to replies are not permitted. 49 CFR 1104.13(c). We are denying Mr. Manatt's requests for relief, but will place his name on the service list in this proceeding, so that he will receive copies of all pleadings, Commission decisions, and decisions of the Administrative Law Judge (ALJ) governing discovery.

addressing all related petitions, notices, and applications filed with the primary application.[18] An original and 20 copies must be filed with the Secretary, Interstate Commerce Commission, Washington, DC 20423.[19]

Written comments must be concurrently served by first class mail on the United States Secretary of Transportation (USDOT), the Attorney General of the United States (DOJ), and applicants' representatives. Written comments must also be served upon all parties of record within 10 days of service of the service list by the Commission. We plan to issue the service list shortly after parties file their notices of intent to participate.

Written comments shall include:

1. The docket number and title of the proceeding;

2. The name, address, and telephone number of the commenting party and its representative upon whom service shall be made;

3. The commenting party's position, i.e., whether it supports or opposes the proposed transaction;

4. A list of any specific protective conditions sought;

5. An analysis of the issues with particular attention to our general policy statement for the merger or control of at least two class I railroads, 49 CFR 1180.1, the statutory criteria, and antitrust policy.

Because we have determined that this proceeding constitutes a major transaction within the meaning of our rail consolidation rules, 49 CFR Part 1180, railroads intending to file inconsistent or responsive applications must submit descriptions of those applications on January 29, 1996. The description must state whether the commenting railroad intends to file an inconsistent or responsive application, petitions for inclusion, trackage rights, or any other affirmative relief requiring an application to be filed with the Commission and a general statement of what that application is expected to include. THIS WILL BE CONSIDERED A PREFILING NOTICE WITHOUT WHICH THE COMMISSION WILL NOT ENTERTAIN APPLICATIONS FOR THIS TYPE OF RELIEF.

Petitions for waiver or clarification by responsive applicants shall be filed no later than January 29, 1996. Each responsive application filed and accepted will be consolidated with the primary application in this proceeding. Responsive applications include inconsistent applications, petitions for inclusion, or any other affirmative relief that requires an application to be filed with the Commission (such as trackage rights, purchase, purchase of a portion, acquisition, extension, construction, operation, pooling, terminal operations, abandonment, etc.). Parties should contact the Office of the Secretary at 927–7428 to obtain docket numbers for their responsive applications.

Parties wishing to engage in discovery are directed to consult with Administrative Law Judge Jerome Nelson.[20] For the purposes of the present proceeding, we think it appropriate to tighten the deadlines provided by 49 CFR 1115.1(c). Accordingly, the provisions of the second sentence of 49 CFR 1115.1(c) to the contrary notwithstanding, an appeal to a decision issued by ALJ Nelson must be filed within 3 working days of the date of his decision, and any response to any such appeal must be filed within 3 working days thereafter. Likewise, any reply to any procedural motion filed with the Commission itself in the first instance must also be filed within 3 working days.

In order for us to fulfill our responsibilities under the National Environmental Policy Act and other environmental laws, inconsistent applications and responsive applications must contain certain environmental information. Anyone desiring to file an inconsistent or a responsive application involving significant operational changes or an action such as a rail line abandonment or construction under 49 CFR 1105.6(b)(4) of our environmental rules must include, with its application, a preliminary draft environmental assessment (PDEA). Generally, these types of actions require an environmental report under 49 CFR 1105.6(b)(3) which would form the basis of a subsequent environmental assessment (or environmental impact statement, if warranted). Here, for purposes of this proceeding, a PDEA is necessary at the outset.

The preparation of a PDEA should not be burdensome. Although the information would be presented in a somewhat different format, the PDEA should address essentially the same environmental issues that would have been covered by an environmental report. The PDEA, like the environmental report, should be based on consultations with the Section of Environmental Analysis (SEA) and the various agencies set forth in 49 CFR 1105.7(b). SEA will be available to provide assistance as needed. Parties should contact Elaine K. Kaiser or Phillis Johnson-Ball of SEA at (202) 927–6248 if they have any questions regarding the environmental review process or preparation of a PDEA. SEA will use the PDEA to expedite the environmental review process. If a PDEA is not submitted or is insufficient, we will not process the inconsistent or responsive application.

If an inconsistent or responsive application does not involve significant operational changes or an action such as an abandonment or construction, it generally is exempt from environmental review. The applicant must certify, however, that the proposal meets the exemption criteria under 49 CFR 1105.6(c)(2). Anyone desiring to file an inconsistent application or responsive application should consult with SEA as early as possible regarding the appropriate environmental documentation. We further note that, for purposes of this proceeding, persons will have 20 days to comment on the Environmental Assessment, which SEA expects to issue in April.

We plan to conclude the evidentiary phase of this proceeding by May 14, 1996. Briefs are due on June 3, 1996, and will be limited to 50 pages. Briefs must be filed in accordance with the requirements of 49 CFR 1104.2. The initial decision will be waived, and the determination of the merits of the application(s) will be made in the first instance by the entire Commission under 49 U.S.C. 11345.

We advise protestants that, if they seek to have the primary application denied, or seek conditions if it is approved, because they contend their ability to provide essential service and/or competition will be harmed, they must present substantial evidence in support of their positions. See *Lamoille Valley R.R. Co.* v. *ICC*, 711 F.2d 295 (D.C. Cir. 1983).

[18] On December 14, 1995, the International Brotherhood of Teamsters (IBT) filed a motion for an extension of time in which to file its reply to applicants' petition for exemption contained in Finance Docket No. 32760 (Sub-No. 8). Because we are allowing all parties until March 29, 1996, to file such replies, IBT's request is moot.

[19] In addition to submitting an original and 20 copies of all documents filed with the Commission, the parties are encouraged to submit all pleadings and attachments as computer data contained on a 3.5-inch floppy diskette which is formatted for WordPerfect 5.1 (or formatted so that it can be converted by WordPerfect 5.1). The computer data contained on the computer diskettes submitted are subject to the protective order attached to the Commission's Decision No. 2 served September 1, 1995, and are for the exclusive use of Commission employees working directly with review of substantive matters in this proceeding. The flexibility provided by such computer file data will facilitate expedited review by the Commission and its staff.

[20] ALJ Nelson held a discovery conference in this proceeding on December 1, 1995. At that conference the ALJ adopted discovery guidelines, as reflected in his order served on December 7, 1995. Parties may contact the Office of the Secretary to obtain a copy of the discovery guidelines.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The applications, petitions, and notices in Finance Docket No. 32760, and in all related proceedings, are accepted for consideration.

2. The parties shall comply with all provisions as stated above.

3. Applicants shall submit additional information as set forth above regarding Docket No. AB–12 (Sub-No. 185X) within 20 days of the effective date of this decision.

4. Applicants are directed to provide the Commission with a current complete set of operating timetables for both UP and SP within 20 days of the effective date of this decision.

5. Any appeal to a decision issued by the ALJ in this proceeding must be filed within 3 working days of the date of the decision, and any response to such an appeal must be filed within 3 working days of the date of filing of the appeal.

6. Replies to any procedural motion filed with the Commission must be filed within 3 working days.

7. This decision is effective on the date of service.

Decided: December 21, 1995.

By the Commission, Chairman Morgan, Vice Chairman Owen, and Commissioner Simmons.

Vernon A. Williams,

Secretary.

Procedural Schedule

November 30, 1995: Primary application filed

December 29, 1995: Commission notice of acceptance of primary application and related applications published in the Federal Register on or before this date

January 16, 1996: Notice of intent to participate in proceeding due

January 29, 1996: Description of anticipated inconsistent and responsive applications due; petitions for waiver or clarification due

March 29, 1996: Inconsistent and responsive applications due. All comments, protests, requests for conditions, and any other opposition evidence and argument due. DOJ and USDOT comments due

April 12, 1996: Notice of acceptance (if required) of inconsistent and responsive applications published in the Federal Register

April 29, 1996: Response to inconsistent and responsive applications due. Response to comments, protests, requested conditions, and other opposition due. Rebuttal in support of primary application and related applications due.

May 14, 1996: Rebuttal in support of inconsistent and responsive applications due

June 3, 1996: Briefs due, all parties (not to exceed 50 pages)

July 2, 1996: Oral argument (at Commission's discretion)

July 3, 1996: Voting Conference (at Commission's discretion)

August 12, 1996: Date of service of final decision

[FR Doc. 95–31333 Filed 12–26–95; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32796]

West Texas and Lubbock Railroad Company, Inc.; Purchase and Operation Exemption; Seagraves, Whiteface and Lubbock Railroad Company

The West Texas and Lubbock Railroad Company (WTLR) has filed a notice of exemption to acquire from Seagraves, Whiteface and Lubbock Railroad Company (SWGR) [1] and operate the approximately 113-mile SWGR rail system, consisting of three connecting branch lines as follows: (1) Between milepost 0.0 at Lubbock, TX (Burlington Northern and Santa Fe connection), and milepost 63.8 at Seagraves, TX; (2) between milepost 0.0 at Doud, TX (connection with SWGR Lubbock to Seagraves line), and milepost 39.2 at Whiteface, TX; and (3) The Pan American Spur from milepost 36.3 (at Coble, TX) to ''end of track'' (approximately 9.3 miles). WTLR will also obtain ancillary overhead trackage rights currently held by SWGR over certain lines and yard tracks of The Atchison, Topeka and Santa Fe Railway Company (''ATSF'') as follows: Milepost 88 + 0748.6 feet and Lubbock Subdivision milepost 675 + 518.5 feet, including tracks numbers 40, 292, 93, 92, 25, 4, 3, 90, 58, 57, 56, 36 and 2 in ATSF's Lubbock Yard. These incidental trackage rights will enable WTLR to interchange cars with connecting class I carriers. The lines described in this paragraph are located in Gaines, Terry, Cochran and Hockley Counties, TX.

The proposed transaction was expected to be consummated on October 25, 1995. WTLR certified that its projected revenues do not exceed those that would qualify it as a class III carrier.

WTLR owns no railroad lines and conducts no rail operations subject to the Commission's jurisdiction. Rail America, Inc. (RAI) owns 100% of WTLR's stock. RAI owns or controls six other class III shortline railroads.

This transaction is related to a notice of exemption filed in *RailAmerica, Inc.—Continuance in Control Exemption—West Texas and Lubbock Railroad Company, Inc. and Plainview Terminal Company,* Finance Docket No. 32797, for RAI to continue in control of WTLR and Plainview Terminal Company (PTC) and five other class III railroads upon PTC and WTLR becoming class III rail carriers.

Any comments must be filed with the Commission [2] and served on: Robert A. Wimbish, Rea, Cross and Auchincloss, 1920 N Street, N.W., Suite 420, Washington, D.C. 20036.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: December 19, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–31318 Filed 12–26–95; 8:45 am]

BILLING CODE 7035–01–P

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements; Notice of Pending Submittal to the Office of Management and Budget (OMB) for Review

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

[1] Anderson Grain Corporation (Anderson), of Levelland, Texas, filed an ''objection'' to this notice. The Commission will issue a separate decision on Anderson's pleading.

[2] Legislation to sunset the commission on December 31, 1995, and transfer remaining functions is now under consideration in Congress. Until further notice, parties submitting pleadings should continue to use the current name and address.

1. The title of the information collection: Exercise of Discretion for an Operating Facility, NRC Enforcement Policy (NUREG–1600).

2. Current OMB approval number: 3150–0136.

3. How often the collection is required: On occasion.

4. Who is required or asked to report: Nuclear power reactor licensees.

5. The number of annual respondents: 36.

6. The number of hours needed annually to complete the requirement or request: 2,160.

7. Abstract: The NRC's revised Enforcement Policy includes the circumstances in which the NRC may exercise enforcement discretion. This enforcement discretion is designated as a Notice of Enforcement Discretion (NOED) and relates to circumstances which may arise where a licensee's compliance with a Technical Specification Limiting Condition for Operation or with other license conditions would involve an unnecessary plant transient or performance of testing, inspection, or system realignment that is inappropriate for the specific plant conditions, or unnecessary delays in plant startup without a corresponding health and safety benefit. A licensee seeking the issuance of a NOED must provide a written justification, which documents the safety basis for the request and provides whatever other information the NRC staff deems necessary to decide whether or not to exercise discretion.

Submit, by February 26, 1996, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. Members of the public who are in the Washington, DC, area can access this document via modem on the Public Document Room Bulletin Board (NRC's Advanced Copy Document Library), NRC subsystem at FedWorld, 703–321–3339. Members of the public who are located outside of the Washington, DC, area can dial FedWorld, 1–800–303–9672, or use the FedWorld Internet address: fedworld.gov (Telnet). The document will be available on the bulletin board for 30 days after the signature date of this notice. If assistance is needed in accessing the document, please contact the FedWorld help desk at 703–487–4608.

Comments and questions may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 F33, Washington, DC, 20555–0001, or by telephone at (301) 415–7233, or by Internet electronic mail at BJS1@NRC.GOV.

Dated at Rockville, Maryland, this 20th day of December, 1995.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 95–31302 Filed 12–26–95; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 50–285]

Omaha Public Power District Fort Calhoun Station, Unit No. 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of 10 CFR Part 50, Section IV.F.2.c of Appendix E regarding a biennial emergency preparedness exercise for Facility Operating License No. DRP–40, issued to Omaha Public Power District, (the licensee), for operation of the Fort Calhoun Station, Unit 1, located in Washington County, Nebraska.

Environmental Assessment

Identification of the Proposed Action

The proposed action would grant a schedular exemption from the requirement of Section IV.F.2.c of Appendix E to 10 CFR Part 50, which requires that each licensee perform a biennial emergency preparedness exercise, including offsite plans with full participation by offsite State and local authorities. This action would allow the licensee to extend the biennial interval until the first quarter of 1996.

The proposed action is in accordance with the licensee's application for exemption dated December 8, 1995, as supplemented by letter dated December 15, 1995.

The Need for the Proposed Action

The proposed action is needed because the Federal Emergency Management Agency (FEMA) was not able to support the licensee's previously scheduled biennial full exercise as result of the federal impasse over the 1996 Federal Budget. Without the exemption, FEMA will not be able to complete its required biennial assessment of the licensee's ability to ensure adequate protection can and will be taken in the event of a radiological emergency.

Environmental Impacts of the Proposed Action

The proposed exemption would not adversely affect the response capabilities of the licensee and State and local authorities. The Commission has completed its evaluation of the proposed action and concludes that the intent of Appendix E, Section IV.F.2.c to ensure offsite emergency preparedness is maintained, has been met. Therefore, the change will not increase the probability or consequences of accidents, no changes are being made in the types or amounts 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 affect 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 (FES) for the Fort Calhoun Station, Unit 1, dated August 1972.

Agencies and Persons Consulted

In accordance with its stated policy, on December 19, 1995, the staff consulted with the Nebraska State official, Ms. Cheryl Rodgers of the Department of Health, 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 December 8, 1995, and supplemental letter dated December 15, 1995, which 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 room located at the W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102.

Dated at Rockville, Maryland, this 20th day of December 1995.

For the Nuclear Regulatory Commission.

L. Raynard Wharton,

Project Manager, Project Directorate IV–2, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95–31300 Filed 12–26–95; 8:45 am]

BILLING CODE 7590–01–P

Notice of Contaminated Sites Listed in NRC Site Decommissioning Management Plan

SUMMARY: This notice informs the public about the list of contaminated sites in the U.S. Nuclear Regulatory Commission's Site Decommissioning Management Plan (SDMP). One of the objectives of the SDMP is to promote timely and safe decommissioning of contaminated sites that warrant special NRC oversight because they pose unique or complex decommissioning issues. NRC established the SDMP in 1990 and updated it annually thereafter. NRC recently published an updated version of the SDMP in NUREG–1444 (''Site Decommissioning Management Plan,'' NUREG–1444, Supplement 1, November 1995).

There are currently 47 sites listed in the SDMP. The table at the end of this notice provides the current list of SDMP sites by site name and location. Since 1990, nine sites have been removed from the SDMP after successfully completing remediation, NRC deferral of oversight to other agencies, or an NRC determination that the site was not subject to NRC licensing.

Sites listed in the SDMP vary in degree of radiological hazard, decommissioning complexity, and cost. Some sites comprise tens of acres that require assessment for radiological contamination, whereas other sites have contamination known to be limited to individual buildings or discrete piles of waste or contaminated soil. Many sites involve active licenses, but some sites were formerly licensed. SDMP sites also vary in degree of completion of decommissioning. At some sites, little or no decontamination work has been done. At other sites on the list, decommissioning is essentially complete and license termination or site release is in the offing.

Sites are added to the list if they satisfy one or more of the following criteria:

(1) Problems with the viability of the responsible organization (e.g., inability to pay for or unwillingness to perform decommissioning);

(2) Presence of large amounts of soil contamination or unused settling ponds or burial grounds that may be difficult to dispose of;

(3) Long-term presence of contaminated, unused facility buildings;

(4) Previously terminated license; or

(5) Contamination or potential contamination of the groundwater from onsite wastes.

In reviewing the sites against these criteria, the NRC staff also considers the projected duration of necessary decommissioning actions and the willingness of the responsible organization to complete these actions in a timely manner.

Sites are removed from the list if they meet one or more of the following criteria:

(1) The license has been terminated after acceptable remediation;

(2) For operating sites that have an inactive, contaminated portion of the site (e.g., contaminated, inactive settling pond or building or a large volume of contaminated soil), remediation of the area has been completed and the license has been modified to reflect the remediation;

(3) For unlicensed sites, acceptable remediation has been completed and the responsible party has been notified; or

(4) Regulatory jurisdiction and oversight are completely assumed by an Agreement State (a State that has signed an agreement with the NRC to regulate nuclear materials under section 274 of the Atomic Energy Act) or by another State or Federal agency (e.g., the Environmental Protection Agency).

NRC routinely notices removal of sites from the SDMP in the Federal Register.

FOR FURTHER INFORMATION CONTACT: David Fauver, Sr. Project Manager, Low-Level Waste and Decommissioning Projects Branch, Division of Waste Management, U.S. Nuclear Regulatory Commission, Mail Stop T7F27, Washington, DC 20555, Telephone: (301) 415–6625.

Dated at Rockville, Maryland this 19th day of December, 1995.

For the 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.

Table 1.—Site Decommissioning Management Plan Site List

Advanced Medical Systems, Inc.; Cleveland, OH
Aluminum Company of America; Cleveland, OH
Anne Arundel County/Curtis Bay; Anne Arundel County, MD
Army, Department of, Aberdeen Proving Ground; Aberdeen, MD
Army, Department of, Jefferson Proving Ground; Jefferson, IN
Babcock & Wilcox; Apollo, PA
Babcock & Wilcox; Parks Township, PA
BP Chemicals America, Inc.; Lima, OH
Brooks & Perkins; Detroit, MI
Brooks & Perkins; Livonia, MI
Cabot Corporation; Boyerton, PA
Cabot Corporation; Reading, PA
Cabot Corporation; Revere, PA
Chemetron Corporation, Bert Avenue; Cleveland, OH
Chemetron Corporation, Harvard Avenue; Cleveland, OH
Clevite; Cleveland, OH
Dow Chemical Company; Bay City and Midland, MI
Elkem Metals, Inc.; Marietta, OH
Engelhard Corporation; Plainville, MA
Fansteel, Inc.; Muskogee, OK
Hartley and Hartley (Kawkawlin) Landfill; Bay County, MI
Heritage Minerals; Lakehurst, NJ
Horizons, Inc.; Cleveland, OH
Kaiser Aluminum; Tulsa, OK
Kerr-McGee; Cimarron, OK
Kerr-McGee; Cushing, OK
Lake City Army Ammunition Plant (formerly Remington Arms Company); Independence, MO
Minnesota Mining and Manufacturing Co. (3M); Pine County, MN
Molycorp, Inc.; Washington, PA
Molycorp, Inc.; York, PA
Northeast Ohio Regional Sewer District/ Southerly Plant; Cleveland, OH
Nuclear Metals, Inc.; Concord, MA
Permagrain Products; Media, PA
Pesses Company, METCOA Site; Pulaski, PA
RMI Titanium Company; Ashtabula, OH
RTI, Inc. (formerly Process Technology of North Jersey, Inc.); Rockaway, NJ

Safety Light Corporation; Bloomsburg, PA
Schott Glass Technologies; Duryea, PA
Sequoyah Fuels Corporation; Gore, OK
Shieldalloy Metallurgical Corporation; Cambridge, OH
Shieldalloy Metallurgical Corporation; Newfield, NJ
Texas Instruments, Inc.; Attleboro, MA
Watertown Arsenal/Mall; Watertown, MA
Watertown GSA; Watertown, MA
Westinghouse Electric Corporation; Waltz Mill, PA
Whittaker Corporation; Greenville, PA
Wyman-Gordon Company; North Grafton, MA

[FR Doc. 95–31298 Filed 12–26–95; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 50–412]

Duquesne Light Co., Ohio Edison Co., The Cleveland Electric Illuminating Co., The Toledo Edison Co., Beaver Valley Power Station, Unit 2; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request by Duquesne Light Company (the licensee) to withdraw its April 14, 1993, application for a proposed amendment to Facility Operating License No. NPF–73 for Beaver Valley Power Station, Unit 2 (BVPS–2), located in Beaver County, Pennsylvania.

The proposed amendment involved revision of Table Notation (10) of Table 4.3–1 of Technical Specification 4.3.1.1.1. The proposed revision would have added a footnote to Table Notation (10) that would have stated: ''Complete verification of OPERABILITY of the manual reactor trip switch circuitry shall be performed prior to startup from the first shutdown to Mode 3 occurring after April 6, 1993.''

The Commission has previously issued a Notice of Consideration of Issuance of Amendment in the Federal Register on April 27, 1993 (58 FR 25676). However, on December 23, 1993, the licensee submitted a letter to the NRC requesting withdrawal of the proposed change because the change was no longer required. BVPS–2 had entered Mode 3 on September 18, 1993, in preparation for its fourth refueling outage and had performed the required surveillance test on November 18, 1993.

For further details with respect to this action, see the application for amendment dated April 14, 1993, and the licensee's letter of December 23, 1993, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, 20555 and at the B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Dated at Rockville, Maryland, 19th day of December 1995.

For the Nuclear Regulatory Commission.

Donald S. Brinkman,

Senior Project Manager, Project Directorate I–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–31301 Filed 12–26–95; 8:45 am]

BILLING CODE 7590–01–P

[Docket Nos. 50–277 AND 50–278]

Peco Energy Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, Atlantic City Electric Company, Peach Bottom Atomic Power Station, Units 2 and 3; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. DPR–44 and DPR–56, issued to the PECO Energy Company (PECO, the licensee), for operation of the Peach Bottom Atomic Power Station, Units 2 and 3 (Peach Bottom, PBAPS), located in York County, Pennsylvania.

The proposed amendment would revise the ventilation filter test program (VFTP) bypass and penetration leakage test acceptance criteria from less than 0.05 percent to less than 1.0 percent. The change corrects an administrative error that occurred during the development of the Peach Bottom Improved Technical Specifications which were issued as Amendments 210 and 214 to the Peach Bottom licenses on August 30, 1995.

The amendment is being proposed on an exigent basis in accordance with 10 CFR 50.91(a)(6). On December 11, 1995, the licensee determined that a change to the Peach Bottom Atomic Power Station Improved Technical Specifications, issued by Amendments 210 and 214 to the Unit 2 and Unit 3 licenses, respectively, was required. An administrative error contained in the Improved Technical Specification VFTP would result in the Engineered Safety Feature (ESF) filter ventilation systems being declared inoperable upon implementation of Improved Technical Specifications. Implementation of the Improved Technical Specifications is scheduled for January 11, 1996. Because these ESF filter ventilation systems are common to both Units and because the ESF filter ventilation systems cannot be maintained operable in accordance with the administrative error in the VFTP, a shutdown of both Units would be required. Therefore, the licensee has requested approval of the proposed amendment in advance of the implementation of the Improved Technical Specifications in order to eliminate the unnecessary hardship associated with shutting down both units.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6) for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves 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. 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 changes do not involve a significant increase in the probability or consequences of an accident previously evaluated because the changes are purely administrative and do not involve any physical changes to plant SSC [systems, structures and components]. These proposed changes do not impact initiators of analyzed events, and will not increase the probability of occurrence of an accident previously evaluated. These proposed changes do not impact the assumed mitigation of accidents or transient events. Therefore, these changes will not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated because the changes will not involve a physical alteration of the plant (no new or different type of equipment will be installed) or changes in methods governing normal plant operation. The changes do not allow plant operation in any mode that is not already evaluated in the safety analysis. Therefore, these changes will not create the

possibility of a new or different kind of accident from any accident previously evaluated.

(3) The proposed changes do not involve a significant reduction in a margin of safety because they are purely administrative and will not involve any technical changes. Generic Letter 83–13 (GL 83–13), ''Clarification of Surveillance Requirements for HEPA [high efficiency particulate air] Filters and Charcoal Adsorber Units in Standard Technical Specifications on ESF Cleanup Systems,'' was reviewed for guidance. GL 83–13 based in-place penetration and bypass leakage testing acceptance criteria in part on the NRC staff assumptions used in its safety evaluation reports (SERs) for the ESF atmospheric cleanup systems. GL 83–13 stated, ''0.05% value applicable when a HEPA filter or charcoal adsorber efficiency of 99% is assumed, or 1% when a HEPA filter or charcoal adsorber efficiency of 95% or less is assumed in the NRC staff's safety evaluation.'' In the original SER for PBAPS dated August 11, 1972, the NRC staff assumed a 90% halogen removal efficiency for the elemental and particulate forms of iodine, and 70% for the organic forms of iodine in the HEPA filters and charcoal adsorbers of the Standby Gas Treatment System (SGTS). The SER for Amendments 10/7 dated June 25, 1975 was issued to resolve an issue raised by a December 10, 1974, letter from the NRC proposing model TS [technical specifications] for PBAPS Control Room Air Treatment Systems and SGTS. The June 25, 1975, SER documented the acceptability of values of less than 1% penetration and bypass leakage which is still in place in the existing TS Bases. No SERs assumed HEPA filter or charcoal adsorber efficiency of 99%. Therefore, GL 83–13 recommends acceptance of less than 1% penetration and bypass leakage. Therefore, maintaining the current requirements for penetration and bypass leakage does not involve a reduction in the margin of safety. Also, because the change is administrative in nature, no question of safety is involved. Therefore, the 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.

The Commission is seeking public comments on this proposed determination. Any comments received within 15 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 15-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 15-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. Should the Commission take this action, it will publish in the Federal Register a notice of 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 hearing and petitions for leave to intervene is discussed below.

By January 25, 1996, 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 located at the Government Publications Section, State Library of Pennsylvania, (Regional Depository) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105. 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 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 the amendment is issued before the expiration of the 30-day hearing period, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, 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 John F. Stolz, Director, Project Directorate I–2: 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 J. W. Durham, Sr., Esquire, Sr. V.P. and General Counsel, PECO Energy Company, 2301 Market Street, Philadelphia, Pennsylvania 19101, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the 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 dated December 19, 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 Government Publications Section, State Library of Pennsylvania, (Regional Depository) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Dated at Rockville, Maryland, this 21st day of December, 1995.

For the Nuclear Regulatory Commission.

Joseph W. Shea,

Project Manager, Project Directorate I–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–31299 Filed 12–26–95; 8:45 am]

BILLING CODE 7590–01–P

POSTAL RATE COMMISSION

[Order No. 1097; Docket No. MC96–1]

Notice of Filing of Request for Establishment of an Experimental First-Class and Priority Mail Small Parcel Automation Rate Category

Issued December 20, 1995.

Before Commissioners: Edward J. Gleiman, Chairman; W.H. ''Trey'' LeBlanc III, Vice Chairman; George W. Haley, H. Edward Quick, Jr.; Experimental First-Class and Priority Mail Small Parcel Automation Rate Category, 1995.

Notice is hereby given that on December 19, 1995, the U.S. Postal Service filed a request with the Postal Rate Commission pursuant to 3623 of the Postal Reorganization Act, 39 U.S.C. 101 et seq., for a recommended decision on proposed changes in the Domestic Mail Classification Schedule (DMCS). The proposed revisions also include proposed new rates. The request includes attachments supported by the testimony of four witnesses and four library references. It is on file in the Commission Docket Room and is available for inspection during the Commission's regular business hours.

Experimental Nature of the Proposed Change

The Postal Service indicates that it is requesting new, experimental small parcel automation rate categories within First Class and Priority Mail.

Description of Request

The Postal Service requests the establishment of discounted rate categories within Priority Mail and First-Class Mail for bulk quantities of small parcels that are prebarcoded and otherwise compatible with processing on sorting machines equipped with barcode scanners. The proposed service would be available to all Priority and First-Class Mail pieces which: (1) Are entered at one of the designated test sites;[1] (2) are presented in mailings of 50 or more pieces; (3) bear a barcode as prescribed by the Postal Service; (4) meet machinability specifications prescribed by the Postal Service; (5) bear a label placed on the surface of the parcel with the largest measured area; (6) meet address readability specifications as prescribed by the Postal Service; and (7) are presented for mailing in a manner which does not require cancellation. The Postal Service proposes a rate discount of four cents per piece for mailings that would qualify for inclusion in the proposed categories.

The request of the Postal Service proposes that the experimental First-Class and Priority Mail Small Parcel Automation Rate Categories be in effect for two years. The Postal Service states a belief that this period of effectiveness will allow mailers sufficient time to adjust their mailing practices to use the classification, and provide adequate time for the Service to aggregate and fully analyze data collected under the experiment. If the data generated in the experiment are determined to support a request for a permanent mail classification change, the Postal Service anticipates that such a filing would be made sufficiently in advance of the termination date that service at the experimental sites would not be interrupted.

Motion for Waiver of Certain Filing Requirements

The Postal Service's request was also accompanied by a motion for waiver of compliance with certain requirements of section 64(h) of the rules of practice [39 CFR 3001.64(h)], which specify rate-related information to be included in classification requests that would affect rates and fees. Specifically, the Postal Service seeks waiver of compliance with subsections (d) (in part), (f)(2), (f)(3), (h), (j), (l)(1) (in part), and (l)(2) of section

[1] The Postal Service states that there are currently three locations which have equipment appropriate for processing the proposed parcel categories: the Southeastern Pennsylvania Processing and Distribution Center, the Philadelphia, Pennsylvania Airport Mail Facility, and the St. Petersburg, Florida Sectional Center Facility.

54 of the rules [39 CFR § 54(d), (f)(2), (f)(3), (h), (j), (l)(1), and (l)(2)], which would otherwise be required under section 64(h)(2)(i) [39 CFR § 64(h)(2)(i)]. The Postal Service states that the requested waiver is justified by the extremely limited scope of the proposed experiment and its anticipation that the consequent effects on costs, revenues, and volumes will be very minor.

Motion to Expedite the Proceeding

Section 67d of the rules of practice (39 CFR 3001.67d) states that the Commission will treat cases falling under the experimental rules as subject to the maximum expedition consistent with procedural fairness, and prescribes adoption of a schedule that will allow issuance of a decision not more than 150 days from a determination that experimental treatment of the request is appropriate. Notwithstanding this provision, the Postal Service has submitted a motion requesting that the Commission establish procedures allowing for issuance of a recommended decision on its request within 120 days of the date of its filing. In support of its motion, the Postal Service states that it has provided sufficient information to allow such expedited consideration, and claims that it needs additional flexibility to operate in an increasingly competitive environment. In connection with its motion, the Postal Service proposes adoption of special rules of procedure, which it provided in draft form. The Service also provides a proposed procedural schedule, which would culminate in issuance of the Commission's Recommended Decision on April 12, 1996.

Anyone wishing to be heard in this matter is directed to file a written notice of intervention with Margaret P. Crenshaw, Secretary of the Commission, 1333 H Street, NW, Washington, DC 20268–0001, on or before January 16, 1996. Intervenors should indicate whether they want full or limited participation status. See rules 39 CFR 3001.20 and 3001.20a.

Those interested in participating in this docket are given notice that the Commission will evaluate whether it is appropriate to use rules 67–67d for considering a Postal Service request. In determining whether the procedures for experimental cases are appropriate, the Commission will consider: (1) The novelty of the proposed change; (2) the magnitude of the proposed change; (3) the ease or difficulty of collecting data on the proposed change; and (4) the duration of the proposed change. Participants are invited to comment on whether the Postal Service request should be evaluated under rules 67–67d. Such comments are to be filed on or before January 16, 1996. Prior to a Commission decision on this question, participants should act on the assumption that the Postal Service request that the case be considered pursuant to these rules will be approved.

Rule 67a provides a procedure for limiting issues in experimental cases. In order to enable participants to evaluate whether genuine issues of fact exist, the Postal Service shall respond to discovery requests within 10 days. Written discovery pursuant to rules 25–28 may be undertaken immediately upon intervention.

A decision on whether there is a need for evidentiary hearings, and the scope of any such hearings has not been made yet. Participants wishing to comment on this question should file a statement of issues raised by the Postal Service request by January 16, 1996. At the same time, participants should designate those issues involving questions of material fact which they believe require trial type hearings. The Postal Service and any interested participant may file responses to these statements on or before January 26, 1996.

If it is determined to schedule trial type hearings to consider topics involving issues of material fact, hearings to evaluate the supporting evidence presented by the Postal Service may be scheduled to begin as soon as February 6, 1996. The Presiding Officer will establish subsequent procedural dates.

Representation of the General Public

In conformance with § 3624(a) of title 39, the Commission designates W. Gail Willette, Director of the Commission's Office of the Consumer Advocate (OCA), to represent the interests of the general public in this proceeding. Pursuant to this designation, Ms. Willette will direct the activities of Commission personnel assigned to assist her and, when requested, will supply their names for the record. Neither Ms. Willette nor any of the assigned personnel will participate in or provide advice on any Commission decision in this proceeding. The OCA shall be separately served with three copies of all filings, in addition to and contemporaneous with, service on the Commission of the 24 copies required by section 10(c) of the rules of practice [39 CFR 3001.10(c)].

It is ordered:

1. The Commission will sit en banc in this proceeding.

2. Notice of intervention will be filed no later than January 16, 1996.

3. Participants wishing to comment on whether it is appropriate to consider this request under Commission rules 67–67d shall submit such comments no later than January 16, 1996.

4. Participants are directed to file statements of issues and designations of issues requiring trial type hearings no later than January 16, 1996; responses may be submitted no later than January 26, 1996.

5. Answers to the Postal Service motions: to Expedite the Proceeding, and for Waiver of Certain Filing Requirements are to be submitted no later than January 16, 1996.

6. W. Gail Willette, Director of the Commission's Office of the Consumer Advocate, is designated to represent the general public.

7. The Secretary shall cause this Notice and Order to be published in the Federal Register.

Margaret P. Crenshaw,

Secretary.

[FR Doc. 95–31296 Filed 12–26–95; 8:45 am]

BILLING CODE 7710–FW–P

RESOLUTION TRUST CORPORATION

Coastal Barrier Improvement Act; Property Availability; Hanover Run/ Myrtle Point, St. Mary's County, MD

AGENCY: Resolution Trust Corporation.

ACTION: Notice.

SUMMARY: Notice is hereby given that the property known as Hanover Run/ Myrtle Point, located in California, St. Mary's County, Maryland, is affected by Section 10 of the Coastal Barrier Improvement Act of 1990 as specified below.

DATES: Written notice of serious interest to purchase or effect other transfer of all or any portion of this property may be mailed or faxed to the RTC until March 26, 1996.

ADDRESSES: Copies of detailed descriptions of this property, including maps, can be obtained from or are available for inspection by contacting the following person: Mr. James C. Kimball, RTC/FDIC Atlanta Field Office, 245 Peachtree Center Avenue, NE, Marquis One Tower, 10th Floor, Atlanta, GA 30303, (404) 225–5707; Fax (404) 230–8159.

SUPPLEMENTARY INFORMATION: The Hanover Run/Myrtle Point property is located on Patuxent Boulevard north of Maryland Route 4 and south of Mill Creek and the Patuxent River, St. Mary's County, Maryland. The site consists of approximately 502.11 acres of undeveloped land that is almost

completely forested. This property contains wetlands, salt ponds, archaeological resources of early native American culture, and two 17th century plantations near the colonial port of Harveytown. The northern and eastern portions of the site which border the Patuxent River, Sam Abel Cove, Mill Creek, and Little Kingston Creek are situated within undeveloped floodplains. The Hanover Run/Myrtle Point property is adjacent to Clark's Landing which is managed by the Department of Recreation and Parks of St. Mary's County for recreational purposes. This property is covered property within the meaning of Section 10 of the Coastal Barrier Improvement Act of 1990, Public Law 101–591 (12 U.S.C. 1441a–3).

Written notice of serious interest in the purchase or other transfer of all or any portion of this property must be received on or before March 26, 1996, by the Resolution Trust Corporation at the appropriate address stated above.

Those entities eligible to submit written notices of serious interest are:

1. Agencies or entities of the Federal government;

2. Agencies or entities of State or local government; and,

3. ''Qualified organizations'' pursuant to section 170(h)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 170(h)(3)).

Written notices of serious interest must be submitted in the following form:

NOTICE OF SERIOUS INTEREST

RE: [insert name of property]

Federal Register Publication Date: _____ [insert Federal Register publication date]

1. Entity name.

2. Declaration of eligibility to submit Notice under criteria set forth in the Coastal Barrier Improvement Act of 1990, P.L. 101–591, section 10(b)(2), (12 U.S.C. 1441a–3(b)(2)), including, for qualified organizations, a determination letter from the United States Internal Revenue Service regarding the organization's status under section 170(h)(3) of the U.S. Internal Revenue Code (26 U.S.C. 170(h)(3)).

3. Brief description of proposed terms of purchase or other offer for all or any portion of the property (e.g., price, method of financing, expected closing date, etc.).

4. Declaration of entity that it intends to use the property for wildlife refuge, sanctuary, open space, recreational historical, cultural, or natural resource conservation purposes (12 U.S.C. 1441a–3(b)(4)), as provided in a clear written description of the purpose(s) to which the property will be put and the location and acreage of the area covered by each purpose(s) including a declaration of entity that it will accept the placement, by the RTC, of an easement or deed restriction on the property consistent with its intended conservation use(s) as stated in its notice of serious interest.

5. Authorized Representative (Name/Address/Telephone/Fax).

List of Subjects

Environmental protection.

Dated:

Resolution Trust Corporation.

William J. Tricarico,

Assistant Secretary.

[FR Doc. 95–31266 Filed 12–26–95; 8:45 am]

BILLING CODE 6714–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–36602; File No. SR–Amex–95–52]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange, Inc. Relating to Revisions to Equity Transaction Charges

December 19, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on December 15, 1995 the American Stock Exchange, Inc. (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. On December 15, 1995, the Exchange submitted to the Commission Amendment No. 1 to the proposed rule change.[2] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its current schedule of charges for equity trades effective January 1, 1996. The revised fee schedule will eliminate all transaction charges for round-lot Post Executive Reporting (''PER'') system trades of 500 shares or less and eliminate credits to member firms in connection with PER trades. The text of the proposed rule change is available at the Office of the Secretary, the Amex, and at the Commission.

II. Self-Regulatory Organization's Statement of Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its schedule of equity transaction charges as follows, effective January 1, 1996: (1) The Exchange will impose no transaction charges for round-lot PER system trades of 500 shares or less, and (2) the Exchange will eliminate all credits to member firms in connection with PER transactions. Current share-based charges and value-based charges will otherwise remain the same. The Exchange believes these changes will maintain the competitiveness of its schedule of transaction charges and better serve needs of member firms and their customers.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act[3] in general and furthers the objectives of Section 6(b)(4)[4] in particular in that it provides for the equitable allocation of reasonable dues, fees, and other charges among the Exchange's members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[1] 15 U.S.C. 78s(b)(1).

[2] The amendment clarified the applicable ranges. See Letter dated December 15, 1995, from Michael Cavalier, Assistant General Counsel, Amex, to Anthony Pecora, Attorney, SEC.

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(4).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change constitutes or changes a due, fee, or other charge imposed by the Exchange and, therefore, has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [5] and subparagraph (e)(2) of Rule 19b–4(2) thereunder.[6]

At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of the American Stock Exchange. All submissions should refer to File No. SR–Amex–95–52 and should be submitted by January 17, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

[5] U.S.C. 78s(b)(3)(A)(ii).

[6] 17 CFR 240.19b–4(e)(2).

[7] 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–31306 Filed 12–26–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36609; File No. SR–CBOE–95–68]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to an Expansion of the Firm Facilitation Exemption to All Non-Multiple-Listed Exchange Option Classes

December 20, 1995.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 16, 1995, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE, pursuant to Rule 19b–4 of the Act, proposes to expand the firm facilitation exemption for position and exercise limits that is currently available for the Standard & Poor's (''S&P'') 500 Index (''SPX'') options and for interest rate options to all non-multiple-listed Exchange option classes. The text of the proposed rule change is available at the Office of the Secretary, the CBOE, and the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of the basis for the proposed rule change, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78S(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1994).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The CBOE has previously established firm facilitation [3] exemptions for certain option classes, such as for SPX index options (Rule 24.4.03),[4] and for interest rate options (Rule 23.3(c)).[5] Exchange member firms have expressed to the CBOE's Department of Market Regulation their belief that the current firm facilitation exemptions, which allow member firms to meet the investing needs of their customers, should be expanded floor-wide. The CBOE has also noted situations in which a member firm was willing to accommodate a large customer order [6] that could not be filled by the trading crowd, but was prevented from facilitating the order because of a position limit constraint. In light of the above, the CBOE proposes that the firm facilitation exemption be made available in all option classes that are exclusively listed on the CBOE.[7]

The CBOE proposes to expand the firm facilitation exemption by incorporating it as new Interpretation and Policy .06 to Rule 4.11, the general position limit rule which also sets specific limits for equity option classes.[8] By including the firm facilitation exemption within Rule 4.11, the exemption would be available to equity, broad-based (sector) index, narrow-based (industry) index, Flexible Exchange (''FLEX''), interest rate, and government securities option classes to the extent and at the levels specified therein.[9]

[3] According to the CBOE, a facilitation trade is a transaction that involves crossing an order of a member firm's public customer with an order from the member firm's proprietary account.

[4] See Securities Exchange Act Release No. 30944 (July 21, 1992), 57 FR 33376 (July 28, 1992) (approval order for File No. SR–CBOE–92–09).

[5] See Securities Exchange Act Release No. 33106 (October 26, 1993), 58 FR 58358 (November 1, 1993) (approval order for File No. SR–CBOE–93–21).

[6] The CBOE notes that the SPX facilitation exemption defines a customer order as one that is entered, cleared, and in which the resulting position is carried with the firm.

[7] The CBOE's general exercise limit provisions (Rule 4.12) also will be amended to increase exercise limits to the levels permitted by the firm facilitation exemption. Several other non-substantive, editorial changes to the position and exercise limit rules, interpretations, and policies will be made as well.

[8] Through the rule proposal, the exemption provisions contained in Rule 24.4.03 (for SPX index options) and in Rule 23.3(c) (for interest rate options) would be eliminated.

[9] The CBOE notes that the structuring of the rule proposal in this manner is important because the special position limits for broad-based index options (Rule 24.4), for narrow-based index options (Rule 24.4A), for FLEX Options (Rule 24A.7), for interest rate options (Rule 23.3), and for government

As is the case with the SPX and interest rate firm facilitation exemptions, Exchange Rule 6.74(b) procedures for crossing a customer order with a firm facilitation order must be followed. In this regard, before a customer order can be crossed with a firm facilitation order, the trading crowd must be given reasonable opportunity to participate. Moreover, only after it has been determined that the trading crowd will not fill the order, may the firm's customer order be crossed with the firm's facilitation order.

In addition, except for the existing SPX and interest rate firm facilitation exemptions which are set at higher levels, the expanded firm facilitation exemption will be twice the standard limit.[10]

The CBOE notes that the firm facilitation exemption will be in addition to and separate from the standard limit, as well as other exemptions available under Exchange position limit rules. For example, if a firm desires to facilitate a customer order in the XYZ option class, which is assumed to be a class of options traded exclusively on the Exchange with a 25,000 contract standard position limit, the firm may qualify for a firm facilitation exemption of up to twice the standard limit (50,000 contracts), as well as an equity hedge exemption of up to twice the standard limit (50,000 contracts), in addition to the 25,000 contract standard limit. If both exemptions are allowed, the facilitation firm may hold or control a combined position of up to 125,000 XYZ contracts on the same side of the market.[11]

The CBOE notes, however, that the firm facilitation exemption will not extend to all option classes listed on the Exchange. Rather, until coordinated intermarket procedures are developed, the exemption will be extended only to non-multiply-listed option classes.[12]

The CBOE also proposes a new provision with respect to the requirement that the ''facilitation firm'' hedge the exempted position within five business days. The new provision would allow the facilitation firm to be granted an exemption from this requirement when opposite side of the market contracts are used to hedge the original facilitated customer order. In this regard, the Department of Market Regulation's staff would be responsible for granting the exemption for the hedge, and the facilitation firm would be required to submit documentation to the regulatory staff as to how the position was hedged.

Lastly, to aid in understanding the scope of the firm facilitation exemption, Interpretation .06 will include both a table and an example showing how the exemption will be applied.

The Exchange believes that expanding the firm facilitation exemption will contribute to the depth and liquidity of the market by allowing those member firms who are willing to commit firm capital the ability to facilitate large customer orders in a wide range of option classes. In approving the firm facilitation exemptions for SPX and interest rate options, the Commission expressed its opinion that providing member organizations with exemptions for the purpose of facilitating large customer orders would better serve the needs of the investing public by distributing the risks of large customer transactions to several market participants. At that time, the Commission also noted that safeguards were built into the exemption to minimize any potential disruption or manipulation concerns. The CBOE believes that these same benefits and assurances are also applicable with respect to the new firm facilitation exemption.

Because the expanded firm facilitation exemption will enhance the depth and liquidity of the market for both members and investors, the Exchange believes that the rule proposal is consistent with and furthers the objectives of Section 6(b)(5) of the Act in that it would remove impediments to and perfect the mechanism of a free and open market in a manner consistent with the protection of investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the CBOE consents, the Commission will:

A. By order approve the proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–95–68 and should be submitted by January 17, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–31310 Filed 12–26–95; 8:45 am]

BILLING CODE 8010–01–M

securities options (Rule 21.3) each mandate compliance with Rule 4.11.

[10] The CBOE notes that this filing does not propose to change the existing SPX and interest rate firm facilitation exemptions.

[11] 50,000 facilitation+50,000 hedge+25,000 standard=125,000 contracts

[12] The CBOE notes, however, that the Intermarket Surveillance Group (''ISG'') is currently working on developing such procedures.

[13] 17 CFR 200.30–3(a)(12) (1994).

[Release No. 34–36605; International Series Release No. 904; File No. SR–ISCC–95–5]

Self-Regulatory Organizations; International Securities Clearing Corporation; Notice of Filing of Proposed Rule Change Relating to Global Clearance Network Service

December 20, 1995.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on November 22, 1995, the International Securities Clearing Corporation (''ISCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items, I, II, and III below, which items have been prepared primarily by ISCC. On November 29, 1995, and on November 30, 1995, ISCC filed amendments to its proposed rule change.[2] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

1. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change is to accommodate an additional service provider in ISCC's Global Clearance Network (''GCN'') service.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ISCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. ISCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

ISCC's Rule 50 provides that ISCC may establish a foreign clearance, settlement, and custody service known as the Global Clearance Network (''GCN'') in conjunction with banks, trust companies, and other entities. Presently, ISCC has established GCN relationships with Citibank, N.A., Standard Bank of South Africa, Westpac Custodian Nominees Limited of Australia, and Westpac Nominees-NZ-Limited.[4] The proposed rule change will accommodate S.D. INDEVAL, S.A. de C.V. (''INDEVAL'') as an additional GCN service provider.

ISCC in conjunction with the International Operations Association (''IOA)[5] has developed a cross-border communications link to INDEVAL using the telecommunication system provided by the Society for Worldwide Interbank Financial Telecommunications S.C. (''SWIFT''). INDEVAL was created under Mexican securities law in 1978 and has been privately owned since 1987.[6] INDEVAL is regulated by the Government of Mexico. INDEVAL provides clearance, settlement, and custodial services for all transactions executed on the Mexican Stock Exchange and for transactions in other securities that are publicly traded in Mexico. INDEVAL accepts any security publicly offered in Mexico for custody and clearing except for certain Mexican government securities.[7] As of December 31, 1994, 415 institutions were registered with INDEVAL, and the value of assets under custody was 744.2 billion Mexican pesos. INDEVAL may act as an eligible foreign custodian under Rule 17f–5 under the Investment Company Act of 1940.[8]

INDEVAL has entered into an agreement with ISCC pursuant to which INDEVAL has agreed to provide access to its clearance, settlement, and custody services to GCN participants that qualify to be customers of INDEVAL.[9] The link permits ISCC members that also are members of INDEVAL to send instructions through ISCC to INDEVAL regarding such participants' INDEVAL accounts. The link does not provide a mechanism for transferring securities or funds into or out of the United States. INDEVAL is providing the services at its scheduled rates and is responsible for collecting fees directly from the participants. The agreement is terminable on ninety days prior notice. However, if ISCC notifies INDEVAL within such ninety day period that it has not been able to make arrangements with an alternative service provider, the agreement terminates thirty days after the expiration of such ninety day period.

The proposed rule change will facilitate and centralize the processing of international transactions at a beneficial cost to members which ultimately will be reflected in services to the investing public. Accordingly, these changes are consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder.

(B) Self-Regulatory Organization's Statement on Burden on Competition

ISCC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments relating to the proposed rule change have been solicited or received. ISCC will notify the Commission of any written comments received by ISCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and published its reason for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be approved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing.

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Letters from Julie Beyers, Associate Counsel, ISCC, to Christine Sibille, Division of Market Regulation, Commission (November 28, 1995 and November 30, 1995).

[3] The Commission has modified parts of these statements.

[4] Securities Exchange Act Release Nos. 29841 (October 18, 1991), 56 FR 55960; 35392 (February 16, 1995), 60 FR 10415; and 36339 (October 5, 1995), 60 FR 53447.

[5] IOA was established in 1980 to promote and facilitate the development of cross-border investment activities. IOA is a division of the Securities Industry Association and has membership of approximately 800 internationally active broker-dealers, banks, custodians, clearing organizations, and other service providers.

[6] Its shareholders are brokerage houses, banks, insurance companies, Banco de Mexico (the central bank of Mexico), and the Mexican Stock Exchange.

[7] Starting in April 1994, Banco de Mexico authorized INDEVAL to offer custodial and transfer services for government debt securities to foreign direct account depositors by means of a link between Banco de Mexico and INDEVAL.

[8] Letter from Richard F. Jackson, Division of Investment Management, Commission, File No. 132–3 (October 19, 1990). An ''eligible foreign custodian'' includes a securities depository or clearing agency which is incorporated or organized under the laws of a country other than the United States and which operates the central system for handling of securities or equivalent book-entries in that country. 17 CFR 270.17f–5(c)(2)(iii) (1994).

[9] Such agreement is governed by the laws of the United Mexican States.

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW, Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number SR–ISCC–95–05 and should be submitted by January 17, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–31309 Filed 12–26–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36606; International Series Release No. 905; File No. SR–CC–95–11]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving a Proposed Rule Change Modifying the Capital Computation Formula and Reporting Requirements Applicable to Canadian Clearing Members of The Options Clearing Corporation

December 20, 1995.

On July 13, 1995, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change (File No. SR–OCC–95–11) pursuant to Section 19(b)(1) of the Securities and Exchange Act of 1934 (''Act'').[1] Notice of the proposal was published in the Federal Register on September 13, 1995.[2] No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 36197, International Series Release No. 850 (September 7, 1995), 60 FR 47633.

I. Description of the Proposal

OCC is modifying its rules concerning the financial requirements of Canadian clearing members, including the capital computation formula and reporting requirements applicable to Canadian clearing members, to reflect revisions to the capital computation and reporting standards recently adopted by various Canadian regulatory authorities. OCC's rules allow Canadian clearing members to submit required financial reports in accordance with the accounting and reporting standards of their appropriate self-regulatory body.[3] In monitoring Canadian clearing members' compliance with OCC financial requirements, OCC converts this financial information into a form consistent with Rule 15c3–1 under the Act.[4]

The capital formula applied under Canadian securities regulations to Canadian securities firms has been revised and incorporated into a new standard report format. The prior capital formula applied a minimum capital requirement, as assessed by a working capital computation (*i.e.*, total capital less nonallowable assets), based upon volume of business determined by a percentage of adjusted liabilities. The new capital formula continues to be based on a working capital computation minus certain charges, including charges that reflect the risk of proprietary securities held in inventory. However, the new capital formula replaces the concept of adjusted liabilities with revised definitions of allowable assets and margin charges that are intended to reflect the credit worthiness of counterparties and the economic substance of transactions.

The report format used by Canadian securities firms to report their capital computation also has been revised. Accordingly, OCC is changing its financial requirements and reporting rules to conform them to the revised capital formula and reporting format.

Specifically, the prior Interpretations and Policies (''Interpretation'') .01 to OCC Rule 301, regarding initial financial requirements, provided that a Canadian clearing member that commenced doing business as a broker or dealer within twelve months prior to its admission to OCC clearing membership must have maintained ''initial net free capital,'' as defined in the Supplementary Instructions re Completion of the Joint Regulatory Financial Questionnaire (''Supplementary Instructions''),[5] of not less than ten percent of such clearing member's ''adjusted liabilities,'' as defined in the Supplementary Instructions, until the later of (i) three months after its admission to OCC clearing membership or (ii) twelve months after it commenced doing business as a broker or dealer. Interpretation .01 to OCC Rule 302, regarding minimum net capital requirements, provided that a Canadian clearing members must have maintained net free capital, as defined in the Supplementary Instructions, of not less than the amount of net free capital that would be required of such clearing member under Section 100.2 of the By-Laws of the Investment Dealers Association of Canada (''IDAC'') if the clearing member was a member of the IDAC.

As amended, Interpretation .01 to Rule 301 requires a Canadian clearing member to maintain an initial ''early warning reserve,'' as determined in accordance with the Joint Regulatory Financial Questionnaire and Report (''JRFQ&R''),[6] of not less than $1, 000,000 (U.S.) for the same period as previously required. The amended Interpretation .01 to Rule 302 will provide that the minimum net capital requirement of a Canadian clearing member is the early warning reserve, as determined under the JRFQ&R, in an amount not less than the greater of $750,000 (U.S.) or 2% of such Canadian clearing member's total margin requirements as determined in accordance with the JRFQ&R. Application of the early warning reserve as determined under the JRFQ&R also replaces the use of the net free capital formula as determined under the Interpretations to OCC Rules 303 and 304, regarding early warning notice and restrictions on distributions.

Finally, in connection with OCC's financial reporting requirements, each Canadian clearing member now is required to file its JRFQ&R with OCC on a monthly basis except as provided in the Interpretations to Rule 306. The JRFQ&R replaces the Joint Industry Monthly Financial Report which was previously required under the

[3] OCC By-law, Article I.N. (2) employs the term ''appropriate self-regulatory body'' as defined in the Supplementary Instructions re Completion of the Joint Regulatory Financial Questionnaire to refer to the government agency or self-regulatory authority primarily responsible for regulating the activities of a Canadian Clearing Member.

[4] 17 CFR 240.15c3–1.

[5] The Supplementary Instructions are issued by the Investment Dealers Association of Canada and provide additional guidance for securities firms in connection with the preparation of the Joint Regulatory Financial Questionnaire and Report.

[6] The JRFQ&R is a financial reporting form which Canadian securities firms are required to prepare and submit to appropriate Canadian regulatory authorities and provincial exchanges to advise them of such firms' financial condition.

Interpretations to OCC's financial reporting rule.

II. Discussion

Section 17A(b)(3)(F)[7] of the Act requires the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible and to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions. The Commission believes OCC's proposed rule change is consistent with the requirements of Section 17A(b)(3)(F) because the proposal conforms OCC's rules pertaining to Canadian clearing members to the revised capital computation and reporting standards adopted by various Canadian regulatory authorities. OCC allows Canadian clearing members to submit required financial reports to OCC in accordance with the accounting and reporting standards of their appropriate Canadian self-regulatory body. OCC then converts this financial information into a form consistent with Rule 15c3–1 under the Act[8] in order to monitor Canadian clearing member compliance with OCC financial requirements. As a result of this monitoring scheme, conformity of OCC rules to the current computation and reporting standards of Canadian regulatory authorities is critical to the efficient and proper monitoring of Canadian clearing members' compliance with OCC financial requirements. The Commission believes the proposed rule change should provide consistency between OCC's rules concerning Canadian clearing members' financial requirements and the capital computation and reporting standards adopted by Canadian regulatory authorities and thereby should help assure the safeguarding of securities and funds which are in the custody or control of OCC or for which it is responsible and should foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–OCC–95–11) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–31307 Filed 12–26–95; 8:45 am]

BILLING CODE 8010–01–M

[7] 15 U.S.C. 78q–1(b)(3)(F) (1988).

[8] 17 CFR 240.15c3–1.

[9] 17 CFR 200.30–3(a)(12) (1994).

[Release No. 34–36607; File No. SR–OCC–95–14]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to the Processing of Late Exercise Requests for Eligible Option Contracts

December 20, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on September 15, 1995, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change (File No. SR–OCC–95–14) as described in Items I, II and III below, which Items have been prepared primarily by OCC. On December 19, 1995, OCC filed an amendment to the proposed rule change to clarify certain language in the proposal.[2] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to amend OCC Rule 801(e) pertaining to late exercise of option contracts by changing the cut-off times for filing a late exercise notice and by eliminating any references to trading volume. In addition, the proposed rule change would revise OCC Rule 801(a) to provide expressly for the submission of exercise instructions through electronic means.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The primary purpose of the proposed rule change is to amend OCC Rule 801(e) regarding late exercises by changing the cut-off times for filing a late exercise notice and by eliminating any references to trading volume. the proposed rule change also seeks to modify OCC Rule 801(a) to provide expressly for the submission of exercise notices through electronic means.

OCC Rule 801(e) currently permits OCC clearing members to file, revoke, or modify exercise notices after the 7:00 P.M. (all time references are Central Time unless stated otherwise) deadline for the purpose of correcting bona fide errors. Once a late instruction is accepted, Rule 801(e) requires the clearing member submitting an instruction to pay a late filing fee and explain in writing the error that cause the late submission of the instruction. The filing fees for late instructions are imposed on a graduated fee schedule with variable cut-off times. The earlier that a late exercise notice is submitted the easier and less costly it is for OCC to process the request.[4]

OCC clearing members have requested that OCC provide them with data from nightly processing earlier on the night of process. Presently, Rule 801(e) requires OCC to wait until 10:00 P.M. to begin critical processing even if it has received all necessary data from exchanges[5] and clearing members earlier in the night. Due to the many technical improvements implemented by the exchanges in recent years, the exchanges now send daily trading data to OCC much earlier. Thus, there are

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Letter from Michael G. Vitek, OCC, to Jerry W. Carpenter, Assistant Director, Division of Market Regulation, Commission (December 19, 1995).

[3] The Commission has modified the text of the summaries prepared by OCC.

[4] For a detailed description of OCC's procedures for processing late option exercise notices on non-expiring option contracts and amendments to the late exercise fee schedule cut-off times, refer to Securities Exchange Act Release Nos. 29390 (July 1, 1991), 56 FR 31454 [File No. SR–OCC–90–3] (order approving procedures for processing late exercise notices) and 33247 (November 24, 1993), 58 FR 63419 [SR–OCC–93–2] (order approving changes to OCC's late exercise feel schedule cut-off times).

[5] The term ''exchange'' is defined in Article I, Section E(4) of OCC's by-laws as a national securities exchange or a national securities association that has qualified for participation in OCC pursuant to the provision of Article VII of OCC's by-laws.

many nights when OCC could begin critical processing by 9:00 P.M. To accommodate the requests by clearing members for earlier data distribution, OCC has decided to advance the late exercise cut-off times by one hour and to eliminate the volume conditions affecting the cut-off times.

The volume conditions were initially incorporated into Rule 801(e) to ensure that clearing members had adequate time to reconcile their records with exchange trade comparison reports. Since that time, the exchanges have continued to improve their systems and operations in the trade matching process, particularly with respect to intraday trade matching. These technological improvements have enabled the exchanges to send daily trade data to OCC and its clearing members much earlier in the day. Accordingly, OCC proposes to eliminate any references to volume in the revised Rule 801(e). OCC does not believe removing the volume considerations will have any negative affect on its clearing members.

The proposed rule change also amends OCC's late exercise fee schedule cut-off times. The time at which a $500 fee will be imposed is being changed from between 7:00 P.M. to 9:00 P.M. to between 7:00 P.M. to 8:00 P.M. The late exercise cut-off time associated with a $2000 fee will be changed from between 9:01 P.M. and the start of critical processing to between 8:01 P.M. and the start of critical processing.

In addition to the changes described above, Rule 801 is being revised to provide expressly for the submission of exercise instructions through electronic means.

OCC believes the proposed rule change is consistent with the purposes and requirements of Section 17A of the Act because it facilitates the prompt and accurate clearance and settlement of securities transactions and assures the safeguarding of securities and funds in OCC's custody or control or for which it is responsible.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments relating to the proposed rule change have been solicited or received. OCC will notify the Commission of any written comments received by OCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which OCC consents, the Commission will:

(A) By order approve the proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of OCC. All submissions should refer to the File No. SR–OCC–95–14 and should be submitted by January 17, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–31308 Filed 12–26–95; 8:45 am]

BILLING CODE 8010–01–M

[6] 17 CFR 200.30–3(a)(12) (1994).

[Release No. 34–36603; File No. SR–PSE–95–31]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Stock Exchange Incorporated Relating to Pre-Arbitration Hearing Document Exchanges

December 19, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on December 7, 1995, the Pacific Stock Exchange Incorporated (''PSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. On December 18, 1995, the Exchange submitted to the Commission Amendment No. 1 to the proposed rule change.[2] The Commission is publishing this notice to solicit comments on the amended proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to increase the prehearing document exchange deadline contained in PSE Rule 12, *Arbitration*, from ten (10) days to twenty (20) days.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] The amendment corrected the proposal's reference to Section 15A(b)(6) as its statutory basis and deleted superfluous language describing an affirmative obligation to supplement and correct discovery. *See* Letter dated December 13, 1995, from Rosemary A. MacGuiness, Senior Counsel, PSE, to Glen Barrentine, Senior Counsel/Team Leader, SEC.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Currently, the PSE's Arbitration Department responds to numerous requests for additional, but late, discovery that arise from the exchange of documents intended to be used by the parties at the hearing. Accordingly, the Exchange is proposing to amend PSE Rule 12.14(c) to increase the amount of time before a hearing where the parties are required to exchange documents from ten (10) days to twenty (20) days. By increasing the time for exchanging prehearing memoranda, the proposed rule change is intended to reduce the burden on the Arbitration Department and the arbitrators in responding to last minute discovery requests. The Securities Industry Conference on Arbitration approved the proposed rule change as an amendment to the Uniform Code of Arbitration at its meeting on October 21, 1994.

2. Statutory Basis

The PSE believes the proposed rule change is consistent with the provisions of Section 6(b)(5)[3] of the Act because it is designed to facilitate the arbitration process by providing a more reasonable time frame in which to address last minute discovery requests and alleviate the burdens on the forum staff and arbitrators in dealing with such requests.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the Federal Register or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will;

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Pacific Stock Exchange. All submissions should refer to File No. SR–PSE–95–31 and should be submitted by January 17, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–31305 Filed 12–26–95; 8:45 am]

BILLING CODE 8010–01–M

[3] 15 U.S.C 78f(b)(5).

[4] 17 C.F.R. 200.30–3(a)(12)

[Rel. No. IC–21610; No. 812–9740]

Pruco Life Insurance Company, et al.

December 19, 1995.

AGENCY: Securities and Exchange Commission (''SEC'' or ''Commission'').

ACTION: Notice of application for an order under the Investment Company Act of 1940 (''1940 Act'').

APPLICANTS: Pruco Life Insurance Company (''Pruco Life''), Pruco Life Insurance Company Insurance Company of New Jersey (''Pruco Life of New Jersey''), The Prudential Insurance Company of America (''Prudential''), Pruco Life Flexible Premium Annuity Account (''Separate Account''), and Pruco Securities Corporation (''Securities'').

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) of the 1940 Act granting exemptions from the provisions of Sections 22(d), 26(a)(2)(C), and 27(c)(2) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants seek an order to permit: (1) The deduction of a mortality and expense risk charge from the assets of the Separate Account or any other separate account (''Other Accounts'') established by Pruco Life, Pruco Life of New Jersey, or Prudential to support individual flexible premium annuity contracts (''Contracts'') as well as other variable annuity contracts that are substantially similar in all material respects to the Contracts (''Future Contracts'') (2) a waiver of the withdrawal charge for Contracts or Future Contracts issued in connection with the waiver of withdrawal charges endorsement (''Critical Care Access'') and (3) a reduction of the withdrawal charge to Contract and Future Contract owners age 84 or older to insure compliance with state non-forfeiture laws.

FILING DATE: The application was filed on August 25, 1995, and an amended and restated application was filed on December 4, 1995. In addition, Applicants have represented that they will file an amendment during the notice period to make the representations contained herein.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 15, 1996, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requestor'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 SEC.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549. Applicants, Clifford E. Kirsch, Esq., The Prudential Insurance Company of America, Prudential Plaza, Newark, New Jerey 07102.

FOR FURTHER INFORMATION CONTACT: Pamela K. Ellis, Senior Counsel, or Wendy Finck Friedlander, Deputy Chief, both at (202) 942–0670, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Pruco Life, a stock life insurance company, is organized in Arizona, and licensed to do business in the District of Columbia and all states of the United States except New York. Pruco Life is a wholly-owned subsidiary of Prudential.

2. Pruco Life of New Jersey, a stock life insurance company, is organized in New Jersey. Pruco Life of New Jersey is a wholly-owned subsidiary of Pruco Life.

3. Prudential, a mutual life insurance company, is organized in New Jersey.

4. Securities will serve as the principal underwriter of the Contracts. Securities, an indirect wholly-owned subsidiary of prudential, is registered under the Securities Act of 1934 (''1934 Act'') as a broker-dealer, and is a member of the National Association of Securities Dealers. The Contracts will be sold by registered representatives of Securities. Securities also may enter into agreements with other brokers registered under the 1934 Act who qualify to sell the Contracts.

5. The Separate Account is a separate account established by Pruco Life to fund the Contracts. The Separate Account is registered with the Commission as a unit investment trust under the 1940 Act, and interests in the Contracts are registered as securities under the Securities Act of 1933.

6. Pruco Life has established for each investment option offered under the Contracts a Separate Account subaccount (''Subaccount''), which will invest solely in a specific corresponding portfolio of certain designated investment companies (''Funds''). The Funds will be registered under the 1940 Act as opened management investment companies. Each portfolio of the Funds will have separate investment objectives and policies.

7. The Contracts also provide for a fixed-rate option which guarantees a stipulated rate of interest for a one-year period, and a market-value adjustment option which guarantees a stipulated rate of interest if held for a seven year period.

8. The Contracts are individual flexible premium annuity contracts. The Contracts may be purchased with an initial purchase payment of $10,000 or more. The minimum subsequent purchase payment for the Contracts is $1000. Net purchase payments may be allocated to one or more of the Separate Account Subaccounts, the fixed-rate option, or to the market-value adjustment option.

9. The Contracts provide for a series of annuity payments beginning on the annuity date. The Contract owner may select from several annuity payout options.

10. The Contracts provide for a death benefit if the annuity or the survivor of two co-annuitants dies during the accumulation period. The death benefit is the greater of: (1) The accumulated value under the Contract fund as determined on the date of receipt due proof of death by Pruco Life; (2) 100% of all premium payments made by the Contract owner under the Contract reduced by the amount of any partial withdrawals (including withdrawal charges) ; or (3) the greatest of the Contract fund values calculated on every third Contract anniversary, reduced by all subsequent withdrawals and withdrawal charges.

11. Certain charges and fees are assessed under the Contracts. Pruco Life will deduct an administration charge from a Contract owner's account value to reimburse it for expenses relating to the administration and maintenance of the Contract. The administrative expense charge is deducted daily from the assets in each of the Subaccounts, and is equivalent to an effective annual rate .15%. Although there is no current intention to do so, Pruco Life reserves the right to impose an additional charge of up to $25 annually and upon surrender on Contracts with less than $50,000.

12. Applicants represent that the administration charges will not increase during the life of the Contracts. In addition, Applicants represent that these charges are made with no anticipation of profit, and that the administrative charges comply with Rule 26a–1.

13. A withdrawal charge may be made upon full or partial withdrawals under the Contract. The withdrawal charge will be imposed for expenses related to the sales and distribution of the Contracts. The amount of the withdrawal charge decreases annually from 7% to 0% over 8 Contract years. For the purposes of determining the withdrawal charge, withdrawals will be allocated to purchase payments on a first-in, first-out basis so that all withdrawals are allocated to purchase payments to which the lowest (if any) withdrawal charge applies. In addition, a portion of the purchase payments may be withdrawn without the imposition of any charge (''Charge Free Amount''). This Charge Free Amount is equal to 10% of all purchase payments less all withdrawals of the purchase payments previously made plus the Charge Free Amount available in the immediately preceding Contract year not withdrawn in that year.

14. No withdrawal charge is assessed if withdrawals are used to effect an annuity based on the life of an annuitant. Contracts issued to annuitants age 84 and older are subject to a reduced withdrawal charge.

15. In those states which have approved a Critical Care Access endorsement, all or part of any withdrawal and annual administrative charges associated with a full or partial withdrawal, or any annuitization or withdrawal charge due on the annuity date, will be waived following the receipt of due proof that the annuitant or co-annuitant (if applicable) has been confined to an eligible nursing home or hospital for a period of at least 3 months, or a physician has certified that the annuitant or co-annuitant has 6 months or less to live.

16. Pruco Life proposes to deduct a daily mortality and expense risk charge. Pruco Life represents that this charge is equal to an effective annual rate of 1.25% of the net asset value of the Separate Account, and that it will not increase. Of this amount, approximately .80% is for mortality risks and .45% is for expense risks.

17. Pruco Life assumes the mortality risk that the life expectancy of the annuitant will be greater than that assumed in the guaranteed annuity purchase rates, thus requiring Pruco Life to pay out more in annuity income than it had planned. In addition, Pruco Life is contractually obligated to provide a death benefit prior to the annuity date. Thus, Pruco Life assumes the risk that the owner may die at a time when the amount of the death benefit payable exceeds the then net surrender value of the Contracts. The expense risk assumed by Proco Life is that the Contract administration charge will be insufficient to cover the cost of administering the Contracts.

18. In the event the mortality and expense risk charges are more than sufficient to cover Pruco Life's costs and expenses, any excess will be a profit to Pruco Life.

19. A charge may be deducted for premium taxes and any taxes attributable to purchase payments. This may include any state or local premium taxes, any federal premium taxes, and any federal, state, or local income, excise, business or any other type of tax (or component thereof) measured by, or based upon, the amount of purchase payment received by Pruco Life. Applicants represent that premium taxes currently range from 1% to 5%.

Furthermore, Pruco Life reserves the right to impose a charge of up to a maximum of .3% for federal income taxes measured by premiums upon each purchase payment received under the Contact, in those states where approval has been obtained. At present, no such charge is being made in any state.

20. No transfer fee will be charged for the first 12 transactions (excluding dollar cost averaging transfers) effecting transfers in any contract year. Subsequent transfers within a Contract, year, however, will be assessed a fee of $25 per transfer.

21. A market-value adjustment (''MVA'') will be made if a Contract owner withdraws or transfers money before its maturity date from a division of a fixed-rate investment option that is being credited with an unique guaranteed interest rate (''interest cell''). The MVA may increase or decrease either the amount transferred or the amount remaining in an interest cell after a partial withdrawal.

Applicants' Legal Analysis

1. Section 6(c) of the 1940 Act authorizes the Commission, by order upon application, to conditionally or unconditionally grant an exemption from any provision, rule, or regulation of the 1940 Act to the extent that the exemption 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.

2. Sections 26(a)(2)(C) and 27(c)(2) of the 1940, 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.

3. 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 from the net assets of the Separate Account and the Other Accounts in connection with the Contracts and Future Contracts of the 1.25% charge for the assumption of mortality and expense risks.

4. Applicants represent that the 1.25% per annum mortality and expense risk charge is within the range of industry practice for comparable annuity contracts. This representation is based upon an analysis of publicly available information about similar industry products, taking into consideration such factors as the current charge levels, the existence of expense charge guarantees, and guaranteed annuity rates. Pruco Life will maintain at its principal offices, available to the Commission, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, Applicants' comparative review. In addition, Applicants will keep, and make available to the Commission, a memorandum setting forth the basis for the same representations, and that the mortality and expense risk charges are reasonable, with respect to the Future Contracts offered by the Separate Account of Other Accounts.

5. Pruco Life has concluded that there is a reasonable likelihood that the Separate Account's and Other Accounts' proposed distribution financing arrangements will benefit the Separate Accounts and their investors. Pruco Life represents that it will maintain and make available to the Commission upon request a memorandum setting forth the basis of such conclusion. In addition, Applicants will keep, and make available to the Commission, a memorandum setting forth the basis for the same representations with respect to the Future Contracts offered by the Separate Account or Other Accounts.

6. The Separate Account and Other Accounts will be invested only in management investment companies that undertake, in the event the company should adopt a plan for financing distribution expenses pursuant to Rule 12b–1 under the 1940 Act, to have such plan formulated and approved by the company's board members, the majority of whom are not ''interested persons'' of the management investment company within the meaning of Section 2(a)(19) of the 1940 Act.

7. Section 22(d) of the 1940 Act prohibits a registered investment company, its principal underwriter, or a dealer in its securities from selling any redeemable security issued by such registered investment company to any person except at a current offering price described in the prospectus.

8. Applicants request that the Commission issue an order under Section 6(c) of the 1940 Act exempting them from the provisions of Section 22(d) to the extent necessary to permit Applicants to reduce the withdrawal charge for annuitants 84 or older, and to waive the withdrawal charge for Critical Care Access.

9. Applicants submit that the proposed reduction and waiver are consistent with the policies of Section 22(d) and the rules promulgated thereunder. One of the purposes of Section 22(d) is to prevent an investment company from discriminating among investors by charging different prices to different investors. Eligibility for the reduction of fees will be based on advanced age to comply with state non-forfeiture laws, and eligibility for the Critical Care Access fee waiver will be based on the Contract or Future Contract owner experiencing the defined medically related contingencies. Therefore, these benefits will not unfairly discriminate among Contract and Future Contract owners. Applicants submit that the reduction in fees and fee waiver is advantageous to Contract and Future Contract owners by permitting them, upon experiencing such contingencies, to make withdrawals from the Contract or Future Contract with the imposition of either a reduced fee or no fee, respectively. Applicants represent that the reduction in charges and waiver will not result in dilution of the interests of any other Contract and Future Contract owners. Applicants also submit that reducing and waiving the withdrawal fee under such circumstances will not result in the occurrence of any of the abuses that Section 22(d) is designed to prevent.

10. Applicants represent that the reduction and waiver of the withdrawal charge will be uniformly available to all eligible Contract and Future Contract owners, except where prohibited by state law, and that these provisions will be adequately described in the prospectus of the Contracts and Future Contracts.

11. Applicants assert that the terms of the relief requested with respect to any Future Contracts funded by the Separate Account or Other Accounts are consistent with the standards enumerated in Section 6(c) of the 1940 Act. Without the requested relief, Applicants would have to request and obtain exemptive relief for each new Other Account it establishes to fund any Future Contract. Applicants submit that any such additional request for exemption would present no issues under the 1940 Act that have not already been addressed in this application, and that investors would not receive any benefit or additional protections thereby.

Applicants submit that the requested relief is appropriate in the public interest because it would promote competitiveness in the variable annuity contract market by eliminating the need for Applicants to file redundant exemptive applications, thereby reducing their administrative expenses

and maximizing the efficient use of their resources. The delay and expense involved in having repeatedly to seek exemptive relief would reduce Applicants' ability effectively to take advantage of business opportunities as they arise.

Applicants further submit that the requested relief is consistent with the purposes of the 1940 Act and the protection of investors for the same reasons. Applicants thus assert that the requested exemptions are 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.

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. NcFarland,

Deputy Secretary.

[FR Doc. 95–31264 Filed 12–26–95; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 21609; 812–9686]

Stein Roe Income Trust, et al.; Notice of Application

December 19, 1995.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the ''Act'').

APPLICANTS: Stein Roe Income Trust, Stein Roe Investment Trust, Stein Roe Municipal Trust, and SR&F Base Trust (collectively, the ''Trusts''), and Stein Roe & Farnhman Incorporated (the ''Adviser'').

RELEVANT ACT SECTIONS: Order under section 6(c) of the Act for an exemption from sections 12(d)(1), 18(f), and 21(b) of the Act, under sections 6(c) and 17(b) for an exemption from sections 17(a)(1) and 17(a)(3) of the Act, and under section 17(d) of the Act and rule 17d–1 thereunder to permit certain joint arrangements.

SUMMARY OF APPLICATION: Applicants request an order that would permit the Trusts to borrow money from each other through a credit facility.

FILING DATES: The application was filed on July 25, 1995 and amended on November 8, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 16, 1996, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants: One South Wacker Drive, Chicago, IL 60606.

FOR FURTHER INFORMATION CONTACT: Marianne H. Khawly, Staff Attorney, at (202) 942–0562, or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. Stein Roe Income Trust, Stein Roe Investment Trust, and Stein Roe Municipal Trust are organized as Massachusetts business trusts. SR&F Base Trust is organized as a Massachusetts common law trust. Each Trust has multiple series. Each Trust has entered into an investment advisory agreement with the Adviser with respect to each existing series. The Adviser is a wholly-owned indirect subsidiary of Liberty Financial Companies, Inc., which is a majority owned indirect subsidiary of Liberty Mutual Insurance Company. Applicants request that any relief also apply to any registered open-end investment companies established or acquired in the future, for which the Adviser or a company controlling, controlled by, or under common control with the Adviser, acts as investment adviser, (the ''Future Funds,'' and together with the existing series, the ''Funds'').

2. The Trusts have entered into a loan agreement with their custodian, State Street Bank and Trust Company (''State Street'') under which State Street may, but is not obligated to, lend money to the Trusts for temporary or emergency purposes. The maximum aggregate credit available under the agreement is $75 million. The Trusts seek to reduce the middleman function of banks by entering into a master loan agreement with each other (the ''Credit Facility'') that would permit the Funds to lend money directly to, and to borrow from, each other to meet the temporary borrowing needs of the borrowing Funds (the ''Interfund Loans''). The form of master loan agreement attached to the application is referred to as the ''Interfund Loan Agreement.''

3. The Credit Facility is intended to reduce substantially the Funds' borrowing costs and to enhance the ability of the Funds to earn higher rates of interest on their short-term lendings. Although the Credit Facility would substantially reduce the Funds' reliance on bank credit arrangements, the Trusts would continue to maintain existing loan agreements and to borrow money from banks. The terms and conditions of the loan agreement with State Street would serve as a guideline for making Interfund Loans.

4. The Credit Facility is likely to provide the Funds with significant savings at times when the cash position of a Fund is insufficient to meet temporary cash requirements. This situation generally arises when shareholder redemptions exceed anticipated volumes and the Funds have insufficient cash on hand to satisfy such redemptions. When the Funds liquidate portfolio securities to meet redemption requests, they often do not receive payment in settlement for up to seven days. However, shareholder redemption requests are normally effected immediately. Therefore, the Funds need a source of immediate, short-term liquidity pending settlement of the sale of portfolio securities.

5. While bank borrowings will continue to be available to supply such liquidity, the rates charged under the Credit Facility would be below those offered by State Street on short-terms loans. Likewise, Funds making cash loans to other Funds would earn interest at a rate higher than they otherwise could obtain from investing their cash in short-term repurchase agreements. Thus, the Credit Facility would benefit both those Funds that are borrowers and those Funds that are lenders.

6. The interest rate to be charged on Interfund Loans (the ''Interfund Rate'') would be determined daily and would be the mean of (a) the ''Repro Rate,'' as defined below, and (b) the ''Bank Loan Rate,'' as defined below. The Repro Rate on any day would be the highest interest

rate available to the Funds from investment in overnight repurchase agreements. The Bank Loan Rate for any day would be calculated according to a formula established by the board of each Trust to approximate the lowest interest rate at which bank loans are available to the Funds. The formula would be based upon a publicly available rate (*e.g.*, Federal Funds plus 75 basis points) and would vary with this rate so as to reflect changing bank loan rates. The Adviser would administer the Credit Facility as part of its duties under its agreement with each Fund and would receive no additional compensation for its services. The Adviser will make cash available to borrowing Funds only if the Interfund Loan Rate is more favorable to the lending Fund than the Repo Rate and more favorable to the borrowing Fund than the Bank Loan Rate.

7. No Fund would be permitted to participate in the Credit Facility unless: (a) the Fund had fully disclosed all material information concerning the Credit Facility in its prospectus and/or statement of additional information; and (b) the Fund's participation in the Credit Facility was consistent with its investment objective, fundamental limitations and the Trust's declaration of trust.

Applicant's Legal Analysis

1. Applicants request an order under section 6(c) of the Act for an exemption from sections 12(d)(1), 18(f), and 21(b) of the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(3) of the Act, and under section 17(d) of the Act and rule 17d–1 thereunder to permit certain joint arrangements. The requested order would permit the Funds to borrow from and lend to each other through the Credit Facility.

2. Applicants believe that, for the reasons discussed below, the requested order meets the standards set forth in sections 6(c) and 17(b) and rule 17d–1. Section 6(c) provides, in relevant part, that the SEC may by order exempt any person or class of persons from any provision of the Act or from any rule thereunder, if such exemption is necessary or appropriate in the public interest, consistent with the protection of investors, and consistent with the purposes fairly intended by the policy and provisions of the Act. Section 17(b) authorizes the SEC to exempt a proposed transaction from section 17(a) if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, the transaction is consistent with the polices of the registered investment company, and the general purposes of the Act. Rule 17d–1 provides that in passing upon applications for exemptive relief from section 17(d), the SEC will consider whether the participation of a registered or controlled company in a joint enterprise or joint arrangement is consistent with the provisions, policies, and purposes of the Act and to the extent to which such participation is on a basis different from or less advantageous than that of other participants.

3. Section 17(a)(3) generally prohibits an affiliated person of a registered investment company from borrowing money or other property from such investment company. Section 2(a)(3)(C) defines ''affiliated person'' of another person to be any person directly or indirectly controlling, controlled by, or under common control with, such other person. Section 21(b) generally prohibits any registered investment company from lending money or other property to any person if that person controls or is under common control with that company. The Adviser is the investment adviser of each Fund and the trustees and principal officers of each Trust are substantially identical. In view of the overlap of trustees and officers among the Trusts, the Trusts might be deemed to be under common control and thus affiliated persons of each other.

4. Sections 17(a)(3) and 21(b) were intended to prevent a party with strong potential adverse interests and influence over the investment decisions of a registered investment company from causing or inducing the investment company to engage in lending transactions that are detrimental to the best interests of the investment company and its shareholders. Applicants believe that proposed transactions do not raise such concerns because: (a) The Adviser would administer the program as a disinterested fiduciary; (b) all Interfund Loans would consist only of uninvested cash reserves that the Fund otherwise would invest in short-term repurchase agreements or comparable short-term instruments; (c) the Interfund Loans would not involve a significantly greater risk than such other investments; (d) the lending Fund would receive interest at a higher rate than it could obtain through such other investments; and (e) the borrowing Fund would pay interest at a rate lower than would otherwise the available to it under its bank loan agreements. Moreover, the proposed conditions would effectively preclude the possibility of any undue advantage.

5. Section 17(a)(1) generally prohibits and affiliated person of a registered investment company from selling any security to such registered investment company. Section 12(d)(1) prohibits registered investment companies from purchasing or otherwise acquiring any security issued by any other investment company except in accordance with certain limitations. The Credit Facility may be deemed to involve the sale of a ''security'' by a borrowing Fund to a Lending Fund. Applicants believe that the Credit Facility would not involve the type of abuses at which these sections were directed. In this case, the purpose of the Credit Facility is to provide economic benefits for all participating Funds. In addition, there would be no duplicative costs to the Funds or their shareholders. Accordingly, applicants submit that, for the reasons discussed above, the requested order meets the standards set forth in sections 6(c) and 17(b).

6. Section 17(d) generally prohibits any affiliated person of a registered investment company, or affiliated person of such a person, when acting as principal, from effecting any transaction in which the investment company is a joint or a joint and several participant. The Credit Facility may be deemed to involve a joint enterprise between or among affiliated persons. Applicants believe, however, that the interfund lending program meets the standards of rule 17d–1 because it does not involve any potential that one Fund might receive a preferential rate to the disadvantage of another Fund. Under the Credit Facility, the Funds would neither negotiate interest rates between themselves, nor would the Adviser set the rates in its discretion. Rather, rates would be set pursuant to a pre-established formula, approved by the trustees, which would be the function of the current rates quoted by an independent third-party for short-term borrowings and for short-term repurchase agreements. All Funds participating in the Credit Facility on any given day would receive the same rate.

7. Section 18(f)(1) prohibits registers open-end investment companies from issuing senior securities except that any such registered investment company shall be permitted to borrow from any bank, provided that, immediately after such borrowing there is an asset coverage of at least 300% for all borrowings of such registered company. Applicants request relief from the section to allow a fund to borrow from other Funds in amounts, as measured on the day when the most recent loan was made, not to exceed 125% of the

borrowing Fund's net cash redemptions for the preceding seven calendar days. Because applicants would be subject to all of the proposed conditions, including the percentage and collateral limitations on interfund borrowings, they believe that the Credit Facility would not involve the type of abuses that the section was intended to prevent. Applicants, therefore, believe that the requested exemption from section 18(f)(1) meets the standards of section 6(c).

Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. The interest rates to be charged to the Funds under the Credit Facility will be the average of the Repo Rate and the Bank Loan Rate.

2. The Adviser on each business day will compare the Bank Loan Rate with the Repo Rate and will make cash available for Interfund Loans only if the interfund rate is (a) more favorable to the lending Fund than the Repo Rate and (b) more favorable to the borrowing Fund than the Bank Loan Rate.

3. If a Fund has outstanding borrowings, any Interfund Loans to the Fund: (a) will be at an interest rate equal to or lower than any outstanding bank loan; (b) will be secured at least on an equal priority basis with at least an equivalent percentage of collateral to loan value as any outstanding bank loan that requires collateral; (c) will have a maturity no longer than any outstanding bank loan (and in no event over seven days); and (d) will provide that, if an event of default by the Fund occurs under any agreement evidencing an outstanding bank loan to the Fund, that event of default will automatically (without need for action or notice by the lending Fund) constitute an immediate event of default under the Interfund Loan Agreement entitling the lending Fund to call the Interfund Loan (and exercise all rights with respect to any collateral) and that such call will be made if the lending bank exercises its right to call its loan under its agreement with the Fund.

4. A Fund may make an unsecured borrowing through the Credit Facility if its outstanding borrowings from all sources immediately after the borrowing total less than 10% of its total assets, provided that if a Fund has a secured loan outstanding from any lender, including but not limited to another fund, the Fund's interfund borrowing will be secured on at least an equal priority basis with at least an equivalent percentage of collateral to loan value as any outstanding loan that requires collateral. If a Fund's total outstanding borrowings immediately after an interfund borrowing would be greater than 10% of its total assets, the Fund may borrow through the Credit Facility only on a secured basis. A Fund could not borrow through the Credit Facility if its total outstanding borrowings immediately after the interfund borrowing would be more than 33⅓% of its total assets.

5. Before any Fund that has outstanding interfund borrowings may, through additional borrowings, cause its outstanding borrowings from all sources to exceed 10% of its total assets, the Fund must first secure each outstanding Interfund Loan by the pledge of segregated collateral with a market value at least equal to 102% of the outstanding principal value of the loan. If the total outstanding borrowings of a Fund with outstanding Interfund Loans exceeds 10% of its total assets for any other reason (such as decline in net asset value or because of shareholder redemptions), the Fund will within one business day thereafter: (a) Repay all its outstanding interfund loans; (b) reduce its outstanding indebtedness to 10% or less of its total assets; or (c) secure each outstanding Interfund Loan by the pledge of segregated collateral with a market value at least equal to 102% of the outstanding principal value of the loan until the Fund's total outstanding borrowings cease to exceed 10% of its total assets, at which time the collateral called for by this condition 5 shall no longer be required. Until each Interfund Loan that is outstanding at any time that a Fund's total outstanding borrowings exceeds 10% is repaid or the Fund's total outstanding borrowings cease to exceed 10% of its total assets, the Fund will mark the value of the collateral to market each day and will pledge such additional collateral as is necessary to maintain the market value of the collateral that secures each outstanding Interfund Loan at least equal to 102% of the outstanding principal value of the interfund loan.

6. No equity, taxable bond, or money market Fund may loan funds through the Credit Facility if the loan would cause its aggregate outstanding loans through the Credit Facility to exceed 5%, 7.5%, or 10%, respectively, of its net assets at the time of the loan.

7. A Fund's Interfund Loans to any one Fund shall not exceed 5% of the lending Fund's net assets.

8. The duration of Interfund Loans will be limited to the time required to receive payment for securities sold, but in no event more than seven days. Loans effected within seven days of each other will be treated as separate loan transactions for purposes of this condition.

9. A Fund's borrowings through the Credit Facility, as measured on the day the most recent Interfund Loan was made to the Fund, will not exceed 125% of the Fund's total net cash redemptions for the preceding seven calendar days.

10. Each Interfund Loan may be called on one business days' notice by the lending Fund and may be repaid on any day by the borrowing Fund.

11. A Fund's participation in the Credit Facility must be consistent with its investment policies and limitations in the Trust's Declaration of trust.

12. The Adviser will calculate total Fund borrowing and lending demand through the Credit Facility, and allocate Interfund Loans on an equitable basis among Funds, without the intervention of the portfolio manager of any Fund. The Adviser will not solicit cash for the Credit Facility from any Fund or prospectively publish or disseminate loan demand data to portfolio managers. The Adviser will invest amounts remaining after satisfaction of borrowing demand in accordance with standing instructions from portfolio managers or return remaining amounts for investment directly by the portfolio managers of the money market Funds.

13. The Adviser will monitor the interest rates charged and the other terms and conditions of the Interfund Loans and will make a quarterly report to the boards of trustees of the Trusts concerning their participation in the Credit Facility and the terms and other conditions of any extensions of credit thereunder.

14. Each Fund's board of trustees, including a majority of the independent trustees: (a) Will review no less frequently than quarterly the Fund's participation in the Credit Facility during the preceding quarter for compliance with the conditions of any order permitting such transactions; (b) will establish the Bank Loan Rate formula used to determine the interest rate on interfund loans, and review no less frequently than annually the continuing appropriateness of such Bank Loan Rate formula; and (c) will review no less frequently than annually the continuing appropriateness of the Fund's participation in the Credit Facility.

15. In the event an Interfund Loan is not paid according to its terms and such default is not cured within two business days from its maturity or from the time the lending Fund makes a demand for payment under the provisions of the Interfund Loan agreement, the Adviser will promptly refer such loan for arbitration to an independent arbitrator

selected by the board of any Trust involved in the loan who will serve as arbitrator of disputes concerning Interfund Loans. The arbitrator will resolve any problem promptly, and the arbitrator's decision will be binding on both Funds. The arbitrator will submit, at least annually, a written report to the boards setting forth a description of the nature of any dispute and the actions taken by the Funds to resolve the dispute.

16. Each Fund will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any transaction of it under the Credit Facility occurred, the first two years in an easily accessible place, written records of all such transactions setting forth a description of the terms of the transaction, including the amount, the maturity, and the rate of interest available at the time on short-term repurchase agreements and commercial bank borrowings, and such other information presented to the Trust's board of trustees in connection with the review required by conditions 13 and 14.

17. The Adviser will prepare and submit to the boards for review an initial special report on the ''Design of a System'' with respect to the operations of the Credit Facility prior to the facility commencing operations, including a report thereon of its independent public accountants. A test program of modest duration involving actual transactions may be conducted prior to submission of the initial report to the boards. An appropriate single Trust which next files its Form N–SAR after board review of the initial report will file the report with its Form N–SAR, and the other Trusts will incorporate the report by reference in their next N–SAR filings.

Thereafter, an annual report on the ''Design of the System and Certain Compliance Tests'' with respect to the accounting control procedures for the Credit Facility which includes an opinion of the independent public accountants will be filed for two years (measured from the commencement of the Credit Facility subsequent to the test program) with the Form N–SAR of an appropriate single Trust which next files its Form N–SAR, and the other Trusts will incorporate each such annual report by reference in their next subsequent Form N–SAR filings.

The initial ''Design'' report and the annual ''Design and Compliance Tests'' report will each be prepared in accordance with the requirements of Statement of Auditing Standards No. 70 (''SAS 70'') as it may be amended or pursuant to similar auditing standards as may be adopted by the American Institute of Certified Public Accountants from time to time, including reports of independent accountants thereon. Each SAS 70 report will include a description of the Adviser's principal procedures used to monitor compliance with the conditions to any order concerning the application. The principal procedures will include, at a minimum, procedures that are designed to achieve the following objectives: (a) The Interfund Rate being higher than the Repo Rate but lower than the Bank Loan Rate; (b) the Funds' compliance with the Interfund Loan collateral requirements; (c) the Funds' compliance with the percentage limitations on interfund borrowing and lending; (d) the Funds' allocation of interfund borrowing and lending demand in accordance with procedures established by the Funds' boards of trustees; and (e) if a Fund, at the time of its borrowing from another Fund, also has outstanding third-party borrowings, the interest rate on such interfund borrowings not exceed the interest rate on third-party borrowings. After the final annual SAS 70 report, compliance with the conditions to any order issued concerning the application will be considered by the external auditors as part of their internal accounting control procedures, performed in connection with Fund audit examinations, which form the basis, in part, of the auditors' report on internal accounting controls in Form N–SAR.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–31265 Filed 12–26–95; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Draft Environmental Impact Statement/ Section 4(f)/106 Evaluation; Athens County, OH

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of availability.

SUMMARY: The FHWA is issuing this notice to announce the availability of a Draft Environmental Impact Statement/ Section 4(f)/106 Evaluation on the proposed upgrading and relocation of existing U.S. Route 50 between the City of Athens and the Village of Coolville from a two-lane highway to a controlled access, four-lane highway. The approximate length of the improvement is 25.7 km (16 miles). The proposed project would complete an unfinished segment of the Appalachian Highway. Comments are due February 5, 1996.

FOR FURTHER INFORMATION CONTACT: William C. Jones, Division Administrator, Federal Highway Administration, 200 North High Street, Room 328, Columbus, Ohio 43215, Telephone: (614) 469–6896.

SUPPLEMENTARY INFORMATION: Pursuant to the National Environmental Policy Act of 1969 and in accordance with the Council on Environmental Quality Regulations, 40 CFR (Sec. 1506.9) for implementing the Act, the Federal Highway Administration submitted to the U.S. Environmental Protection Agency, Office of Federal Activities the necessary information for the publication of a Notice of Availability for the Athens U.S. 50 Draft Environmental Impact Statement/ Section 4(f)/106 Evaluation in the December 22, 1995, Federal Register which would establish a 45 day review period. Due to circumstances beyond FHWA's control, the Notice of Availability was not submitted to the Federal Register for publication on December 22, 1995. This notice is to document that the DEIS/Section 4(f)/106 Evaluation has been made available on/ or prior to December 22, 1995, to the involved Federal and the State of Ohio permitting and resource agencies and to the public through individual mailings, State of Ohio legal notices published in local newspapers, and through the State Clearinghouse. All of the foregoing notices established the expiration date of the review period as February 5, 1996, which is based upon an 45 day review period commencing on December 22, 1995.

The FHWA will initiate coordination with the U.S. EPA Office of Federal Activities, pursuant to 40 CFR (Sec. 1506.10(d)) to reduce the prescribed 45 day availability period to coincide with availability period as established through other availability notices.

Issued on: December 20, 1995.

James J. Steele,

Assistant Division Administrator, Columbus/

[FR Doc. 95–31314 Filed 12–26–95; 8:45 am]

BILLING CODE 4910–22–P

Federal Railroad Administration

[FRA Docket Nos. H–94–7, RST–94–4, and SA–94–14]

National Railroad Passenger Corporation; Petition for Exemption or Waiver for Test Program and High Speed Revenue Passenger Service

In accordance with 49 CFR 211.51, notice is hereby given that the National Railroad Passenger Corporation (Amtrak) has submitted to the Federal Railroad Administration (FRA) a petition, dated December 5, 1994 for a waiver of compliance with specific requirements of certain parts of Title 49 of the Code of Federal Regulations in order to conduct a series of tests and enter one or more new high speed trainsets of advanced design into revenue service. Please note that this equipment is expected to be delivered to Amtrak beginning in the late spring of 1997.

The purpose of this notice is to identify and briefly describe the separate elements of the petition and afford an opportunity for interested parties to comment on these.

In explanation of why this petition had three docket numbers assigned to it, please consider the following tabulation:

Item	Description	Docket No.
Request 1 ...	High Cant Deficiency for Test Purposes.	H–94–7.
Request 2 ...	High Speed for Stability Tests.	H–94–7.
Request 3 ...	High Cant Deficiency for Revenue Operations.	RST–94–4.
Request 4 ...	High Speed for Revenue Service.	RST–94–4.
Request 5 ...	Request for a Procedure to Increase Speeds Beyond Presently Authorized Speeds.	RST–94–4.
Request 6 ...	Hand Brakes, Side and End Handholds and Uncoupling Levers.	SA–94–14.

It is evident from this compilation that the petition includes two separate phases: Requests 1 and 2 concern testing activities that will occur and be finished within periods of limited duration. This type of operation is assigned an ''H'' series docket number by FRA. Requests 3 through 5 and also 6, addressing proposed future revenue operation of the new equipment, are not temporary in nature and relief, if granted, will continue into the future.

Request 1: (Note: The tests anticipated under Requests 1 and 2 are intended to occur first, at the Transportation Technology Center in Colorado and second, if concluded successfully there, to be repeated at various locations in the Northeast Corridor.) Petitioner requests relief from compliance with § 213.57(b), Curves, elevation and speed limitations, of the Federal track safety standards which currently limits train operating speeds in the negotiation of curved track to a value producing not more than three inches of underbalance. Curve negotiation at various train speeds producing up to 12 inches of cant deficiency (underbalanced superelevation) is to be investigated to evaluate vehicle/track response characteristics in this operating regime. Amtrak states that instrumented wheelsets, accelerometers and other suitable instrumentation will figure in these tests.

Request 2: Lateral suspension performance will be examined to see if truck lateral instability (hunting) occurs within the trainset's operating speed regime up to 165 mph. In order to do this, the petitioner needs to be provided with permission to exceed the train operating speed limit of 110 mph (§ 213.9).

Request 3: Predicated upon successful completion of the cant deficiency tests described in Request 1, above, Amtrak is today asking for a permanent waiver of compliance with § 213.57(b) in order to operate the new trainsets in revenue service at curving speeds developing up to nine inches of cant deficiency.

Request 4: Amtrak wants to run the new trains in revenue service at speeds of up to 150 mph over Class 6 track. Again, and if test results are supportive, compliance with § 213.9 will have to be waived.

Request 5: Once the curving safety of the new vehicles has been established, Amtrak wants the latitude to set cant deficiency limits for other curves without further test. Agency response to this request may become a policy matter in that relief from compliance with specific sections of the track safety standards may have been provided already in response to treatment of Requests 3 and 4.

Request 6: The trainsets will not be built as individual cars which can be coupled and uncoupled in a conventional manner. Uncoupling levers will only be at the ends of the trainset. Since an entire consist will always be handled as a single unit, intermediate cars will not be equipped with standard side or end handholds. Amtrak believes that relevant provisions of § 231.12(b),(c) & (d), Passenger-train cars with wide vestibules, should not apply. The trainsets will be provided with spring-actuated parking brakes which, it is claimed, will eliminate the need for a manually operated hand brake.

FRA is seeking information and comments on this proposed test and revenue passenger service program from interested parties. FRA will take these comments into account in arriving at a final specification of conditions governing the conduct of the entire project. Such comments may also have value in supporting FRA's responses to future requests for approval to operate trains through curves at speeds producing more than the current standard of three inches of underbalance.

All interested parties are invited to participate in this proceeding through written submission. FRA does not anticipate scheduling an opportunity for oral comment because the facts do not appear to warrant it. An opportunity to present oral comments will be provided, however, if within 45 days of the publication date of this notice, the party submits a written request for a hearing that demonstrates that his or her position cannot be properly presented by written statements.

All written communications concerning this petition should reference ''FRA General Docket Nos. H–94–7/RST–94–4/SA–94–14'' and should be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, FRA, 400 7th Street SW, Washington, DC 20590.

Comments received not later than 45 days following publication of this notice will be considered in this proceeding and in evaluating any future proposals by Amtrak or other railroad entity for similar programs. All comments received will be available for examination by interested persons at anytime during regular working hours (9 a.m.-5 p.m.), in Room 8201, Nassif Building, 400 7th Street SW, Washington, DC 20590. Issued in Washington, DC on December 21, 1995.

Phil Olekszyk,

Deputy Associate Administrator for Safety Compliance and Program Implementation.

[FR Doc. 95–31329 Filed 12–26–95; 8:45 am]

BILLING CODE 4910–06–P

Petition for a Waiver of Compliance

In accordance with Title 49 CFR 211.9 and 211.41, notice is hereby given that

the following railroads have petitioned the Federal Railroad Administration (FRA) for exemptions from or waivers of compliance with a requirement of its safety standards. The individual petitions are described below, including the party seeking relief, the regulatory provisions involved, and the nature of the relief being requested.

Interested parties are invited to participate in these proceedings by submitting written views, data or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis of their request.

All communications concerning these proceedings should identify the appropriate waiver petition docket number (e.g., Waiver Petition Docket Number HS–95–13, HS–95–15, HS–95–16 or HS–95–17) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street SW, Washington, DC 20590. Communications received within 45 days of the date of publication of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m. to 5 p.m.) in room 8201, Nassif Building, 400 Seventh Street SW, Washington, DC 20590.

The individual petitions are as follows:

Southern Pacific Transportation Company (SPT), FRA Waiver Petition Docket No. HS–95–13

Southern Pacific requests a permanent waiver, after testing, to utilize new technologies to record hours of duty information for train, engine and yard personnel.

CNNA—Grand Trunk Western Railroad, Inc. (GTW), FRA Waiver Petition Docket No. HS–95–15

Grand Trunk Western requests a permanent waiver, after testing, to utilize new technologies to record hours of duty information for train, engine and yard personnel.

Houston Belt and Terminal Railway Company (HBT), FRA Waiver Petition Docket No. HS–95–16

Houston Belt and Terminal requests a permanent waiver, after testing, to utilize new technologies to record hours of duty information for engine, hostler, yard, signal and operator personnel.

Port Terminal Railroad Association (PTRA), FRA Waiver Petition Docket No. HS–95–17

Port Terminal Railroad requests a permanent waiver, after testing, to utilize new technologies to record hours of duty information for engine, hostler, yard and operator personnel.

The above railroads seek a waiver of compliance with certain provisions of FRA Safety Regulations (Hours of Service of Railroad Employees, 49 CFR Part 228). The railroads seek a waiver of 49 CFR 228.9(a)(1) which requires that records maintained under Part 228 be signed by the employee whose time of duty is being recorded, or in the case of train and engine crews, signed by the ranking crew member. Each railroad seeks to establish a program that utilizes a computerized system of recording hours of duty information which would not comply with the above requirement for a ''signature'' of the employee or ranking crew member. The individual railroads propose that each employee will have his or her own personal identification number (''pin'') which will remain confidential to the employee. When accessing the computer for input of the hours of service record, required by § 228.11, the ''pin'' will not appear on the computer screen when the employee enters his or her number. The ''pin'' is proposed to satisfy the signature requirements of the ''Hours of Service of Railroad Employees.'' The railroads maintain that the change is necessary to modernize recordkeeping.

Issued in Washington, DC on December 21, 1995.

Phil Olekszyk,

Deputy Associate Administrator for Safety Compliance and Program Implempmention.

[FR Doc. 95–31328 Filed 12–26–95; 8:45 am]

BILLING CODE 4910–06–P

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applicants for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before January 26, 1996.

ADDRESS COMMENTS TO: Dockets Unit, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption application number.

FOR FURTHER INFORMATION: Copies of the applications are available for inspection in the Dockets Unit, Room 8426, Nassif Building, 400 7th Street, SW., Washington, DC.

NEW EXEMPTIONS

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
11585–N	Prillaman Chemical Corp., Suffolk, VA	49 CFR 176.67(i) & (j)	To authorize tank cars to remain connected during unloading of chlorine without the physical presence of an unloader. (Mode 2.)

NEW EXEMPTIONS—Continued

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
11591–N	Clearwater Distributors, Inc., Woodridge, NY.	49 CFR 177.834(a), 177.834(h)	To authorize the transportation of multiple portable tanks permanently affixed to the vehicle equipped with unloading rod for use in unloading Class 8 material. (Mode 2.)
11592–N	Amtrol Inc., West Warwick, RI	49 CFR 173.306(g)	To authorize an alternative design equation in the manufacture, mark and sale of cylinders of deep-drawn dome design for use in transporting compressed air or compressed nitrogen. (Mode 1, 2, 3.)
11593–N	Johnson & Johnson, Skillman, NJ	49 CFR 162.301, 172; Subpart C, 172; Subpart F, 172; Subpart G, 172.400, 173.184(b), 178.	To authorize the transportation in commerce of highway fusees packed in first aid kits for retail sales, classed as ORM–D to be shipped without required shipping papers, marking, labelling or placarding. (Mode 1.)
11595–N	B.F. Goodrich, Cleveland, OH	49 CFR 174.67 (i), (j) & (k)	To authorize rail cars to remain connected during unloading of carbon disulfide, Class 3, without the physical presence of an unloader. (Mode 2.)
11597–N	Zeneca, Inc., Wilmington, DE	49 CFR 173.28	To authorize the transportation in commerce of reused composite UN6HA1 drums without leakproof testing for use in transporting Class 9 material. (Mode 2.)
11598–N	Metalcraft Inc., Baltimore, MD	49 CFR 173.34(d), 175.3	To authorize the manufacture, mark and sale of fire extinguishers equipped with non-specified pressure relief devices for use in transporting Division 2.2 material. (Modes 1, 4, 5.)
11599–N	Haviland Products Co., Grand Rapids, MI	49 CFR 173.158	To authorize the transportation in commerce of non-bulk nitric acid, other than red fuming, less than 70%, in 15 gallon and 55 gallon, reusable 1H1 plastic drums. (Mode 1.)
11601–N	Hampton & Branchville RR Co., Inc., Hampton, SC.	49 CFR 174.85(c) & (d)(2)	To authorize the transportation of rail cars containing certain hazardous materials without space cars in required sequence. (Mode 2.)
11602–N	The American Aluminum Association, et al., Cleveland, OH.	49 CFR 172.101, 172.301(c), 173.22a, 173.241, 173.242; Appendix B to Part 107.	To authorize the transportation in commerce of sift-proof bulk packagings comparable to those described in Section 173.240 and SP B54 for the shipment of aluminum processing by products, including drosses and spent potliner. (Modes 1, 2, 3.)
11604–N	G.R.P. Trasporti Ferroviari S. A., Switzerland.	49 CFR 178.245–1(b)	To authorize the transportation in commerce of IMO Type 5 portable tanks equipped with bottom outlets similar to DOT Specification 51, except for location of openings for use in transporting Division 2.2 material. (Modes 1, 2, 3.)
11606–N	Safety-Kleen Corp., Elgin, IL	49 CFR 173.28(b)(2)	To authorize the transportation in commerce of reused non-DOT specification steel drums to ship waste combustible liquid and tetrachloroethylene sludges. (Mode 2.)
11607–N	Degussa Corporation, Ridgefield Park, NJ.	49 CFR 173.32C(j)	To authorize transportation in commerce of disodium tetrasulfide, Class 8, (corrosive solid) in IMO Type 1 tanks of 5000 liters capacity which are loaded to a filling density less than 80% by volume. (Modes 1, 2, 3.)

This notice of receipts of applications for new exemptions is published in accordance with Part 107 of the Hazardous Materials Transportation Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on December 19, 1995.

J. Suzanne Hedgepeth,

Chief, Exemption Programs, Office of Hazardous Materials Exemptions and Approvals.

[FR Doc. 95–31330 Filed 12–26–95; 8:45 am]

BILLING CODE 4910–60–M

Office of Hazardous Materials Safety; Notice of Applications for Modification of Exemptions or Applications to Become a Party to an Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications for modification of exemptions or applications to become a party to an exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier Federal Register publications, they are not repeated here. Requests for modifications of exemptions (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix ''M'' denote a modification request. Application numbers with the suffix ''P'' denote a party to request. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comments must be received on or before January 11, 1996.

ADDRESS COMMENTS TO: Dockets Unit, Research and Special Programs, Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

FOR FURTHER INFORMATION: Copies of the applications are available for inspection in the Dockets Unit, Room 8426, Nassif Building, 400 7th Street SW, Washington, DC.

Application No.	Applicant	Renewal of exemption
10517–M ...	Nalco Chemical Co., Naperville, IL. (See Footnote 1.)	10517
11517–M ...	Technical Service Co., Long Beach, CA. (See Footnote 2.)	11517

[1] To modify exemption to include UN31A as additional container and extend the retest period to once every 5 years instead of 3 years.
[2] To reissue exemption originally issued on an emergency basis to authorize the transportation in commerce of certain Class 3 and Class 8 material in multiple non-DOT specification portable tanks manifolded together within a frame.

Application No.	Applicant	Parties to exemption
4453–P	Blastrite Services, Inc., Van Wyck, SC	4453
4453–P	Rimrock Explosives, Inc., Hayden Lake, ID	4453
4453–P	Southern Explosives Corporation, Glasgow, KY	4453
4453–P	United Explosives Company of Ohio, Findlay, OH	4453
4453–P	Explosives Energies, Inc., Greenfield, MO	4453
4453–P	Explosives Energies, Inc. dba Arkansas Explosives, Mabelvale, AR	4453
4453–P	Explo-Tech, Inc., Spring City, PA	4453
4453–P	North Star Explosives, Ketchikan, AK	4453
6971–P	Supelco, Inc., Bellefonte, PA	6971
7455–P	North Star Explosives, Ketchikan, AK	7455
7737–P	Cliff Acquisition Corporation, Eastlake, OH	7737
8554–P	Balstrite Services, Inc., Van Wyck, SC	8554
8554–P	Rimrock Explosives, Inc., Hayden Lake, ID	8554
8554–P	Southern Explosives Corporation, Glasgow, KY	8554
8554–P	United Explosives Company of Ohio, Findlay, OH	8554
8554–P	Explosives Energies, Inc., Greenfield, MO	8554
8554–P	Explosives Energies, Inc. dba Arkansas Explosives, Mabelvale, AR	8554
8554–P	Explo-Tech, Inc., Spring City, PA	8554
8554–P	North Star Explosives, Ketchikan, AK	8554
8815–P	Viking Explosives & Supply, Inc., Rosemount, MN	8815
9275–P	Florasynth, Inc., Teterboro, NJ	9275
9275–P	Chart Corporation, Inc., Paterson, NJ	9275
9617–P	Blastrite Services, Inc., Van Wyck, SC	9617
9617–P	Rimrock Explosives, Inc., Hayden Lake, ID	9617
9617–P	Southern Explosives Corporation, Glasgow, KY	9617
9617–P	United Explosives Company of Ohio, Findlay, OH	9617
9617–P	Explosives Energies, Inc., Greenfield, MO	9617
9617–P	Explosives Energies, Inc. dba Arkansas Explosives, Mabelvale, AR	9617
9617–P	Explo-Tech, Inc., Spring City, PA	9617
9617–P	North Star Explosives, Ketchikan, AK	9617
9623–P	Blastrite Services, Inc., Van Wyck, SC	9623
9623–P	Rimrock Explosives, Inc., Hayden Lake, ID	9623
9623–P	Southern Explosives Corporation, Glasgow, KY	9623
9623–P	United Explosives Company of Ohio, Findlay, OH	9623
9623–P	Explosives Energies, Inc., Greenfield, MO	9623
9623–P	Explosives Energies, Inc. dba Arkansas Explosives, Mabelville; AR	9623

Application No.	Applicant	Parties to exemption
9623–P	Explo-Tech, Inc., Spring City, PA	9623
9623–P	North Star Explosives, Ketchikan, AK	9623
9723–P	Clark Environmental, Inc., Ft. Pierce, FL	9723
10068–P	Redemption, Inc. d/b/a Island Air Service, Kodiak, AK	10688
10751–P	Blastrite Services, Inc., Van Wyck, SC	10751
10751–P	Rimrock Explosives, Inc., Hayden Lake, ID	10751
10751–P	Southern Explosives Corporation, Glasgow, KY	10751
10751–P	United Explosives Company of Ohio, Findlay, OH	10751
10751–P	Explosives Energies, Inc., Greenfield, MO	10751
10751–P	Explosives Energies, Inc. dba Arkansas Explosives, Mabelvale, AR	10751
10751–P	Explo-Tech, Inc., Spring City, PA	10751
10751–P	North Star Explosives, Ketchikan, AK	10751
10880–P	Blastrite Services, Inc., Van Wyck, SC	10880
10880–P	Rimrock Explosives, Inc., Hayden Lake, ID	10880
10880–P	Southern Explosives Corporation, Glasgow, KY	10880
10880–P	United Explosives Company of Ohio, Findlay, OH	10880
10880–P	Explosives Energies, Inc., Greenfield, MO	10880
10880–P	Explosives Energies, Inc. dba Arkansas Explosives, Mabelvale, AR	10880
10880–P	Explo-Tech, Inc., Spring City, PA	10880
10880–P	North Star Explosives, Ketchikan, AK	10880
11156–P	ECONEX, Inc., Pittsfield, IL	11156
11156–P	Boren-Ireco Company, Inc., Parrish, AL	11156
11156–P	Blastrite Services, Inc., Van Wyck, SC	11156
11156–P	Rimrock Explosives, Inc., Hayden Lake, ID	11156
11156–P	Southern Explosives Corporation, Glasgow, KY	11156
11156–P	Explosives Energies, Inc., Greenfield, MO	11156
11156–P	United Explosives Company of Ohio, Findlay, OH	11156
11156–P	Explosives Energies, Inc. dba Arkansas Explosives, Mabelvale, AR	11156
11156–P	Explo-Tech, Inc., Spring City, PA	11156
11156–P	North Star Explosives, Ketchikan, AK	11156
11197–P	Mitsubishi Motor Manufacturing of America, Inc., Normal, IL	11189
11197–P	Advanced Environmental Technical Servcices, Flanders, NJ	11197
11197–P	Monsanto Company, St. Louis, MO	11197
11197–P	California Advanced Environmental Technology Corp., Richmond, CA	11197
11197–P	Advanced Environmental Technology Corporation, Flanders, NJ	11197
11197–P	Baker Performance Chemicals, Incorporated, Houston, TX	11197
11230–P	Explo-Tech, Inc., Spring City, PA	11230
11230–P	North Star Explosives, Ketchikan, AK	11230
11294–P	California Advanced Environmental Technology Corp., Richmond, CA	11294
11294–P	Advanced Environmental Technology Corporation, Flanders, NJ	11294
11294–P	Advanced Environmental Technology Servcies, Flanders, NJ	11294
11294–P	EOG Environmental, Inc., Milwaukee, WI	11294
11346–P	Petro-Log, Inc., Casper, WY	11346
11551–P	Farmland Industries, Inc., Kansas City, MO	11551

This notice of receipt of application for modification of exemptions and for party to an exemption is published in accordance with Part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e).

Issued in Washington, DC, on December 7, 1995.

J. Suzanne Hedgepeth,

Chief, Exemption Programs, Office of Hazardous Materials Exemption and Approval.

[FR Doc. 95–31331 Filed 12–26–95; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Joint Board for the Enrollment of Actuaries, Advisory Committee on Actuarial Examinations; Meeting

Notice is hereby given that the Advisory Committee on Actuarial Examinations will meet in the Conference Room of the Office of Director of Practice, Suite 600, 801 Pennsylvania Avenue, NW, Washington, DC, on Monday and Tuesday, January 8 and 9, 1996, from 8:30 a.m. to 5:00 p.m. each day.

The purpose of the meeting is to discuss topics and questions which may be recommended for inclusion on future Joint Board examinations in actuarial mathematics and methodology referred to in Title 29 U.S. Code, section 1242(a)(1)(B) and to review the November 1995 Joint Board examination in order to make recommendations relative thereto, including the minimum acceptable pass score.

A determination as required by section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463) that the portions of the meeting dealing with the discussion of questions which may appear on future Joint Board examinations and review of the November 1995 Joint Board examination fall within the exceptions to the open meeting requirement set forth in Title 5 U.S. Code, section 552(c)(9)(B), and that the public interest requires that such portions be closed to public participation.

Dated: December 19, 1995.

Patrick McDonough,

Acting Advisory Committee Management Officer, Joint Board for the Enrollment of Actuaries.

[FR Doc. 95–31339 Filed 12–26–95; 8:45 am]

BILLING CODE 4830–01–P

Sunshine Act Meetings

Federal Register
Vol. 60, No. 248
Wednesday, December 27, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the ''Government in the Sunshine Act'' (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 2:02 p.m. on Thursday, December 21, 1995, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following:

Reports of the Office of Inspector General
Personnel Matters
Matters relating to the Corporation's corporate and supervisory activities

In calling the meeting, the Board determined, on motion of Vice Chairman Andrew C. Hove, Jr., seconded by Ms. Susan F. Krause, acting in the place and stead of Director Eugene A. Ludwig (Comptroller of the Currency), concurred in by Director Jonathan L. Fiechter (Acting Director, Office of thrift Supervision), and Chairman Ricki Helfer, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the ''Government in the Sunshine Act'' (5 U.S.C. 552b (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550 17th Street NW., Washington, D.C.

Dated: December 22, 1995.

Federal Deposit Insurance Corporation.
Robert E. Feldman,
Deputy Executive Secretary.
[FR Doc. 95–31395 Filed 12–22–95; 1:22 pm]
BILLING CODE 6714–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Tuesday, January 2, 1996.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: December 22, 1995.
Jennifer J. Johnson,
Deputy Secretary of the Board.
[FR Doc. 95–31448 Filed 12–22–95; 3:08 pm]
BILLING CODE 6210–01–P

UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS

Notice of a Meeting

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 C.F.R. Section 7.5) and the Government in the Sunshine Act (5 U.S.C. Section 552b), hereby gives notice that it intends to hold a meeting at 8:30 a.m. on Tuesday, January 9, 1996, in Washington, D.C. The meeting is open to the public and will be held at the U.S. Postal Service Headquarters, 475 L'Enfant Plaza, S.W., in the Benjamin Franklin Room. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meeting should be addressed to the Secretary for the Board, David F. Harris, at (202) 268–4800.

There will also be a session of the Board on Monday, January 8, 1996, but it will consist entirely of briefings and is not open to the public.

AGENDA

Tuesday Session

January 9—8:30 a.m. (Open)

1. Minutes of the Previous Meeting, December 4–5, 1995.
2. Remarks of the Postmaster General and CEO. (Marvin Runyon)
3. Consideration of Board Resolution on Capital Funding. (Chairman Sam Winters)
4. Annual Report on Government in the Sunshine Act Compliance. (Secretary to the Board Koerber)
5. Postmaster General's FY 1995 Annual Report. (Larry M. Speakes, Senior Vice President, Corporate and Legislative Affairs)
6. Annual 1995 Comprehensive Statement on Postal Operations to Congress. (Larry M. Speakes, Senior Vice President, Corporate and Legislative Affairs)
7. Capital Investments. (All for final consideration)
   a. Tray Management System—Phase II Development. (William J. Dowling, Vice President, Engineer).
   b. Low Cost Optical Character Reader. (Mr. Dowling).
   c. 47 Small Parcel and Bundle Sorters. (Mr. Dowling).
   d. Associate Office Infrastructure R&D. (Richard D. Weirich, Vice President, Information Systems).
   e. Jacksonville, Florida, Bulk Mail Center Expansion. (Rudolph K. Umscheid, Vice President, Facilities).
8. Election of Chairman and Vice Chairman of the Board of Governors.
9. Tentative Agenda for the February 5–6, 1996, meeting in Houston, Texas.

David F. Harris,
Secretary.
[FR Doc. 95–31394 Filed 12–22–95; 1:22 pm]
BILLING CODE 7710–12–M

Federal Register

Wednesday
December 27, 1995

Part II

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 46 and 52
Federal Acquisition Regulation: Clause Flowdown; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 46 and 52

[FAR Case 92–035]

RIN 9000–AG76

Federal Acquisition Regulation; Clause Flowdown

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to reduce the number of contract clauses requiring flowdown to subcontractors. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

DATES: Comments should be submitted on or before February 26, 1996 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets NW., room 4037 Washington, DC 20405.

Please cite FAR case 92–035 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Mr. Harry Rosinski at (202) 501–0692 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAR case 92–035.

SUPPLEMENTARY INFORMATION:

A. Background

The Councils conducted an extensive review of all FAR clauses requiring flowdown to subcontractors in an effort to eliminate any unnecessary flowdown requirements. As a result, the Councils are proposing to eliminate requirements for flowdown of the clauses at FAR 52.215–26, 52.216–5, 52.216–6, 52.216–16, 52.216–17, 52.222–1, 52.236–21, 52.244–2(i), 52.246–23, 52.246–24, and 52.246–25.

B. Regulatory Flexibility Act

The proposed changes may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et. seq.*, because it will reduce administrative burden for Government contractors and their subcontractors. An Initial Regulatory Flexibility Analysis (IRFA) has been prepared and will be provided to the Chief Counsel for Advocacy for the Small Business Administration. A copy of the IRFA may be obtained from the FAR Secretariat. Comments are invited. Comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 92–035), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 46 and 52

Government procurement.

Dated: December 18, 1995.

Edward C. Loeb,

Acting Director, Office of Federal Acquisition Policy.

Therefore, it is proposed that 48 CFR parts 46 and 52 be amended as set forth below:

1. The authority citation for 48 CFR parts 46 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 46—QUALITY ASSURANCE

46.806 [Removed]

2. Section 46.806 is removed.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.215–26 [Amended]

3. Section 52.215–26 is amended by revising the date of the clause to read ''(DATE)'' and by removing paragraph (d).

4. 52.216–5 is amended by revising the introductory paragraph, the date of the clause, and paragraph (i) to read as follows:

52.216–5 Price Redetermination—Prospective.

As prescribed in 16.205–4, insert the following clause:

PRICE REDETERMINATION—PROSPECTIVE (DATE)

* * * * *

(i) *Subcontracts.* No subcontract placed under this contract may provide for payment on a cost-plus-a-percentage-of-cost basis.

* * * * *

(End of clause)

5. Section 52.216–6 is amended by revising the introductory text, the date of the clause, and paragraph (h) to read as follows:

52.216–6 Price Redetermination—Retroactive.

As prescribed in 16.206–4, insert the following clause:

PRICE REDETERMINATION—RETROACTIVE (DATE)

* * * * *

(h) *Subcontracts.* No subcontract placed under this contract may provide for payment on a cost-plus-a-percentage-of-cost basis.

* * * * *

(End of clause)

6. Section 52.216–16 is amended by revising the introductory paragraph, the date of the clause, and paragraph (h) to read as follows:

52.216–16 Incentive Price Revision—Firm Target.

As prescribed in 16.405(a), insert the following clause:

INCENTIVE PRICE REVISION—FIRM TARGET (DATE)

* * * * *

(h) *Subcontracts.* No subcontract placed under this contract may provide for payment on a cost-plus-a-percentage-of-cost basis.

* * * * *

(End of clause)

* * * * *

7. Section 52.216–17 is amended by revising the introductory paragraph, the date of the clause, and paragraph (j) to read as follows:

52.216–17 Incentive Price Revision—Successive Targets.

As prescribed in 16.405(b), insert the following clause:

INCENTIVE PRICE REVISION—SUCCESSIVE TARGETS (DATE)

* * * * *

(j) *Subcontracts.* No subcontract placed under this contract may provide for payment on a cost-plus-a-percentage-of-cost basis.

* * * * *

(End of clause)

* * * * *

8. Section 52.222–1 is amended by revising the introductory paragraph and the date of the clause; by removing the paragraph designation ''(a)'' in paragraph (a); and by removing paragraph (b). The revised text reads as follows:

52.222–1 Notice to the Government of Labor Disputes.

As prescribed in 22.103–5(a), insert the following clause:

NOTICE TO THE GOVERNMENT OF LABOR DISPUTES (DATE)

* * * * *

(End of clause)

52.236–21 [Amended]

9. Section 52.236–21 is amended by revising the date of the clause to read ''(DATE)'' and by removing paragraph (h).

52.244–2 [Amended]

10. Section 52.244–2 is amended by removing and reserving paragraph (i).

52.246–23 [Amended]

11. Section 52.246–23 is amended by revising the date of the clause to read ''(DATE)'' and by removing paragraph (d).

52.246–24 [Amended]

12. Section 52.246–24 is amended by revising the date of the clause to read ''(DATE)'' and by removing paragraphs (f) and (g).

52.246–25 [Amended]

13. Section 52.246–25 is amended by revising the date of the clause to read ''(DATE)'' and by removing paragraph (d).

[FR Doc. 95–31204 Filed 12–26–95; 8:45 am]

BILLING CODE 6820–EP–P

Federal Register

Wednesday
December 27, 1995

Part III

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 25 and 52

Federal Acquisition Regulation: Buy American Act—Construction (Grimberg Decision); Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 25 and 52

[FAR Case 91–119]

RIN 9000–AG81

Federal Acquisition Regulation; Buy American Act—Construction (Grimberg Decision)

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are considering changes to the Federal Acquisition Regulation (FAR) to amend FAR Parts 25 and 52 to add guidance on requests for exceptions to the Buy American Act for construction. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

DATES: *Comment due date:* To be considered in the formulation of a final rule, comments should be submitted on or before February 26, 1996.

ADDRESSES: Comments should be submitted to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets NW., Room 4037, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Loeb at (202) 501–4547 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAR case 91–119.

SUPPLEMENTARY INFORMATION:

A. Background

In its decision in *John C. Grimberg Co., Inc.* v. *U.S.*, 869 F.2d 1475 (Fed. Cir. 1989), the Court of Appeals for the Federal Circuit in effect ruled that the current Department of Defense practice of generally denying post-award waivers of the Buy American Act for construction contracts is unreasonable. In light of this decision, FAR revisions are proposed to add guidance on exceptions to the Buy American Act.

B. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because contractors are required to either comply with the Buy American Act or seek exceptions. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected FAR subpart will also be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 91–119), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) applies because the proposed revisions impose additional record-keeping requirements or information collection requirements or collection of information from offerors, contractors or members of the public which require the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 3501, *et seq.* The proposed rule requires contractors proposing to use foreign construction materials to submit information on the foreign and domestic construction materials, as well as a justification for use of foreign materials. This information will be evaluated by the Government in determining if a request for a waiver of the Buy American Act should be granted. A request for approval of the new information collection requirement has been submitted to OMB.

DATES: Comments may be submitted on or before February 26, 1996.

ADDRESSES: Send comments regarding the burden estimate or any other aspect of the information collection requirement to Mr. Peter Weiss, FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the FAR Secretariat.

Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average .*5* 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.

The annual reporting burden is estimated to be $37,500 as a result of the following estimated number of hours of labor for compliance: Respondents, *1,000*; responses per respondent, *5*; total annual responses, *5,000*; preparation hours per response, *.5*; and total response burden hours, *2,500*.

List of Subjects in 48 CFR Parts 25 and 52

Government procurement.

Dated: December 18, 1995.

Edward C. Loeb,

Acting Director, Office of Federal Acquisition Policy.

Therefore, it is proposed that48 CFR parts 25 and 52 be amended as set forth below:

PART 25—FOREIGN ACQUISITION

1. The authority citation for 48 CFR Parts 25 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

25.200 [Amended]

2. Section 25.200 is amended to revise the cite ''41 U.S.C. 10'' to read ''41 U.S.C. 10a–10d''.

3. Section 25.202 is amended by revising paragraph (a)(1), redesignating paragraphs (b) through (c) as paragraphs (c) through (d), and adding a new paragraph (b) to read as follows:

25.202 Policy.

(a) * * *

(1) The cost would be unreasonable (the cost of a particular domestic construction material shall be determined to be unreasonable when the cost of such material exceeds the cost of foreign material by more than 6 percent, unless the agency head determines a higher percentage to be appropriate; see Executive Order 10582);

* * * * *

(b) Offerors should request an exception to the Buy American Act in time to allow determination before submission of offers so that, through competition, economic benefits of the exception are passed along to the Government. Officials making these determinations shall consider the feasibility of foregoing the acquisition or of acquiring a domestic substitute.

* * * * *

25.203, 25.204, and 25.205 [Redesignated as 25.204, 25.206, and 25.207]

4. Sections 25.203, 25.204, and 25.205 are redesignated as 25.204, 25.206, and 25.207, respectively.

4A. A new 25.203 is added to read as follows:

25.203 Exceptions requested before submission of offers.

(a) Any request for exception to the Buy American Act made before receipt of offers shall be evaluated based on the information in the applicable clause at 52.225–5, Buy American Act—

Construction Materials, paragraph (c) and (d) or 52.225–15, Buy American Act—Construction Materials under European Community and North American Free Trade Agreements, paragraphs (c) and (d) and may be supplemented by other information readily available to the contracting officer.

(b) If an exception to the Buy American Act is granted before receipt of offers, the excepted material shall be identified in the clause at 52.225–5 or 52.225–15.

5. Newly designated 25.204 is revised to read as follows:

25.204 Evaluating offers of foreign construction material.

(a) Offerors proposing to use foreign construction material other than that listed in the applicable clause at 52.225–5(b)(2) or 52.225–15(b)(3) must provide the information required by paragraphs (c) and (d) of the respective clauses.

(b) Unless agency regulations specify a higher percentage, the Government will add to the offer price 6 percent of the cost of any foreign construction material proposed for exception from the requirements of the Buy American Act based on the unreasonable cost of domestic construction materials. If the evaluation of offers results in a tie between an offer including foreign construction material, as evaluated, and an offer including solely domestic material, award shall be made on the offer including solely domestic material. This procedure does not apply to foreign construction material whose use is excepted by the Government under the clause at 52.225–5(b)(2) or 52.225–15(b)(3).

(c) Offerors also may submit alternate offers based on use of domestic construction material to avoid the possibility that denial of an exception permitting use of foreign construction material shall cause rejection of the entire offer.

(d) If an exception to the Buy American Act is granted, the excepted material shall be listed in the contract.

6. A new 25.205 is added to read as follows:

25.205 Post award exceptions.

(a) If a contractor requests an exception to the Buy American Act after contract award, the contractor shall explain why the exception could not have been requested before contract award or otherwise was not reasonably foreseeable. If the contractor does not submit a satisfactory explanation, an exception should not be granted unless it is in the Government's best interests.

(b) Any request for exception to the Buy American Act made after contract award shall be evaluated based on information similar to that required before award by the applicable clause at 52.225–5(c) and (d) or 52.225–15(c) and (d) and/or other information readily available to the contracting officer.

(c) If an exception to the Buy American Act is granted after contract award, the contract shall be modified to allow use of the foreign construction material, and adequate consideration shall be negotiated. However, when the basis for the exception is the unreasonable price of a domestic construction material, adequate consideration shall not be less than the differential established in 25.202(a)(1) or agency procedures.

7. Newly designated Section 25.206 is revised to read as follows:

25.206 Noncompliance.

(a) The contracting officer is responsible for conducting Buy American Act investigations when available information indicates such action is warranted.

(b) Unless fraud is suspected, the contracting officer shall notify the contractor of the apparent unauthorized use of foreign construction material and request a reply, to include proposed corrective action.

(c) If an investigation reveals that a contractor or subcontractor has used foreign construction material without authorization, the contracting officer shall take appropriate action, including one or more of the following:

(1) If granting an exception to the Buy American Act is appropriate, the contracting officer may process an exception in accordance with 25.205.

(2) If an exception to the Buy American Act is not appropriate:

(i) The contracting officer should consider requiring removal and replacement of the unauthorized foreign construction material.

(ii) If removal and replacement of foreign construction material incorporated in a building or work would be impracticable, cause undue delay, or otherwise be detrimental to the interests of the Government, the contracting officer may determine in writing that the foreign construction material need not be removed and replaced. Such a determination does not constitute approval of an exception and should be so stated in the determination. Further, such a determination does not affect the Government's right to suspend and/or debar a contractor, subcontractor or supplier for violation of the Buy American Act, or to exercise other contractual rights and remedies, such as reducing the contract price or terminating the contract for default.

(iii) If the noncompliance is sufficiently serious, the contracting officer should consider exercising appropriate contractual remedies, such as terminating the contract for default. The contracting officer should also consider preparing and forwarding a report for suspension and/or debarment, including findings and supporting evidence in accordance with FAR subpart 9.4, Debarment, Suspension, and Ineligibility. In addition, if the noncompliance appears to be fraudulent, the contracting officer should consider referring the matter to other appropriate agency officials, such as the officer responsible for criminal investigation and prosecution.

8. Newly designated Section 25.207 is revised to read as follows:

25.207 Solicitation provision and contract clause.

(a) The contracting officer shall insert the provision at 52.225–X, Notice of Buy American Act—Construction Materials, in solicitations for construction when the clause at 52.225–5, Buy American Act—Construction Materials, is prescribed.

(b) The contracting officer shall insert the clause at 52.225–5, Buy American Act—Construction Materials, in solicitations and contracts for construction inside the United States, except when the clause at 52.225–15, Buy American Act—Construction Materials under European Community and North American Free Trade Agreements, is prescribed.

(c) The contracting officer shall insert the provision at 52.225–XX, Notice of Buy American Act Requirement—Construction Materials under European Community and North American Free Trade Agreements, in solicitations for construction when the clause at 52.225–15, Buy American Act—Construction Materials under European Community and North American Free Trade Agreements, is prescribed.

(d) The contracting officer shall insert the clause at 52.225–15, Buy American Act—Construction Materials under European Community and North American Free Trade Agreements, in solicitations and contracts for construction inside the United States with an estimated acquisition value of $6,500,000 ($8,000,000 for the Power Marketing Administrations) or more, to be awarded by agencies listed in 25.407.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

9. Section 52.225–X is added to read as follows:

52.225–X Notice of Buy American Act requirement—construction materials.

As prescribed in 25.207(a), insert the following provision:

Notice of Buy American Act Requirement—Construction Materials (Date)

(a) Offerors are required to comply with the requirements of FAR clause 52.225–5, Buy American Act—Construction Materials, of this solicitation. The terms ''construction material'' and ''domestic construction material'' as used in this provision, have the meanings set forth in FAR clause 52.225–5(a), Definitions.

(b) Offerors should request an exception to the Buy American Act in time to allow determination before submission of offers. For evaluation of a request for an exception to the requirements of the Buy American Act prior to bid opening, the information and applicable supporting data required by FAR clause 52.225–5(c) and (d) shall be included in the request. If a request has not been made before the time set for receipt of offers or a response has not been received to a request made prior to receipt of offers, the information and supporting data shall be included in the offer.

(c) *Evaluation of offers.* (1) For evaluation of offers, (unless agency regulations specify a higher percentage) the Government will add to the offer price 6 percent of the cost of any foreign construction material proposed for exception from the requirements of the Buy American Act based on claimed unreasonable cost of domestic construction materials.

(2) If the evaluation of offers results in a tie between an offer including foreign construction material, as evaluated, and an offer including solely domestic material, award shall be made on the offer including solely domestic material.

(3) This procedure does not apply to foreign construction material whose use is excepted by the Government under FAR clause 52.225–5(b)(2) of the solicitation.

(d) *Alternate offerors.* (1) When an offer includes foreign construction material, offerors also may submit alternate offers based on use of domestic construction material.

(2) If alternate offers are submitted, a separate SF 1442 shall be submitted for each alternate offer, and a separate price comparison table prepared in accordance with FAR clause 52.225–5(c) and (d) shall be submitted for each offer that is based on the use of any foreign construction material.

(3) If a particular exception requested under FAR clause 52.225–5(c), is not approved—

(i) The Government will evaluate only offers based on use of the equivalent domestic construction material, and the offeror shall be required to furnish such domestic construction material;

(ii) In sealed bid procurements, any offer based on use of that particular foreign construction material must be rejected as nonresponsive; and

(iii) In negotiated procurements, any offer based on use of that particular foreign construction material may not be accepted unless revised during negotiations.

(End of provision)

10. Section 52.225–5 is amended by revising the introductory paragraph; revising the clause date; revising paragraph (a) introductory text; by removing the phrase ''as used in this clause'' from the definitions of ''Components'', ''Construction materials'' and ''Domestic construction materials''; by revising paragraph (b); and adding paragraphs (c) and (d) to read as follows:

52.225–5 Buy American Act—construction materials.

As prescribed in 25.207(b), insert the following clause:

Buy American Act—Construction Materials (Date)

(a) Definitions. As used in this clause

* * * * *

(b)(1) The Buy American Act (41 U.S.C. 10(a)-10(d)) requires that only domestic construction material be used in performing this contract, except as provided in subparagraphs (b)(2) or (b)(3) of this clause.

(2) This requirement does not apply to the excepted construction material or components listed by the Government below:

_____

(list applicable accepted materials or indicate ''none''.)

(3) Other foreign construction material may be used if the Government determines that—

(i) The cost would be unreasonable (the cost of a particular domestic construction material shall be determined to be unreasonable when the cost of such material exceeds the cost of foreign material by more than 6 percent, unless the agency head determines a higher percentage to be appropriate);

(ii) The use of a particular domestic construction material would be impracticable; or

(iii) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.

(4) The Contractor agrees that only domestic construction material will be used by the Contractor, subcontractors, material men, and suppliers in the performance of this contract, except for foreign construction materials, if any—

(i) Listed in paragraph (b)(2) of this clause; or

(ii) Proposed by the Contractor and approved by the Government in accordance with paragraphs (c) and (d) of this clause.

(c) *Request for exceptions.* (1) Contractors proposing to use foreign construction material shall provide adequate information for Government evaluation of the request for exception to the Buy American Act. Each submission shall include a description of the foreign and domestic construction materials, including unit of measure, quantity, prices and time of delivery or availability, location of the construction project, name and address of the proposed contractor, and a detailed justification of the reason for use of foreign materials cited in accordance with subparagraph (b)(3) of this clause. A submission based on unreasonable cost shall include a reasonable survey of the market and a completed price comparison table in the format in paragraph (d) of this clause. The price of construction material shall include all delivery costs to the construction site and any applicable duty (whether or not a duty-free certificate may be issued).

(2) If an exception to the Buy American Act is granted after contract award, the contract shall be modified to allow use of the foreign construction material, and adequate consideration shall be negotiated. However, when the basis for the exception is the unreasonable price of a domestic construction material, adequate consideration shall not be less than the differential established in subparagraph (b)(3)(i) of this clause.

(3) If a request for an exception to the Buy American Act is not granted, the use of that particular foreign construction material will be a failure to comply with the Act.

(d) For evaluation of requests under paragraph (c) of this clause, the following information and any applicable supporting data based on the canvas of suppliers shall be included in the request.

FOREIGN AND DOMESTIC CONSTRUCTION MATERIALS PRICE COMPARISON

Construction material description	Unit of measure	Quantity	Price (dollars)
Item 1:			
Foreign construction material	.....	.....	.....
Domestic construction material	.....	.....	.....
Item 2:			
Foreign construction material	.....	.....	.....
Domestic construction material	.....	.....	.....

FOREIGN AND DOMESTIC CONSTRUCTION MATERIALS PRICE COMPARISON—Continued

Construction material description	Unit of measure	Quantity	Price (dollars)
List name, address, telephone number and contact for suppliers surveyed. Attach copy of response; if oral, attach summary. Include other applicable supporting information.			
Include all delivery costs to the construction site and any applicable duty (whether or not a duty-free entry certificate is issued).			

(End of clause)

11. Section 52.225–XX is added to read as follows:

52.225–XX Notice of Buy American Act requirement—construction materials under European Community and North American Free Trade Agreements.

As prescribed in 25.207(c), insert the following provision:

Notice of Buy American Act Requirement—Construction Materials Under European Community and North American Free Trade Agreements (Date)

(a) Offerors are required to comply with the requirements of Federal Acquisition Regulation (FAR) clause 52.225–15 of this solicitation. The definitions set forth at 52.225–15(a) have the same meaning in this provision.

(b) Offerors should request an exception to the Buy American Act in time to allow determination before receipt of offers. For evaluation of a request for an exception to the requirements of the Buy American Act prior to bid opening, the information and applicable supporting data required by 52.225–15 (c) and (d) shall be included in the request. If a request has not been made before the time set for receipt of offers or a response has not been received to a request made prior to receipt of offers, the information and supporting data shall be included in the offer.

(c) *Evaluation of offers.* (1) For evaluation of offers, (unless agency regulations specify a higher percentage) the Government will add to the offer price 6 percent of the cost of any foreign construction material proposed for exception from the requirements of the Buy American Act based on claimed unreasonable cost of domestic construction materials.

(2) If the evaluation of offers results in a tie between an offer including foreign construction material, as evaluated, and an offer including solely domestic material, award shall be made on the offer including solely domestic material.

(3) This procedure does not apply to foreign construction material whose use is excepted by the Government under 52.225–15(b)(3) of the solicitation.

(d) *Alternate offers.* (1) When an offer includes foreign construction material, offerors also may submit alternate offers based on use of domestic construction material.

(2) If alternate offers are submitted, a separate SF 1442 shall be submitted for each alternate offer, and a separate price comparison table prepared in accordance with 52.225–15 (c) and (d) shall be submitted for each alternate offer that is based on the use of any foreign construction material.

(3) If a particular exception requested under 52.225 15(c) is not approved—

(i) The Government will evaluate only offers based on use of the equivalent domestic construction material, and the offeror shall be required to furnish such domestic construction material;

(ii) In sealed bid procurements, any offer based on use of that particular foreign construction material must be rejected as nonresponsive; and.

(iii) In negotiated procurements, any offer based on use of that particular foreign construction material may not be accepted unless revised during negotiations.

(End of provision)

12. Section 52.225–15 is amended by revising the introductory paragraph, the clause date, and paragraphs (b) and (c); and adding paragraph (d) to read as follows:

52.225–15 Buy American Act—Construction Materials under European Community and North American Free Trade Agreements.

As prescribed in 25.207(d), insert the following clause:

Buy American Act—Construction Materials Under European Community and North American Free Trade Agreements (Date)

(a) Definitions. As used in this clause—

* * * * *

(b)(1) The Buy American Act (41 U.S.C. 10(a)–10(d)) requires that only domestic construction material be used in performing this contract, except as provided in subparagraphs (b)(2), (b)(3), or (b)(4) of this clause.

(2) The Memorandum of Understanding between the United States of America and the European Economic Community on Government Procurement, and the North American Free Trade Agreement (NAFTA), provide that EC and NAFTA construction materials are exempted from application of the Buy American Act.

(3) This requirement does not apply to the excepted construction material or components listed by the Government below:

(list applicable accepted materials or indicate ''none''.)

(4) Other foreign construction material may be used if the Government determines that—

(i) The cost would be unreasonable (the cost of a particular domestic construction material shall be determined to be unreasonable when the cost of such material exceeds the cost of foreign material by more than 6 percent, unless the agency head determines a higher percentage to be appropriate);

(ii) The use of a particular domestic construction material would be impracticable; or

(iii) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.

(5) The Contractor agrees that only domestic construction material will be used by the Contractor, subcontractors, material men, and suppliers in the performance of this contract, except for foreign construction materials, if any—

(i) Listed in paragraph (b)(3) of this clause; or

(ii) Proposed by the Contractor and approved by the Government in accordance with paragraphs (c) and (d) of this clause.

(c) *Request for exceptions.* (1) Contractors proposing to use foreign construction material shall provide adequate information for Government evaluation of the request for exception to the Buy American Act. Each submission shall include a description of the foreign and domestic construction materials, including unit of measure, quantity, prices and time of delivery or availability, location of the construction project, name and address of the proposed contractor, and a detailed justification or the reason for use of foreign materials cited in accordance with subparagraph (b)(3) of this clause. A submission based on unreasonable cost shall include a reasonable survey of the market and a completed price comparison table in the format in paragraph (d) of this clause. The price of construction material shall include all delivery costs to the construction site and any applicable duty (whether or not a duty-free certificate may be issued).

(2) If an exception to the Buy American Act is granted after contract award, the contract shall be modified to allow use of the foreign construction material, and adequate consideration shall be negotiated. However, when the basis for the exception is the unreasonable price of a domestic construction material, adequate consideration shall not be less than the differential established in subparagraph (b)(4)(i) of this clause.

(3) If a request for an exception to the Buy American Act is not granted, the use of that particular foreign construction material will be a failure to comply with the Act.

(d) For evaluation of requests under paragraph (c) of this clause, the following information and any applicable supporting data based on the canvas of suppliers shall be included in the request.

FOREIGN AND DOMESTIC CONSTRUCTION MATERIALS PRICE COMPARISON

Construction material description	Unit of measure	Quantity	Price (dollars)*
Item 1:			
Foreign construction material	.....	.....	$
Domestic construction material	.....	.....	$
Item 2:			
Foreign construction material	.....	.....	$
Domestic construction material	.....	.....	$
List name, address, telephone number and contact for suppliers surveyed. Attach copy of response; if oral, attach summary. Include other applicable supporting information.			

* Include all delivery costs to the construction site and any applicable duty (whether or not a duty-free entry certificate is issued).

[End of clause]

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Part IV

Department of Transportation

Federal Transit Administration

49 CFR Part 659

Rail Fixed Guideway Systems; State Safety Oversight; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Part 659

[Docket No. 92–D]

RIN 2132–AA39

Rail Fixed Guideway Systems; State Safety Oversight

AGENCY: Federal Transit Administration, DOT.

ACTION: Final rule.

SUMMARY: As required by the Intermodal Surface Transportation Efficiency Act of 1991, the Federal Transit Administration (FTA) issues a rule requiring States to oversee the safety of rail fixed guideway systems not regulated by the Federal Railroad Administration (FRA). This document accordingly sets forth FTA's State safety oversight program, which is intended to improve the safety of rail fixed guideway systems.

EFFECTIVE DATE: This regulation is effective January 26, 1996. The incorporation by reference of certain documents in the regulation is approved by the Director of the Federal Register as of January 26, 1996.

FOR FURTHER INFORMATION CONTACT: For program issues: Judy Meade or Roy Field, Office of Safety and Security, Federal Transit Administration, (202) 366–2896 (telephone) or (202) 366–3765 (fax). For legal issues: Nancy Zaczek, Office of Chief Counsel, Federal Transit Administration, (202) 366–4011 or (202) 366–3809.

SUPPLEMENTARY INFORMATION:

This preamble is organized as follows:

I. Background

The Intermodal Surface Transportation Efficiency Act of 1991 (Pub. L. 102–240), enacted into law on December 18, 1991, added section 28 to the Federal Transit Act (recently codified at 49 U.S.C. 5330 (1994)), which requires the Federal Transit Administration to issue regulations creating a State oversight program. On June 25, 1992, FTA issued an Advance Notice of Proposed Rulemaking (ANPRM) soliciting public comment on a range of issues to be addressed in drafting a Notice of Proposed Rulemaking (NPRM). 57 FR 28572. The agency held hearings on the ANPRM in Los Angeles, California; Portland, Oregon; and Washington, DC. Thirty-five entities either submitted comments to the docket or testified at one of the three hearings, including fifteen transit authorities, three utility commissions, eight States, one engineering firm, two transit associations, one labor union, one Federal agency, one transit supplier, two representatives from the people mover industry, and one transportation consultant.

On December 9, 1993, FTA published its NPRM (58 FR 64855) and today publishes its final rule, which requires States to oversee the safety of rail fixed guideway systems.

A. 49 U.S.C. 5330

In general, section 5330 applies only to those States in which a rail fixed guideway system operates that is not regulated by the Federal Railroad Administration, and requires any such State to designate a State oversight agency to be responsible for overseeing the rail fixed guideway system's safety practices. FTA is required to issue a rule implementing the program and may withhold Federal funds if a State fails to implement the rule.

More specifically, the statute describes the responsibilities of the State and the agency the State designates to provide oversight, which in most instances will be an agency of the State because most rail fixed guideway systems operate in only one State. When a rail fixed guideway system operates in more than one State, however, the statute permits the affected States to designate any entity, other than the transit agency itself, to oversee that rail fixed guideway system.

Whether the oversight agency is a State agency or some other entity, it must require each affected transit agency to create a system safety program plan, which the oversight agency must review and approve. The oversight agency must also investigate accidents and hazardous conditions. Once a hazardous condition has been discovered, the oversight agency must require the transit agency to correct or eliminate it.

If a State has not met these requirements or has not made adequate efforts to comply with them, the Secretary may withhold up to five percent of a fiscal year's apportionment under FTA's formula program for urbanized areas (formerly section 9) attributable to the State or an affected urbanized area in the State.

B. Summary of the Final Rule

The rule delineates the responsibilities of the State, the oversight agency, the transit agency, and the FTA.

The State

Under the rule, the primary responsibility of the State is to designate an entity or entities to oversee the safety of a rail fixed guideway system. When the rail fixed guideway system operates only within a single State, that entity or entities must be an agency of the State; when it operates in more than one State, the affected States may designate a single entity to oversee that system. In neither case may the State designate the transit agency as the oversight agency.

To ensure the oversight agency's candid assessment of the probable cause of a particular accident or unacceptable hazardous condition, the rule allows the State to enact legislation prohibiting the disclosure of oversight agency investigation reports.

The Oversight Agency

The rule directs the oversight agency, or an entity acting on its behalf, to develop a system safety program standard, a document that establishes the relationship between the oversight and transit agencies and specifies the procedures that the transit agency must follow. The system safety program standard must, at a minimum, comply with the American Public Transit Association's ''Manual for the Development of Rail Transit System Safety Program Plans'' (''APTA Guidelines''), a manual widely used throughout the transit industry and available from the American Public Transit Association (APTA), 1201 New York Avenue, N.W., Washington, D.C. 20005–3917, or the Federal Transit Administration, Office of Safety and Security, 400 7th Street, S.W., Washington, D.C. 20590. The APTA Guidelines assist in developing safety practices to reduce the likelihood of unintentional events that may lead to death, injury, or property damage. In

addition, the system safety program standard must include specific provisions addressing ''security'' matters, intentional wrongful or criminal acts, such as muggings, rapes, murders, assaults, or terrorist activities. To develop this portion of the system safety program plan, we suggest that the oversight agency use FTA's ''Transit Security Procedures Guide'' and ''Transit System Security Program Planning Guide,'' available from the FTA at the address above.

The oversight agency must require the transit agency to develop a system safety program plan that complies with the oversight agency's system safety program standard. By January 1, 1997, the oversight agency must review and approve, in writing, the transit agency's system safety program plan; however, the ''security'' provisions of the system safety program plan must be approved initially by the oversight agency by January 1, 1998. After the initial approvals, the oversight agency must review, as necessary, the transit agency's system safety program plan and determine whether it should be updated. All oversight agency approvals must be in writing.

The rule allows the oversight agency to prohibit the transit agency from publicly releasing the ''security'' provisions in the system safety program plan.

The oversight agency must require the transit agency to conduct safety audits according to the Internal Safety Audit Process detailed in checklist number 9 of the APTA Guidelines. Once a year the transit agency must compile and submit an audit report to the oversight agency or an entity acting on its behalf for review.

Aside from reviewing the transit agency's safety audit reports, the oversight agency must conduct on-site safety reviews every three years. In a safety review, the oversight agency must assess whether the transit agency's actual safety practices and procedures comply with its system safety program plan. Once this review is completed, the oversight agency must prepare a report containing its findings and recommendations, an analysis of the efficacy of the transit agency's system safety program plan, and a determination of whether the system safety program plan should be updated.

The oversight agency must require the transit agency to report the occurrence of accidents and unacceptable hazardous conditions within a period of time specified by the oversight agency. The oversight agency must investigate such reports in accordance with procedures it has established. The oversight agency may conduct its own investigation, use a contractor to conduct an investigation, or rely on the investigation conducted by the transit agency or the National Transportation Safety Board (NTSB).

After the oversight agency has investigated an accident or unacceptable hazardous condition, it must require the transit agency to minimize, control, correct, or eliminate it, in accordance with a corrective action plan drafted by the transit agency and approved by the oversight agency.

The oversight agency must submit three kinds of reports to FTA: an initial submission, an annual submission, and a periodic submission. In the initial submission, the oversight agency lists the names and addresses of the rail fixed guideway systems it oversees. This report must be updated only when that information changes. In the annual submissions, the oversight agency must submit to FTA a publicly available report summarizing its oversight activities for the past year. Periodically, an oversight agency must submit to FTA status reports of accidents, hazardous conditions, and corrective action plans. The oversight agency must submit these reports only if FTA so requests.

The Transit Agency

The transit agency must develop a system safety program plan that complies with the oversight agency's system safety program standard. It must conduct safety audits that comply with the Internal Safety Audit Process, APTA Guidelines, checklist number 9, and draft and submit to the oversight agency a report summarizing the results of the safety audit. The transit agency must classify hazardous conditions according to the APTA Guidelines' Hazard Resolution Matrix. The transit agency must report, within the timeframe specified by the oversight agency, any accident or unacceptable hazardous condition that has occurred on the rail fixed guideway system. The transit agency may, if the oversight agency so chooses, conduct investigations on behalf of the oversight agency. Once an investigation has been completed, the transit agency must obtain the oversight agency's approval of a corrective action plan and then implement the plan so as to minimize, control, correct, or eliminate the particular unacceptable hazardous condition or condition that has caused an accident.

The Federal Transit Administration

The FTA assesses whether the State has complied with the rule or has made adequate efforts to comply with it. If the FTA determines that the State is not in compliance or has not made adequate efforts to comply, it may withhold up to five percent of the amount apportioned for use in the State or affected urbanized areas under FTA's formula program for urbanized areas (formerly section 9). Also, FTA receives reports from the oversight agency.

C. Overview of the Comments

The FTA received 60 comments in response to the NPRM. FTA considered all comments filed in a timely manner as well as all statements and material presented at the public hearings on the rule. The breakdown among commenter categories is as follows:

Transit Agencies	27
State DOTs	9
Public Utilities	6
Cities	1
Federal Agencies	2
Independent Consultants	8
Trade Associations	2
Safety Societies/Associations	5

In Section II below, we discuss in detail the public comments addressing issues raised in the NPRM. One such issue, how the term ''rail fixed guideway system'' should be defined, affects the scope of the rule. Another key issue, how the system safety program standard should be developed and what it should include, will directly affect the relationship between the oversight and transit agencies. Most important, we examine whether the oversight agency should use the APTA Guidelines or Military Standard 882B or 882C (MIL-STD 882B or 882C) to develop its system safety program standard. We also examine whether the system safety program standard should cover the planning, design, and construction phases of a rail fixed guideway system's life cycle; EPA and OSHA-type matters; ''security''; and other issues.

Also, we discuss the oversight agency's role in investigating accidents and unacceptable hazardous conditions. A related issue concerns whether investigation reports should be kept confidential.

For additional discussion on individual issues, see also the Section-By-Section Analysis below in Section III.

II. Discussion of the Comments

A. Rail Fixed Guideway System

The first issue is the definition of ''rail fixed guideway system.'' Statutes give us limited guidance in this regard; section 5330, the authority for this rulemaking, states that it applies ''only to States that have rail fixed guideway mass transportation systems not subject

to regulation by the Federal Railroad Administration.'' Another provision, 49 U.S.C. § 5302, defines ''mass transportation'' as ''transportation by a conveyance that provides regular and continuing general or special transportation to the public * * *.'' Finally, 49 U.S.C. § 20102(1), which defines railroads subject to regulation by the FRA, specifically excludes ''rapid transit operations within an urban area that are not connected to the general railroad system of transportation.'' Of mass transportation systems, generally, only commuter railroads are regulated by the FRA. Therefore, we asked in both the ANPRM and the NPRM whether we should adopt a narrow definition and include only light and heavy rail systems or a broad definition and include other rail systems, such as monorails, inclined planes, trolley systems, and funiculars, as well.

Many commenters to the ANPRM did not address this issue. Those that responded directed their comments to specific issues; for instance, six commenters discussed including people movers, while only two commenters proposed a definition for FTA's consideration. In the NPRM, FTA proposed to define ''rail fixed guideway system'' as

> Any public transportation facility not regulated by the Federal Railroad Administration, which occupies a separate right-of-way exclusively for public transportation or uses a steel-wheeled catenary or other rail system sharing a right-of-way with other forms of transportation and, which is included in the calculation of fixed guideway route miles under section 9 of the FT Act.

As we explained in the preamble to the NPRM, this definition would cover light and heavy rail, cable cars, trolleys, people movers, and inclined planes so long as their mileage is included in the calculation of fixed guideway route miles under section 9 of the FT Act. We further noted that the Morgantown People Mover, which is not used in the calculation of route miles under the section 9 formula program, would not be covered by the proposed rule, while the Detroit People Mover, which is used in the calculation of the section 9 formula would be covered. We further noted that the definition also would not cover rubber-wheeled trolley buses that use a catenary system, as they are subject to motor vehicle regulations.

Many of the commenters to the NPRM urged FTA to adopt the narrow definition, with most of them suggesting that the definition be limited to light and heavy rail systems only. In support of their contention, some of these commenters noted that in the past, NTSB had recommended that FTA oversee the safety of rapid rail transit systems only, although these commenters stated that light rail systems should be covered by the rule as well. Concerning people movers, inclined planes, amusement rides, funiculars, historical trolleys, cable cars, and other rail transit systems, these commenters opposed their inclusion, opining that they do not present the same level of risk to public safety as posed by heavy and light rail systems.

NTSB also commented on this issue by stating that although it had no accident investigation experience with people movers or incline planes that would provide a basis to determine if these systems should be covered by the FTA's regulations, the Board believe[s] that the safety of any system that regularly transports people should be monitored by an appropriate State or local agency. Limiting the definition of a rail fixed guideway system to those systems used by an urbanized area in the calculation of fixed guideway route miles under Section 9 of the Federal Transit Act would apparently exclude some of these systems from the proposed regulation. Further, it is possible that an urbanized area could not count in the statutory formula to determine Section 9 Federal funds the rail route miles of a particular system to avoid having the system covered by the proposed oversight regulation. In short, the Safety Board questions the need for the Section 9 limitation to the definition.

FTA Response. Although most commenters recommended that we cover only light and heavy rail systems, we agree with the NTSB that ''any system that regularly transports people should be monitored by an appropriate State or local agency.'' Hence, the rule covers inclined planes, monorails, trolleys, automated guideways, and funiculars along with light, rapid, and heavy rail systems. We did, however, change the definition to clarify that guided busways are not covered.

We also made another change in light of NTSB's assertions that the proposed definition may exclude some systems that are not used to calculate fixed guideway route miles under FTA's formula grant program for urbanized areas. We do not believe this would be the case because FTA's grant program is based, in part, on the amount of ''fixed guideway route miles'' within an urbanized area. It is therefore in the urbanized area's interest to include as many systems as possible. Moreover, in most instances, a system that receives Federal funding under FTA's formula grant program for urbanized areas would have its mileage included in the calculation. The opposite, however, is not true; there are systems whose mileage is used in the calculation that do not receive funding under FTA's formula grant program for urbanized areas. That is why we proposed covering those systems that are used in the calculation instead of just certain recipients of FTA funding; it is actually a broader category. Nevertheless, we have added a provision to cover any system that receives funding under FTA's formula grant program for urbanized areas or is used in the calculation of ''fixed guideway route miles.'' This definition should cover most rail mass transit systems not regulated by the FTA.

B. System Safety Program Standard

Section 5330 requires FTA to issue regulations that direct the State oversight agency to develop ''a safety program plan for each [rail] fixed guideway mass transportation system in the State.'' In the NPRM, we proposed to require the oversight agency to adopt a system safety program standard, which a transit agency would then use to develop its system safety program plan, the document used by the transit agency to ensure that it uses proper safety practices and procedures.

The NPRM further proposed that the oversight agency's ''system safety program standard'' comply, at a minimum, with the American Public Transit Association's ''Manual for the Development of Rail Transit System Safety Program Plans,'' (''APTA Guidelines''). In the preamble to the NPRM, we noted that we had considered adopting Military Standard 882B (MIL–STD 882B), which has been subsequently superseded by MIL–STD 882C, but found it unnecessary because APTA had developed its Guidelines by adapting MIL–STD 882B to the transit industry.

While most commenters favored the use of the APTA Guidelines, one commenter strongly favored the use of MIL–STD 882B or 882C to develop the system safety program standard. This commenter noted that:

> [T]he discussion of the Proposed Rule indicates that the APTA requirement is equivalent to MIL–STD 882B, and that the APTA standard can therefore be used in place of the MIL–STD. It should be noted that the APTA standard is not equivalent to the military standard. There are significant and important philosophical differences between the two documents. The most important of the differences is that MIL–STD 882 specifies that system safety be started very early in the project, that it must be involved in the design of the system, that a specific order of precedence must be followed to increase safety, and that risk assessments must be based upon probability and severity. The APTA standard emphasizes the use of system safety for operational systems after they have been completed and put into service,

indicates that system safety is mostly concerned with operations and procedures, and implies that safety can be 'audited' into a system. While the APTA Manual does mention that system safety is needed during the design phases, the emphasis is clearly on later phases * * * . Another potential concern with the APTA Manual is that it describes the audit process in terms of determining whether or not the transit agency is following its system safety program, but is silent on the issue of determining whether or not that program can be expected to accomplish its goals. While this is appropriate for an organization such as APTA, it may not be appropriate for an Oversight Agency. It may be important for the Oversight Agency to review the Transit Agencies' plans with an eye toward trying to determine whether or not the plan is likely to result in an effective system safety program * * * .

This commenter also noted that MIL–STD 882C incorporates changes concerning ''Software Safety.''

FTA Response. This commenter has certainly made a convincing case for the adoption of MIL–STD 882B or 882C, and we emphasize that, although we have adopted the proposal as published in the NPRM, we have not precluded the use of either of those Military Standards. Instead, we have adopted the APTA Guidelines as a minimum standard the oversight agency must meet or exceed; because the APTA Guidelines were derived from MIL–STD 882B, an oversight agency that bases its system safety program standard on either MIL–STD 882B or 882C should meet or exceed the requirements of the APTA Guidelines. Moreover, by adopting the APTA Guidelines as a minimum standard, we accomplish two objectives: establishing a nation-wide baseline standard and giving a State more flexibility and control in developing its own program.

We do, in fact, urge the oversight agency to assess the APTA Guidelines in relation to MIL–STD 882B or 882C and decide which one best addresses its needs. We believe that an oversight agency that uses either MIL–STD 882B or 882C as a basis for its system safety program standard is well served, and we urge an oversight agency to at least consider those Military Standards in developing its own oversight program.

Although we have not mandated the use of MIL–STD 882B or 882C, we have addressed one of the concerns of this commenter, by adding a provision in the rule to require the oversight agency to determine the efficacy of the transit agency's system safety program plan and require the transit agency to update it, if necessary.

This commenter also commented that the MIL–STD 882C's section on ''Software Safety'' is ''of critical importance to modern transit systems''; we recommend that both the oversight agency and the transit agency assess whether that section meets the safety needs of the ''rail fixed guideway system.''

C. System Safety Program Plan—the Six Factors.

As mentioned above, under the NPRM the transit agency was to develop a system safety program plan that complied with the oversight agency's system safety program standard. In the preamble to the NPRM, we suggested that the system safety program plan should: (1) be endorsed by top management; (2) establish the safety goals and objectives of the transit agency; (3) identify safety issues; (4) require cooperation within the transit agency to address the identified safety issues; (5) recognize that achieving safety goals and objectives may require the involvement of entities other than the transit agency; and (6) provide a schedule for the implementation and revision of the system safety program plan. We then asked for comment on whether we should require these six factors in the final rule.

Only seven commenters responded to this issue, and none of them opposed the general concept of the six factors. Several of the commenters noted, however, that all six factors are included in the APTA Guidelines, making them unnecessary if FTA incorporates the APTA Guidelines into the final rule.

FTA Response. Since the six factors are included in the APTA Guidelines, which we have incorporated by reference into the final rule, the oversight agency must require the transit agency to address all six factors in its system safety program plan.

D. Planning, Design, and Construction.

In the preamble to the NPRM, we noted that section 5330 may be read

> To apply only to the operation of rail fixed guideway systems, which would lead to the conclusion that the NPRM covers only those rail fixed guideway systems already in existence, or other systems only when they commence operations. On the other hand, if we were to interpret section [5330] to apply during the planning, design, and construction phases of a system, we would then have to decide when the State would be required to comply with this proposed rule. This would be especially difficult for those States where systems are in the planning stage, which can be a lengthy process, and it would be difficult to specify at what point the oversight agency would have to be established.

Of the commenters that responded to this issue, only a few favored covering the pre-operational phases of the rail fixed guideway system's life cycle. One of these commenters stated that ''[t]o ensure that the design of facilities and systems results in optimal safety, the system safety approach has been shown to be highly effective and cost efficient.''

The vast majority of the commenters were against covering the planning, design, and construction phases in this rule, stating in effect, that other mechanisms, *i.e.*, FTA's Program Management Oversight (PMO) process and the construction contract itself can ensure that safety is planned, designed, and constructed into new rail fixed guideway systems.

FTA Response. Although we agree that a system safety program plan should cover the planning, design, and construction of a ''rail fixed guideway system,'' the language of section 5330 leads us to conclude that it covers only operating systems or systems about to commence operations. Section 5330 directs a State to establish and carry out a ''safety program plan for each [rail] fixed guideway mass transportation system in the State,'' never mentioning the planning, design, and construction phases of a system's life cycle. Moreover, because of the lengthy planning, design, and construction phases of a system's life cycle, we believe that it is impractical, especially for a State planning its first ''rail fixed guideway system,'' to require that a State create a bureaucracy years before a single passenger is served, when there are other mechanisms available to ensure that safety is designed, planned, and constructed into a new ''rail fixed guideway system.'' This does not mean, however, that a State is precluded from creating an oversight agency that oversees the planning, design, and construction of a ''rail fixed guideway system.'' On the contrary, we encourage the States to do so, although we do not, under this rule, require it. Also, we encourage the oversight agencies to work with PMOs to ensure that safety is designed, planned, and constructed into new ''rail fixed guideway systems.''

E. Accountability Factor.

While drafting the NPRM, we were concerned that the development of a State Safety Oversight Program would not be complete without some mechanism to ensure transit agencies' commitment to safety. To ''institutionalize'' this commitment and to meet the requirements of section 5330, we developed the ''accountability factor,'' in which the oversight agency would require a transit agency to

identify tasks critical to safety and the persons responsible for performing those tasks. This concept was derived from section 207 of MIL–STD 882B, which concerns the ''identification of safety-critical equipment and procedures.'' The ''accountability factor'' was intended to help the transit agency identify and correct problems.

Most of the commenters on this issue opposed the inclusion of the ''accountability factor'' in the rule because, in their opinion, it would not achieve its intended purpose of making systems safer. For instance, one commenter stated such a requirement would allow the oversight agency not just to oversee but to micromanage the transit agency; another claimed that it would become a ''paperwork'' exercise and actually hinder the development of safety practices and procedures. Yet another commenter stated that it would be used to ''fix'' blame. One commenter argued that the ''accountability factor'' was a ''misapplication'' of section 207 of MIL–STD 882B, which, according to this commenter, was developed to verify compliance with safety equipment and procedures, an activity distinct from system safety program activities. Last, some commenters indicated that the ''accountability factor'' was not necessary under the rule because a well-drafted system safety program plan incorporates accountability into it.

Although the NTSB favored the inclusion of the ''accountability factor'' in the final rule, it did not elaborate on its reasoning.

FTA Response. The final rule does not include the ''accountability factor'' because on balance, we have concluded that the oversight agency is best suited to meet the directives of section 5330(c)(1) to ''establish[ ] * * * lines of authority [and] levels of responsibility and accountability * * *'' for the rail fixed guideway system. We note that the APTA Guidelines checklist numbers 1 through 5 stress the development of a concept similar to the proposed ''accountability factor.''

F. EPA and OSHA Requirements.

We asked whether the system safety program plan should address matters covered by the Occupational Safety and Health Administration (OSHA) and the Environmental Protection Agency (EPA). Four argued that it should; three were opposed. Those in favor supported a ''comprehensive approach'' to safety in which various safety issues or ''disciplines'' are integrated for a total prevention effort. Those in opposition were concerned about creating overlapping jurisdiction between the oversight agency and the State agency with authority to enforce the EPA and OSHA laws and regulations.

FTA Response. By adopting the APTA Guidelines, which address OSHA and EPA matters in System Safety Checklist numbers 19 and 20, respectively, we have required that these matters be included in the system safety program plan. Although this allows the possibility of jurisdictional conflicts among State agencies, the benefits of the oversight agency's adopting a total approach to safety outweigh this possibility. Moreover, a State can plan to reduce or eliminate any duplicative jurisdiction between the oversight agency and any other State agency with jurisdiction over EPA and OSHA matters.

G. Security.

In the preamble to the NPRM, we asked whether the system safety program plan should address security matters, and if so, what specifically should be included. Many commenters responded to this question, most negatively; some contended that security matters should be handled by law enforcement personnel and not by transit safety professionals, others opined that requiring the system safety program plan to address security matters is outside the scope of section 5330, and others stated that whether transit security matters should be included in the system safety program plan should be decided by State and local transit officials and not mandated by the Federal government.

More particularly, one commenter noted that ''security is a separate issue which requires separate treatment, separate techniques, separate concerns, and separate disciplines.'' This commenter continued:

> [A]lthough, many times the public may perceive their safety as being 'freedom from assault or attack from other individuals', normally professionals in the industry define safety in association with unintentional events or conditions (accidents), whereas, security is defined as being associated with intentional acts (usually illegal acts). The causes and the control measures for these two situations (safety and security) are entirely different * * *. One good reason for keeping these separate is the different type of management required. Typically, effective management of security requires law enforcement type management philosophies, whereas effective management of safety requires entirely different (and sometimes opposite) kinds of thinking. Management of these two functions must be separated, because of the different skills, philosophies, management styles, and kinds of managers required.

Other commenters noted another important difference between safety procedures and security measures: Safety procedures, policies, and processes can be made public and still be effective, whereas security measures, to be effective, must be kept confidential. Thus, these commenters reasoned, security measures should not be included in a publicly available document, such as a system safety program plan.

The commenters in favor of requiring the system safety program plan to address security matters focused on the similarities between security measures and safety issues. Most notably, these commenters stated, safety and security procedures are both forms of risk management; ''[s]afety is the management of the risk to persons and property from accidental or negligent loss * * [while] security is the management of the risk to persons and property from criminal acts.''

Last, some commenters contended that emergency planning and response procedures were the same for both safety and security events. Four commenters recommended that FTA include security only when it relates to emergency planning and response.

FTA Response. Because we agree with the commenter who noted that safety and security are both forms of risk management and because of recent terrorist acts, we have decided to require the inclusion of security considerations in the system safety program plan. In response to another commenter, however, we have added a provision to the rule that will allow the security portion of the system safety program plan to be barred from public disclosure.

We disagree, however, with the argument that Congress did not intend section 5330 to include security. Section 5330(c)(1) states that ''[a] State meets the requirement of this section if the State—establishes and is carrying out a safety program plan for each [rail] fixed guideway mass transportation system in the State * * *'' [emphasis added]. According to Webster's Third New International Dictionary, ''safety'' means ''the condition of being safe; freedom from exposure to danger, exemption from hurt, injury, or loss,'' whereas ''security'' means ''the quality or state of being secure: as (a) freedom from danger: safety.'' It seems clear, therefore, that the meaning of safety encompasses the meaning of security. Moreover, according to the System Safety Glossary published in 1985, by the Transportation Safety Institute ''safety'' is defined as ''[a] reasonable degree of freedom from those conditions that can cause injury or death to personnel, damage to or loss of equipment or

property; freedom from danger''; this would certainly cover intentional acts. Similarly, according to the Transit Security Program Planning Guide recently published by the FTA, ''security'' means ''freedom from intentional danger,'' while ''safety'' means ''freedom from danger.'' Therefore, section 5330 can be interpreted, and we do, to require the inclusion of security in the system safety program plan.

Other commenters indicated that security should not be included in the system safety program plan because safety and security are as different from each other as apples from oranges. One transit agency presented safety and security as two different disciplines requiring two different approaches and two different kinds of trained personnel. Thus, this commenter reasoned, the system safety program plan should not address security matters. In our view, however, safety and security risks are interrelated, especially from the perspective of transit passengers. We agree with the commenter who wrote:

> [A]lthough the disciplines have been separated in their normal application, there is a trend for a united knowledge base of safety with security so that any type of hazard is examined for its implication as a security type of problem. As with other disciplines, safety and security requirements may be at odds requiring careful analysis of the potential hazards and threats against the transit system and the development of appropriate trade-off studies. The Transit Safety Professional needs to have security analyses in the curriculum of study and certification to ensure awareness of the issues and concerns related to security. In addition, security systems themselves require safety analyses to ensure that they are properly covered.

We also disagree with the commenter who recommended that only emergency response procedures be included in the system safety program plan. We note that the APTA Guidelines already contain a provision concerning emergency preparedness. While emergency preparedness is itself a valuable activity, it does not prevent either intentional or unintentional acts from occurring. An emergency preparedness plan is used to develop a response to an event, while the overall system safety program plan develops procedures to reduce the likelihood of either intentional or unintentional events from occurring.

H. Biennial Safety Reviews

In the proposed rule, the oversight agency would comprehensively review, on-site, the rail fixed guideway system's safety practices every two years. Most commenters objected to this provision. Some maintained that a review every two years was unnecessary and burdensome; in support of their contention, they mentioned APTA's Rail Safety Audit Program, in which auditors employed by APTA review a rail fixed guideway system's safety practices every three years. They maintain that a three-year review schedule adequately addresses safety needs. One commenter indicated that APTA adopted a three-year schedule to give rail fixed guideway systems time to take corrective and other recommended actions. Another commenter, a State agency already overseeing rail fixed guideway systems, stated that it does not independently conduct on-site reviews, but instead observes the APTA auditors review a system; this commenter concluded that this approach works well for it and the rail fixed guideway systems under its jurisdiction. Some commenters urged us to specifically allow oversight agencies to use the APTA Rail Safety Audit Program.

Other commenters favored a flexible approach, in which the oversight and transit agencies schedule reviews appropriate for the age, size, and complexity of the rail fixed guideway system. One commenter recommended that we specify the exact requirements of a safety review.

FTA Response. Agreeing generally with the commenters, we have made the rule more flexible. For instance, the rule requires the oversight agency to review the transit agency's safety practices at least every three years instead of every two, as we had proposed. The oversight agency may conduct these reviews more frequently if it chooses. Moreover, the rule expressly allows the oversight agency to use a contractor to conduct the required review, which allows the oversight agency to use the APTA Rail Safety Audit Program or any other qualified contractor to conduct safety reviews.

Although one commenter had urged us to define specifically the requirements of a safety review, we have declined to do so. Instead, the oversight agency should determine for itself, based on the age, size, and complexity of the individual rail fixed guideway system within its jurisdiction, the exact extent of the review; however, it must be comprehensive, *i.e.*, cover all matters included in the transit agency's system safety program plan.

The process used by the California Public Utilities Commission (CPUC) illustrates how the rule can be flexible. Instead of using its staff to conduct comprehensive safety reviews, CPUC staff accompany and observe APTA auditors who perform a comprehensive safety audit. This system allows CPUC personnel to cover the daily operation and maintenance activities of the rail fixed guideway system and conduct in-depth reviews of particular activities on an ''apparent need'' basis. For instance, CPUC's staff conducted in-depth reviews of track maintenance practices at five different rail fixed guideway systems. In short, an oversight agency could conduct its own safety reviews, contract them out completely, or adopt an approach similar to CPUC's, in which both a comprehensive safety review and an in-depth review of a particular system component is conducted by another contractor or oversight agency personnel.

One commenter recommended that the extent and frequency of safety reviews depends on the particular phase of the rail fixed guideway system's lifecycle. This commenter recommended that a safety audit be performed during the preliminary engineering phase to assure properly defined criteria, during the final design stage to assure that the criteria has been included in the specifications, during pre-revenue testing to assure the systems have been properly installed and the system tested and safety certified, then every two to three years when the system is operational, and more frequently if there are serious problems. We agree with this commenter, although we have not adopted his suggestions formally in the rule. Instead, we strongly urge oversight agencies to consider these kinds of factors when establishing a safety review process.

I. Safety Audits

FTA proposed to require the transit agency to conduct a ''safety audit,'' a ''methodical, ongoing, internal examination of a transit agency's safety practices to determine whether they comply with the policies and procedures required under the transit agency's system safety program plan.'' The results of these safety audits were to be compiled every six months by the transit agency into a report to the oversight agency, which would review those reports as part of its monitoring function required under section 5330.

Nineteen commenters responded to this proposed safety audit process, with most of them objecting that such audits amount to a ''paperwork exercise'' that could be detrimental to the safe operation of a rail fixed guideway system. They argued that the ''safety audits'' and the ''biennial reviews'' were redundant and that auditing continuously was not necessary to

ensure the safe operation of a rail fixed guideway system. Some of these commenters recommended that FTA adopt a system of random periodic checks similar to the APTA review process; others recommended that the oversight agency set the timeframe for safety audits by the transit agency. Still others recommended that the frequency of safety audits be linked to the age, type, and speed of the system, maintaining that different rail fixed guideway systems have different safety auditing needs.

FTA Response. FTA had intended the ''safety audit'' process to be used in addition to the ''Internal Safety Audit Process'' in checklist number 9 of the APTA Guidelines, which apparently confused the commenters. To clarify our intent, we have withdrawn the proposed definition, ''safety audit,'' and now require the oversight agency to develop a process that complies with APTA's ''Internal Safety Audit Process.'' Although we make this change, we nevertheless encourage transit and oversight agencies to view safety and the safety auditing process as a routine, daily matter. As noted in the APTA Guidelines, ''[t]he Internal Safety Audit Process * * * requires constant attention and activity.''

To ensure that both transit and oversight agencies view the safety auditing process as a ''constant activity,'' we have retained the requirement for the transit agency to complete and submit safety auditing reports to the oversight agency, a requirement in the APTA Guidelines, which states that audit reports are to be used as a ''management tool.'' FTA had proposed semi-annual reports, which most commenters objected to as a ''paperwork exercise.'' In response, we have changed the reporting time period from semi-annually to annually to reduce the paperwork burden.

J. Accident

To focus oversight agency accident investigations on serious events that may show a systemic safety problem, FTA proposed to define ''accident'' as ''any event involving the operation of a rail fixed guideway system resulting in: (1) [D]eath directly related to the event; (2) [i]njury requiring hospitalization within twenty-four hours of the event; (3) [a] collision, derailment, or fire causing property damage in excess of $25,000; or (4) [a]n emergency evacuation.'' The vast majority of commenters opposed this definition and recommended numerous ways to change it.

For instance, several commenters requested that FTA limit the definition to those events involving revenue service operations, thus excluding incidents occurring in rail yards. According to the commenters, these kinds of incidents are covered by OSHA rules; eliminating them from the rule, these commenters reasoned, would avoid duplicative and perhaps conflicting jurisdiction between the oversight agency and the State and Federal agencies responsible for enforcing OSHA regulations.

Some commenters recommended that any incident involving trespassers or employees be excluded from the definition. These commenters maintained that events involving trespassers would not necessarily indicate a systemic safety problem; in other words, it is impossible to protect against trespassers. Several commenters maintained that events involving employees should not be covered to avoid duplicative jurisdiction between the oversight agency and the State and Federal agencies regulating the workplace.

Other commenters recommended that FTA exclude certain kinds of personal injuries from the definition, stating that it is difficult, if not impossible, for a transit agency to monitor every slip, trip, or fall that occurs at a rail fixed guideway system. They further maintain that these kinds of injuries are not sufficiently serious to trigger an investigation by the oversight agency.

Still other commenters noted that, in most cases, a transit agency would be unable to determine whether a person was hospitalized as a result of the injury. Transit agency personnel operating in large metropolitan areas would be forced to contact dozens of hospitals, a task that would strain its resources; moreover, many hospitals do not release this kind of information to the public.

Several of these commenters recommended that FTA define accident, in part, as any injury in which a person is treated at the scene or is transported from the scene by medical personnel. This change would ease the administrative burden on the rail fixed guideway system, these commenters contended.

Many commenters strongly objected to the $25,000 property damage threshold, with most of them indicating that property damage estimates are subjective and become obsolete over time; others contended that $25,000 was too low. Some recommended that FTA annually adjust the dollar amount for inflation, and others recommended that the dollar amount be set by agreement between the oversight and transit agencies.

Several commenters recommended that FTA define an emergency evacuation, with one proposing that it be limited to circumstances in which emergency doors and exit routes are used, thus excluding instances when passengers are asked to leave a train disabled in a station.

FTA Response. In light of the comments, FTA has made several changes to the definition of accident. For instance, we have limited the definition to only those events that occur during the revenue service operation of the rail fixed guideway system, which eliminates from the rule any injuries or deaths to workers in rail yards. We made this change, not because these are unimportant events, but to avoid overlapping jurisdiction among State agencies. We do, however, encourage the oversight agency to establish a relationship with the State agency having jurisdiction over these matters and share information, thus making the workplace safer for rail fixed guideway system employees.

We disagree with commenters asking us to exclude incidents involving trespassers from the rule. Although we sympathize with the perspective of transit agencies, we believe that any death or injury requiring immediate medical treatment away from the scene of the event, which occurs while the rail fixed guideway system is in revenue service, should be investigated by the oversight agency.

We agree with those commenters who objected to the hospitalization requirement and have changed the rule to state that an accident has occurred if a person has been injured and ''immediately receives medical treatment away from the scene of the accident.'' This language is used in FTA's drug and alcohol rules, as well.

Although several commenters asked us to remove property damage dollar thresholds, we did not do so. Instead, we have raised the dollar threshold to $100,000, which should reduce the number of accidents involving property damage.

Last, we have removed the portion of the definition concerning emergency evacuations. In many instances, a serious event involving the evacuation of a mass transit vehicle also will involve a death, an injury requiring immediate medical treatment away from the scene, or more than $100,000 in property damage, any of which, by themselves, will trigger an oversight agency investigation. Hence, by making this change we have focused an oversight agency's resources on serious events involving the emergency evacuation of a mass transit vehicle.

K. Hazardous Condition

FTA proposed to define a ''hazardous condition'' as ''any condition which may endanger human life or property,'' and ''unacceptable hazardous condition'' as ''a hazardous condition determined to be an unacceptable hazardous condition using the hazard resolution matrix of the 'Rail Safety Audit Manual' published by APTA.'' FTA further proposed to require the oversight agency to investigate only unacceptable hazardous conditions, whereas the transit agency was to correct or eliminate any hazardous condition.

Several commenters were confused by these two definitions and one maintained that the definitions were understandable only in conjunction with the APTA Guidelines checklist number 7.

Another commenter argued that FTA should not adopt the APTA Guidelines' hazard classification process. This commenter stated that

> [T]he Hazard Resolution Matrix contained in the APTA guidelines is an inadequate indicator of when an investigation should be triggered. As an example, it is well-known that currently-operating modern escalators frequently cause minor injuries to patrons (particularly children). Following the APTA guidelines, one would categorize the hazard associated with an operating escalator in Category III (marginal-minor injury). Furthermore, since escalators are usually operating more often than not, the hazard exists all the time the escalator is operating. Again following the APTA guidelines, the hazard probability would be in Category A—frequent-likely to occur frequently (individual); continuously experienced (fleet/inventory). Under the Hazard Resolution Matrix of the APTA guidelines, this would be a Category III–A, which would be labeled 'unacceptable.' Following the reasoning proposed in the NPRM, all escalators would continuously have to be corrected or eliminated by all transit agencies, and all escalator accidents investigated by the oversight agency. Since escalators cannot be corrected (at least so far no one has been successful in creating an escalator that doesn't have these hazards), all escalators would have to be eliminated from transit properties.

In contrast, another commenter supported the use of the APTA Guidelines Hazard Resolution Matrix because, according to this commenter, it has been adopted and practiced by more than 95 percent of the affected systems.

Several commenters objected to FTA's proposal to require transit agencies to ''correct or eliminate any hazardous condition,'' which they characterize as an ''impossible chore.'' In the words of one commenter, ''[i]f every transit agency was required to eliminate every condition that may cause minor injury * * *, all of its resources would be extended in attempting to eliminate these potential minor threats, with little resources left to run the transit system.'' One commenter recognized this problem also, and suggested that FTA require that hazardous conditions be corrected, eliminated, or controlled. One commenter maintained that the oversight agency should not be required to investigate any hazardous condition.

FTA Response. Although FTA has made some changes to the rule, we have not changed the definitions. The terms ''hazardous condition'' and ''unacceptable hazardous condition'' must be read in conjunction with the APTA Guidelines, particularly with the hazard resolution process, checklist number 7. To identify hazards, FTA has mandated the use of this particular process by transit agencies, even if a transit agency has used MIL–STD 882B or 882C to develop its system safety program plan. We have mandated this process, despite some commenters who opposed its adoption, because it is widely used and accepted throughout the transit industry.

Also, the rule requires the oversight agency to investigate unacceptable hazardous conditions as well as accidents. Although at least one commenter opposed requiring the oversight agency to investigate unacceptable hazardous conditions, section 5330(c)(2)(B) requires the oversight agency to ''investigate hazardous conditions.'' To focus State resources on serious safety issues, FTA has interpreted section 5330 narrowly, thus requiring an oversight agency to investigate only ''unacceptable hazardous conditions.''

We agree with the commenters who maintained that not all hazardous conditions can be corrected or eliminated. Risk cannot be taken out of life. Therefore, we require a transit agency to correct or eliminate any hazardous condition if possible, and if not, the transit agency must either minimize or control it. For instance, one commenter noted that escalators are hazardous conditions, which can be corrected only by eliminating the escalator. Under this rule, the transit agency is not required to eliminate escalators, but it is required to minimize or control the risks associated with escalators. A transit agency can take one or more of several actions to minimize these risks, such as installing an emergency shut-off switch, retrofitting the escalator with additional safety devices, posting instructions on how to avoid accidents on escalators, or developing educational programs for children on how to properly use escalators. Many transit agencies have addressed the safety issues of escalators, but we urge them to consider other measures to make escalators safer, especially for children.

L. Investigations

FTA proposed to require the oversight agency to develop its own investigation procedures and to investigate accidents, except those being investigated by the National Transportation Safety Board (NTSB), and all unacceptable hazardous conditions.

Twenty-seven commenters responded to issues arising from this proposal. Although one commenter stressed that the oversight agency should not conduct any investigations, most commenters focused on the oversight agency's role in investigating an ''accident'' or ''unacceptable hazardous condition.'' The vast majority of these commenters maintained that the oversight agency should not conduct its own independent investigation, but should focus on the process used by the transit agency in conducting investigations. These commenters noted that the transit agency must be responsible for operating its own system; an independent investigation by the oversight agency may implicitly usurp the authority of the transit agency over safety and other operational matters, according to these commenters. Others insisted that although the oversight agency's primary responsibility was to ensure that the transit agency properly conducted investigations, it should nevertheless be authorized to investigate extraordinary events. One commenter maintained that the oversight agency should not investigate an ''accident'' or ''unacceptable hazardous condition'' unless the transit agency's investigation is inadequate.

FTA Response. Despite the opinion of at least one commenter, the oversight agency is required under section 5330 to investigate accidents and hazardous conditions. As discussed above, we proposed to define ''accident'' in a manner to focus the oversight agency's investigation on serious events of a systemic nature. Similarly, instead of proposing to require the oversight agency to investigate all ''hazardous conditions,'' we proposed that it investigate only ''unacceptable hazardous conditions.'' We have not changed this basic scheme.

Moreover, we believe that our proposal was misunderstood, and we seek now to clarify the role of the oversight agency in conducting investigations. The oversight agency is not only responsible for developing its own investigatory procedures, it is

responsible for determining how it will investigate. An oversight agency may contract for this service; some may elect to use APTA's Panel of Inquiry, others may choose to use other experts. The oversight agency may allow the transit agency to conduct some or all investigations. The oversight agency may choose to investigate all ''accidents'' and ''unacceptable hazardous conditions'' or investigate some and contract for the investigation of others. The rule is flexible in this regard, just as we had proposed in the NPRM. Although the examples set forth above are not exhaustive, ultimately, unless the NTSB is conducting an investigation, either the oversight agency or an entity acting on its behalf must investigate ''accidents'' and ''unacceptable hazardous conditions.''

We do, however, encourage the oversight agency to either directly or by contract conduct independent investigations. Moreover, we disagree strongly with commenters who maintain that the oversight agency should focus on the process used by the transit agency to conduct investigations. The purpose of this rule is to ensure that a rail fixed guideway system operates safely and that the systemic causes of ''accidents'' and ''unacceptable hazardous conditions'' are addressed; focusing on process in this context, therefore, is misplaced. Rather, the focus of the oversight agency should be to assist the transit agency in preventing ''accidents'' and ''hazardous conditions.''

M. Confidentiality of Oversight Agency Investigation Reports

Several commenters to the ANPRM requested that we include a provision in the rule barring the discovery or the use in evidence of any investigative report compiled as a result of this rule. In the NPRM, we noted that section 5330 did not specifically address this matter, and hence, we doubted that we could make such a mandate. Nevertheless, we asked whether we should adopt a provision which would require that the oversight agency investigation reports be kept confidential.

Almost every commenter favored the adoption of such a provision. One commenter wrote:

> [T]he investigations at rail fixed guideway systems are often confidential * * * and thus they are not subject to discovery or public disclosure. If the information gathered by the states becomes a public document, then the FTA will be building into this regulation a serious conflict between the state agencies and the [rail] fixed guideway systems. In order to ensure better gathering of information by the states, and to maintain unreserved cooperation with the local transit systems, it is strongly recommended that the information gathered by the states must be protected from disclosure.

Another commenter wrote ''[w]e submit that a discovery exemption is critical to the efficient operation of the oversight agency, as it would protect the agency's limited staff and resources from the inundation of subpoenas and other discovery requests.'' Yet another commenter wrote that

> [The rail fixed guideway system] believes that FTA should provide protection for Attorney-Client privilege under the proposed rule to include investigative materials and materials pertaining to 'hazardous condition' discussions or findings by the State oversight agency. If FTA does not have the statutory authority to provide such protection, it should require the States to do so. The loss of [the rail fixed guideway system's] Attorney-Client privilege over such documents would have a serious negative economic impact on third party litigation.

The remaining commenters maintained that although the issue is an important one, FTA should remain silent on it.

FTA Response. FTA agrees strongly that the oversight agency investigation reports should be kept confidential; thus, we have added a provision to the rule permitting a State to require that these reports be kept confidential, and we encourage strongly that the State authorize the oversight agency to do so.

N. Certified Transit Safety Professional.

FTA proposed to require the use of Certified Transit Safety Professionals primarily in response to comments to the ANPRM and related public hearings, which reflected concern throughout the transit industry about the expertise necessary to carry out an effective oversight program. These commenters maintained that an effective oversight program could not be achieved without the use of certified safety professionals.

In response to these comments, the NPRM proposed to require both the oversight agency and the transit agency to use the services of a Certified Transit Safety Professional, either from within their own organizations or under contract, to comply with the requirements of the rule. A Certified Transit Safety Professional was defined as one who had ''successfully completed the Safety Professional Certification requirements established by the Board of Certified Safety Professionals, * * * or, a registered professional engineer in system safety.'' FTA also sought comment on whether it should require a Certified Transit Safety Professional to have a minimum number of years of experience in transit safety.

Forty-seven comments were received on this matter, which was among the most controversial proposals in the NPRM. Although most commenters opposed the inclusion of this concept in the final rule, some recommended changes to the definition of certified transit safety professional. For instance, several commenters noted that organizations other than the Board of Certified Safety Professionals certify safety professionals, such as the World Safety Organization or the Federal Railroad Administration. Others recommended that the rule recognize experience equivalent to the training required by the Board of Safety Professionals. One commenter recommended that, in addition to certification, a Certified Transit Safety Professional be required to have a minimum number of years of experience.

Several commenters opposing this proposal maintained that the Board of Certified Safety Professionals does not certify professionals in transit safety. The Board of Safety Professionals, however, did not oppose this proposal. Instead, they recommended that FTA require the certified transit safety professional's certification to be current. Several commenters noted that States do not certify professional engineers in system safety, although one commenter noted that the Board of Certified Safety Professionals 1993–1994 Directory listed 200 Safety Professionals certified in system safety.

One commenter who opposed this proposal nevertheless recommended that FTA require safety professionals to complete FTA's Rail System Safety Course. Another commenter recommended that a peer group develop guidelines concerning the experience and training for transit safety professionals, which a transit agency could adopt. Other commenters objected to the proposal stating that such a training requirement would be too expensive.

FTA Response. In response to the overwhelming comments opposed to this proposal, FTA has removed the Certified Transit Safety Professional provision from the rule. We do, however, urge the States to develop their own criteria to ensure that both the transit and oversight agencies are using qualified professionals under this rule to ensure the safe operation of rail fixed guideway systems. In this regard, we recommend that safety professionals, at a minimum, have transit safety experience and complete the courses at the Transportation Safety Institute (TSI) sponsored by FTA applicable to rail transit systems. TSI offers the following

courses: System Safety, Accident Investigation, System Security, and Emergency Management. FTA has provided training assistance to the transit industry in safety since 1976, and this program will be a major contribution to State Safety Oversight. Moreover, we urge States to require safety employees to be certified by the Board of Certified Safety Professionals, the World Safety Organization, or other comparable organization; safety professionals should possess a certain level of experience as well.

III. Section-by-Section Analysis

Please note that issues addressed in the Section-by-Section Analysis may also be discussed in the Discussion of the Comments.

Subpart A—General Provisions

A. Purpose. (§ 659.1)

This section explains that FTA is implementing the requirements of 49 U.S.C. § 5330, which requires a State to establish an agency to oversee the safety of rail fixed guideway systems. This rule directs the oversight agency to develop a system safety program standard and to require the transit agency to develop a system safety program plan that complies with the system safety program standard. In addition, the oversight agency must conduct safety reviews and investigations and ensure that the transit agency has developed and implemented a system safety program plan that complies with this rule and is effective.

B. Scope. (§ 659.3)

This section explains that the rule applies only to States with rail fixed guideway systems that are not regulated by the FRA.

C. Definitions. (§ 659.5)

1. Accident

An accident triggers an investigation by the oversight agency or its agent, and is defined as an event that occurs when the rail fixed guideway system is in revenue service and an individual dies or is injured and immediately receives medical treatment away from the scene; or a collision, derailment, or fire results in $100,000 in property damage.

Injuries, deaths, or property damage that occur when the rail fixed guideway system is not in revenue service are excluded from the definition. Hence, under the rule, the oversight agency or its agent is not required to investigate these events, but may do so under its own authority.

An ''individual'' means anyone, including a passenger, trespasser, employee, or other bystander.

2. APTA Guidelines

The ''APTA Guidelines'' means the ''Manual for the Development of Rail Transit System Safety Program Plans'' published by the American Public Transit Association on August 20, 1991.

3. Contractor

A ''contractor'' means an entity that performs tasks required under this part on behalf of the oversight or transit agency. A transit agency may not be a contractor for an oversight agency.

4. FTA

The ''FTA'' means the Federal Transit Administration, an agency of the United States Department of Transportation.

5. Hazardous Condition

''Hazardous Condition'' means a condition that may endanger human life or property. It encompasses ''unacceptable hazardous conditions,'' defined below.

6. Investigation

''Investigation'' means the process used to determine the probable cause of the ''accident'' or ''unacceptable hazardous condition.'' It includes a review by the oversight agency of the transit agency's determination of the probable cause of an ''accident'' or ''unacceptable hazardous condition.''

An ''investigation'' may be conducted by the oversight agency itself or by some other entity acting on its behalf, or the investigation may be conducted by the transit agency. If the oversight agency chooses the latter method it must, at a minimum, review and approve the transit agency's findings of probable cause of the ''accident'' or ''unacceptable hazardous condition.''

7. Oversight Agency

The agency designated by the State or affected States to implement the requirements of this part.

8. Rail Fixed Guideway System

''Rail fixed guideway system'' means any light, heavy, or rapid rail system, monorail, inclined plane, funicular, trolley, or automated guideway that is included in FTA's calculation of fixed guideway route miles or receives funding under FTA's formula program for urbanized areas and is not regulated by the Federal Railroad Administration.

9. Safety

''Safety'' means freedom from danger; it includes freedom from unintentional as well as intentional acts.

10. Safety Review

''Safety review'' means a comprehensive review by the oversight agency of the transit agency's safety practices. It includes an analysis by the oversight agency of the efficacy of the transit agency's system safety program plan and a determination of whether the system safety program plan must be modified, changed, or updated. The safety review must be conducted at the rail fixed guideway system.

11. Security

''Security'' means freedom from intentional danger. Intentional danger includes criminal acts such as muggings, rapes, robberies, or terrorists acts, such as bombings, releases of poisonous gases, or kidnappings.

12. System Safety Program Plan

''System safety program plan'' means the written document developed by the transit agency in accordance with the requirements of the oversight agency's system safety program standard.

13. System Safety Program Standard

''System safety program standard'' means the document developed by the oversight agency that complies, at a minimum, with the APTA Guidelines and requires the rail fixed guideway system to address the personal security of its passengers and employees. It may contain more requirements than the APTA Guidelines. The transit agency must comply with this document when it develops its system safety program plan.

14. Transit Agency

''Transit agency'' means the entity operating the rail fixed guideway system.

15. Unacceptable Hazardous Condition

An ''unacceptable hazardous condition'' is a particular kind of hazardous condition determined by using the Hazard Resolution Matrix contained in the APTA Guidelines at checklist number 7.

D. Withholding of Funds for Non-Compliance. (§ 659.7)

This section is taken from section 5330, which authorizes FTA to withhold Federal funding from a State or an urbanized area in the State. In particular, FTA is authorized to withhold up to five percent of an affected urbanized area's apportionment if the State, in the opinion of FTA, is not in compliance or making adequate efforts to comply with the rule. The sanctions for non-compliance do not begin until September 30, 1997. In the event of non-compliance with the rule,

the Administrator may withhold funds until the State comes into compliance.

Subpart B—The Role of the State

A. Designation of Oversight Agency. (§ 659.21)

This section directs the State to select an agency to oversee the rail fixed guideway system and prohibits the State from selecting the transit agency to perform this role. Paragraph (a) concerns rail fixed guideway systems that operate within only one State. In these instances, the State must designate a State agency to implement the rule. If the State chooses, this paragraph allows the State to designate an oversight agency for each rail fixed guideway system within the State. For instance, a State may wish to designate one agency for an historical trolley system and another for the remaining systems within the State. The rule is flexible in this regard and is written to accommodate those States that have established an oversight program under State law.

For those States that have not established an oversight program and have more than one rail fixed guideway system within the State, we recommend that the State designate only one agency to implement the rule. This would save resources and ensure the consistent application of the rule.

Paragraph (b) is directed to States that jointly operate a multi-State rail fixed guideway system. Although we recommend that the affected States designate a single oversight agency, this paragraph allows them to designate more than one agency, other than the transit agency, to implement the rule. Moreover, this paragraph recognizes that a single oversight agency designated by the affected States will not be an agency of any particular State.

B. Confidential Accident Reports. (§ 659.23)

This section permits the State to require the oversight agency to keep investigation reports confidential in civil litigation.

Subpart C—The Oversight Agency's Role

A. The System Safety Program Standard. (§ 659.31)

This section directs the oversight agency to develop a system safety program standard that complies, at a minimum, with the American Public Transit Association's ''Manual for the Development of Rail Transit System Safety Program Plans'' (APTA Guidelines) available from the American Public Transit Association, 1201 New York Avenue, N.W., Washington, D.C. 20005–3917 or Office of Safety and Security, Federal Transit Administration, 400 Seventh Street, S.W., Washington, D.C. 20590, and requires the transit agency to address the personal security of its passengers and employees.

As discussed above, because the APTA Guidelines were derived from MIL–STD 882B, we believe that existing oversight agencies that have used MIL–STD 882B or its successor MIL–STD 882C to create their oversight programs should meet, if not exceed, the APTA Guidelines, although we recommend that these existing oversight agencies review their programs in this regard.

This section further directs the oversight agency to develop a standard that would require the transit agency to address the personal security of its passengers and employees. In this regard, FTA has neither developed specifications nor adopted a standard for the oversight agency to follow. Instead, we have published, independently, two ''how to'' documents to be used by both the oversight and transit agencies in developing security standards and procedures. These documents, ''Transit Security Procedures Guide'' and ''Transit System Security Program Planning Guide,'' are available free of charge from the Office of Safety and Security, Federal Transit Administration, at the address noted above. Although the use of these documents is not mandated under the rule, we recommend strongly that every affected State and transit agency obtain copies and review them. As noted above, FTA also offers several courses on security through TSI. Moreover, we suggest that the oversight agency require the transit agency to address such criminal acts as terrorist activities and ''street crime'' such as muggings, rapes, drug dealings, etc.

This section also allows the oversight agency to create a program that is more stringent than that required under the APTA Guidelines, although we urge those agencies not to adopt FRA-type regulations.

B. System Safety Program Plans. (§ 659.33)

This section establishes January 1, 1997, as the deadline for the implementation of the system safety program plan and requires the oversight agency to have initially reviewed and approved it before that date. It further establishes January 1, 1998, as the implementation date for the security provisions of the system safety program plan. It also requires the oversight agency to direct the transit agency to update the system safety program plan as necessary. The oversight agency may decide that it is necessary for a system safety program plan to be updated at certain intervals, or it may make a determination based on accident statistics or results from safety audits or reviews, for example. Should the oversight agency make such a determination, this section directs it to again review and approve the transit agency's updated system safety program plan.

This section allows the oversight agency to determine whether the security provisions of the system safety program plan should be publicly available. FTA recommends strongly that the oversight agency prohibit the transit agency from publicly disclosing the security portions of the system safety program plan under any circumstance.

C. Transit Agency Annual Audit Reports. (§ 659.35)

Checklist number 9 of the APTA Guidelines requires the transit agency to draft a report summarizing the findings of its internal safety audit. This section of the rule requires the annual submission of that report to the oversight agency for its review.

D. Safety Reviews. (§ 659.37)

At least every three years, the oversight agency must conduct an on-site safety review of the transit agency's implementation of its system safety program plan. After this review has been completed, the oversight agency must issue a report detailing its findings and recommendations, its analysis of the system safety program plan, and its determination whether the safety program plan should be updated or changed.

E. Transit Agency Report on Accidents and Unacceptable Hazardous Conditions. (§ 659.39)

To investigate ''accidents'' and ''unacceptable hazardous conditions'' as required by section 5330, the oversight agency must know about them. This section directs the oversight agency to require the transit agency to report ''accidents'' and ''unacceptable hazardous conditions'' within the time specified by the oversight agency.

F. Investigations. (§ 659.41)

As discussed above in the Discussion of the Comments, the oversight agency is not required to conduct the investigation itself, but may do so through another entity such as a

contractor or even the transit agency. The oversight agency, however, must decide how it is going to conduct an investigation and establish the procedures it or the entity acting on its behalf will use.

There are numerous ways the oversight agency may comply with this requirement. For instance, the oversight agency may establish one set of procedures to investigate accidents and another to investigate unacceptable hazardous conditions. The oversight agency may use a contractor, such as the APTA Panel of Inquiry, to investigate certain kinds of accidents and its own staff to investigate others.

The rule is intentionally flexible to allow the oversight agency to adapt an oversight program to the needs of the rail fixed guideway systems within the State's jurisdiction.

G. Corrective Actions. (§ 659.43)

Section 659.41 requires the oversight agency to investigate ''unacceptable hazardous conditions.'' This section directs the oversight agency to require the transit agency to develop a corrective action plan to eliminate, minimize, or control investigated hazardous conditions in accordance with the approved corrective action plan and within the time period specified by the oversight agency.

H. Oversight Agency Report to the Federal Transit Administration. (§ 659.45)

This section requires three kinds of reports: initial, annual, and periodic. The initial submission contains information that will not change frequently, such as the name and address of the oversight agency and the transit agencies it oversees, a copy of the system safety program standard, and a description of the oversight agency's procedures for conducting investigations and ensuring that the transit agency has undertaken appropriate corrective actions. This report must be updated only when some of the information within it changes.

The annual submission describes the activities of the oversight agency for the previous twelve months, including any determinations by the oversight agency of the probable cause of ''accidents'' and ''unacceptable hazardous conditions,'' if it can do so and protect the confidentiality of investigation reports. This section allows an oversight agency required to submit annual reports to the State to submit the same report to FTA, if it contains all the necessary information.

Last, this section allows FTA to periodically ask the oversight agency to submit certain kinds of information such as the status reports on ''accidents,'' ''hazardous conditions,'' and corrective action plans. These reports must be submitted only upon FTA's request.

I. Use of Contractors. (§ 659.47)

This section expressly allows the oversight or transit agency to use contractors to perform certain tasks required under the rule. The agencies may use a contractor to perform some or all of these tasks. For instance, an oversight agency may use a contractor to conduct only accident investigations, while another may use a contractor solely to conduct safety reviews. A transit agency may not be a contractor for the oversight agency, however.

J. Certification of Compliance. (§ 659.49)

This section requires the oversight agency to initially certify before January 1, 1997, that it has complied with the rule. Thereafter, the oversight agency is required to certify annually that it is in compliance with the rule.

IV. Economic Analysis

FTA has evaluated the industry-wide costs and benefits of the rule, ''Rail Fixed Guideway Systems; State Safety Oversight,'' which requires a State to develop, through an oversight agency, a program to oversee the safety of rail fixed guideway systems. At least 19 States will be required to create an oversight agency that must:

- Develop a System Safety Program Standard which includes provisions addressing security.
- Approve the transit agency's initial system safety program plan.
- Conduct safety reviews.
- Establish investigation procedures.
- Investigate accidents and unacceptable hazardous conditions.
- Ensure the transit agency complies with the oversight agency's system safety program standard.
- Review corrective action plans.
- Report to FTA.

At least 33 transit agencies must:

- Develop a System Safety Program Plan and update it, as necessary.
- Prepare annual audit reports.
- Conduct safety audits.
- Classify hazardous conditions according to the APTA Hazard Resolution Matrix.
- Report accidents and unacceptable hazardous conditions to the oversight agency.
- Prepare corrective action plans.
- Handle hazardous conditions according to approved corrective action plans.
- Maintain safety data.

Generally, in analyzing the costs of this rule, the Regulatory Evaluation considered only those activities required by the rule. For those States and transit agencies that have already established a program similar to the one required by the rule, the Regulatory Evaluation considered only those activities necessary to bring these programs into compliance with the rule. Year One costs are estimated to be approximately $336,000, the lowest for any single year. This is because the costs incurred in Year One are generally limited to activities of the oversight agencies and the FTA. Total costs for the first ten years are estimated to be approximately $9.1 million.

The estimated benefits of the rule are assumed to take full effect in the third year of implementation, 1998. Therefore, the estimated fatalities and injuries averted are based on an eight-year period. For this period there would be 16 fatalities and 1,528 injuries averted. Based on the Department's Willingness to Pay Threshold, the total benefit of the rule is approximately $107 million over a ten-year period.

V. Regulatory Process Matters

A. Executive Order 12866

FTA has evaluated the costs and benefits to the States of creating an oversight program to oversee the safety of rail fixed guideway systems and has determined that this rule is a major rule under Executive Order 12866 because it affects State and local governments.

B. Departmental Significance

This proposed rule is a ''significant regulation'' under the Department's Regulatory Policies and Procedures, because it changes an important Departmental policy. That policy change requires the States to oversee the safety of rail fixed guideway systems, something the Federal government has never before required.

C. Regulatory Flexibility Act

In accordance with 5 U.S.C. 603(a), FTA has evaluated the effects of this proposed rule on small entities. Based on this evaluation, FTA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities because the affected transit agencies will in most cases be large.

D. Paperwork Reduction Act

The information collection requirements in this rule have been reviewed and approved by the Office of Management and Budget under OMB #2132–0558.

E. Executive Order 12612

We have reviewed this rule under the requirements of Executive order 12612 on Federalism. FTA has determined that since this rule has significant Federalism implications it warrants a Federalism assessment. We note, however, that this rulemaking is mandated by 49 U.S.C. 5330, which requires a State to create an oversight agency to oversee the safety of rail fixed guideway systems.

In considering the Federalism implications of the proposed rule, FTA has focused on several key provisions of Executive order 12612.

Necessity for action. This rule is mandated by law, which requires that rail fixed guideway systems be subject to State oversight. Approximately twenty-one States have rail fixed guideway systems operating within their jurisdictions. Of those, only five States have established a State oversight program.

Consultation with State and local governments. FTA's mission is to provide financial assistance to mass transportation systems throughout the nation, thus providing grants to State and local governments. Because this rule will affect almost half of the States as well as many local governments, we published an ANPRM on June 25, 1992, at 57 FR 28572, to solicit the views of State and local governments. In addition, we held three public hearings in conjunction with the ANPRM. Also, FTA published an NPRM on December 9, 1993, at 58 FR 64855, on which numerous State and local governmental agencies commented. Moreover, we held a public hearing on the NPRM on March 8, 1994, in conjunction with an American Public Transit Association conference, thus allowing more State and local agencies to participate in the development of this rule. In short, we actively sought the views and comments of the affected States.

Need for Federal action. This rule responds to a Congressional mandate but is designed to give a State maximum flexibility in designing its own oversight program.

Authority. The statutory authority for this rule is discussed elsewhere in this preamble.

Pre-emption. This rule does not, as such, pre-empt State or local law. There may be instances in which a State or local agency faces a conflict between compliance with the rule and State and local requirements. Because compliance with the rule is a condition of Federal financial assistance, State and local governments have the option of not seeking the Federal funds if they choose not to comply with this rule.

F. National Environmental Policy Act

FTA has determined that this rule has no environmental implications. Its purpose is to create a State oversight program designed to oversee the safety of rail fixed guideway systems.

G. Energy Impact Implications

This regulation does not affect the use of energy because it creates a State oversight program designed to oversee the safety of rail fixed guideway systems.

List of Subjects in 49 CFR Part 659

Grant programs—transportation, Incorporation by reference, Mass transportation, Reporting and recordkeeping requirements, Safety, Security, and Transportation.

Accordingly, for the reasons cited above, the agency amends title 49 of the Code of Federal Regulations by adding a new part 659, to read as follows:

PART 659—RAIL FIXED GUIDEWAY SYSTEMS; STATE SAFETY OVERSIGHT

Subpart A—General Provisions

Subpart B—The Role of the State

Subpart C—The Oversight Agency's Role

Authority: 49 U.S.C. § 5330.

Subpart A—General Provisions

§ 659.1 Purpose.

This part implements 49 U.S.C. 5330 by requiring a State to oversee the safety of rail fixed guideway systems through a designated oversight agency.

§ 659.3 Scope.

This part applies to a State that has within its boundaries a rail fixed guideway system not regulated by the Federal Railroad Administration (FRA).

§ 659.5 Definitions.

As used in this part—

Accident means any event involving the revenue service operation of a rail fixed guideway system if as a result:

(1) An individual dies;

(2) An individual suffers bodily injury and immediately receives medical treatment away from the scene of the accident; or

(3) A collision, derailment, or fire causes property damage in excess of $100,000.

APTA Guidelines means the American Public Transit Association's ''Manual for the Development of Rail Transit System Safety Program Plans,'' published on August 20, 1991.

Contractor means an entity that performs tasks required by this part on behalf of the oversight or transit agency. The transit agency may not be a contractor for the oversight agency.

FTA means the Federal Transit Administration, an agency within the U.S. Department of Transportation.

Hazardous condition means a condition that may endanger human life or property. It includes unacceptable hazardous conditions.

Investigation means a process to determine the probable cause of an accident or an unacceptable hazardous condition; it may involve no more than a review and approval of the transit agency's determination of the probable cause of an accident or unacceptable hazardous condition.

Oversight agency means the entity, other than the transit agency, designated by the State or several States to implement this part.

Rail fixed guideway system means any light, heavy, or rapid rail system, monorail, inclined plane, funicular, trolley, or automated guideway that is:

(1) Included in FTA's calculation of fixed guideway route miles or receives funding under FTA's formula program for urbanized areas (49 U.S.C. 5336); and

(2) Not regulated by the Federal Railroad Administration.

Safety means freedom from danger.

Safety review means a formal, comprehensive, on-site examination by the oversight agency of a transit agency's safety practices to determine whether they comply with the policies and procedures required under the transit agency's system safety program plan.

Security means freedom from intentional danger.

System safety program plan means a document adopted by the transit agency

detailing its safety policies, objectives, responsibilities, and procedures.

System safety program standard means the standard developed and adopted by the State oversight agency which, at a minimum, complies with the APTA Guidelines and which addresses personal security.

Transit agency means an entity operating a rail fixed guideway system.

Unacceptable hazardous condition means a hazardous condition determined to be an unacceptable hazardous condition using the APTA Guidelines' Hazard Resolution Matrix (APTA Guidelines, checklist number 7).

§ 659.7 Withholding of funds for non-compliance.

The Administrator of the FTA may withhold up to five percent of the amount required to be apportioned for use in any State or affected urbanized area in such State under FTA's formula program for urbanized areas for any fiscal year beginning after September 30, 1997, if the State in the previous fiscal year has not met the requirements of this part and the Administrator determines that the State is not making adequate efforts to comply with this part.

Subpart B—The Role of the State

§ 659.21 Designation of oversight agency.

(a) For a transit agency or agencies operating within a single State, the State must designate an agency of the State, other than a transit agency, to serve as the oversight agency and to implement the requirements of this part.

(b) For a transit agency operating a system within more than one State, those States may designate a single entity, other than the transit agency, to implement the requirements of this part.

§ 659.23 Confidential investigation reports.

The State may prohibit an investigation report that may be prepared by the oversight agency from being admitted into evidence or used in a civil action for damages resulting from a matter mentioned in the report.

Subpart C—The Oversight Agency's Role

§ 659.31 The system safety program standard.

(a) The oversight agency must develop and adopt a system safety program standard that, at a minimum—

(1) Complies with the American Public Transit Association's ''Manual for the Development of Rail Transit System Safety Program Plans'' (APTA Guidelines) published on August 20, 1991, hereby incorporated by reference; and

(2) Requires the transit agency to address the personal security of its passengers and employees.

(b) The APTA Guidelines specify procedures for developing a system safety program plan, generally discuss the principles of system safety, and specifically address certain issues critical to the safe operation of a rail fixed guideway system.

(c) The incorporation by reference of the APTA Guidelines has been approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies of the APTA Guidelines may be obtained from the American Public Transit Association, 1201 New York Avenue, N.W., Washington D.C. 20005–3917, (202) 893–4000. The Guidelines may be inspected at, and are available from the Federal Transit Administration, Office of Safety and Security, 400 7th Street, S.W., Washington, D.C. 20590, and at the Office of the Federal Register, 800 North Capitol Street, N.W., Washington, D.C.

§ 659.33 System safety program plans.

(a) Except as provided in § 659.33(b), the oversight agency must require the transit agency to—

(1) Implement, beginning on January 1, 1997, a system safety program plan conforming to the oversight agency's system safety program standard; and

(2) Approve in writing before January 1, 1997, the transit agency's system safety program plan.

(b) The oversight agency must require the transit agency to—

(1) Implement, beginning on January 1, 1998, the security portions of its system safety program plan; and

(2) Approve in writing before January 1, 1998, the security portions of the transit agency's system safety program plan.

(c) After December 31, 1996, the oversight agency must review and approve, in writing, the transit agency's system safety program plan, as necessary, and require the transit agency to update its system safety program plan, as necessary.

(d) The oversight agency may prohibit a transit agency from publicly disclosing the security aspects of the system safety program plan.

§ 659.35 Transit agency annual audit reports.

The oversight agency must—

(a) Require that the transit agency submit, annually, a copy of the annual safety audit report prepared by the transit agency as a result of the Internal Safety Audit Process (APTA Guidelines, checklist number 9); and

(b) Review the annual safety audit reports prepared by the transit agency.

§ 659.37 Safety reviews.

At least every three years the oversight agency must conduct an on-site safety review of the transit agency's implementation of its system safety program plan and prepare and issue a report containing findings and recommendations resulting from that review, which, at a minimum, must include an analysis of the efficacy of the system safety program plan and a determination of whether it should be updated.

§ 659.39 Transit agency report on accidents and unacceptable hazardous conditions.

The oversight agency must require that the transit agency report accidents and unacceptable hazardous conditions to the oversight agency within a specified period of time.

§ 659.41 Investigations.

The oversight agency must—

(a) Establish procedures to investigate accidents and unacceptable hazardous conditions.

(b) Unless the National Transportation Safety Board has investigated or will investigate an accident, the oversight agency must investigate accidents and unacceptable hazardous conditions occurring at a transit agency under its jurisdiction.

§ 659.43 Corrective actions.

The oversight agency must require the transit agency to minimize, control, correct, or eliminate any investigated hazardous condition within a time period specified by and in accordance with a corrective action plan approved by the oversight agency.

§ 659.45 Oversight agency report to the Federal Transit Administration.

(a) *Initial submissions.* Before January 1, 1997, the oversight agency must submit to FTA the following information, which must be updated as necessary:

(1) The name and address of the oversight agency;

(2) The name(s) and address(es) of the transit agency or agencies subject to the oversight agency's jurisdiction under this part; and

(3) A written description of the oversight agency's oversight program including the following information:

(i) A copy of its system safety program standard;

(ii) Its procedures or process for reviewing and approving the transit agency's system safety program plan;

(iii) Its investigatory procedures; and

(iv) Its procedures for ensuring that appropriate corrective actions have been taken by the transit agency to correct, eliminate, minimize, or control investigated hazardous conditions.

(b) *Annual submissions.* Before January 1 of each year, the oversight agency must submit to FTA a publicly available annual report summarizing its oversight activities for the preceding twelve months, including a description of the most common probable causal factors of accidents and unacceptable hazardous conditions.

(c) *Periodic submissions.* Status reports of accidents, hazardous conditions, and corrective action plans must be forwarded to the FTA upon request.

(d) *Addresses.* Reports and annual summaries must be sent to: Federal Transit Administration, Office of Safety and Security, 400 7th Street, S.W., Washington, D.C. 20590.

§ 659.47 Use of contractors.

(a) The oversight agency may use a contractor to—

(1) Develop a system safety program standard;

(2) Review system safety program plans;

(3) Review annual audit reports;

(4) Conduct safety reviews;

(5) Prepare safety review findings;

(6) Establish investigation procedures;

(7) Conduct investigations;

(8) Review corrective action plans; and/or

(9) Prepare initial or annual submissions to FTA.

(b) The oversight agency may allow a transit agency to use a contractor to—

(1) Develop or update a system safety program plan;

(2) Prepare annual audit reports; and/or

(3) Develop a corrective action plan.

§ 659.49 Certification of compliance.

(a) Before January 1, 1997, and annually thereafter, the oversight agency must certify to the FTA that it has complied with the requirements of this part. Each certification shall comply with the applicable sample certification provided in the appendix to this part. Each certification shall be sent to: Federal Transit Administration, Office of Safety and Security, 400 7th Street, S.W., Washington, D.C. 20590.

(b) Each certification must be signed by an official authorized by the oversight agency and must comply with the applicable sample certification provided in the appendix to this part.

Appendix to Part 659—Sample Certification of Compliance

This appendix contains an example of certification language.

I, (name), (title), certify that (name of the oversight agency) has implemented a State oversight program that meets the requirements of 49 CFR part 659 and further certify that I have no conflict of interest with any rail fixed guideway system overseen as a result of 49 CFR part 659, nor does (name of the oversight agency) and its contractors.

Issued: December 18, 1995.

Gordon J. Linton,

Administrator.

[FR Doc. 95–31159 Filed 12–26–95; 8:45 am]

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S. 790/P.L. 104–66

Federal Reports Elimination and Sunset Act of 1995 (Dec. 21, 1995; 109 Stat. 707)

Passed over the President's veto

H.R. 1058/P.L. 104–67

Private Securities Litigation Reform Act of 1995 (Dec. 22, 1995; 109 Stat. 737)

H.R. 2481/P.L. 104–68

To designate the Federal Triangle project under construction at 14th Street and Pennsylvania Avenue, Northwest, in the District of Columbia, as the ''Ronald Reagan Building and International Trade Center''. (Dec. 22, 1995; 109 Stat. 766)

H.J. Res. 136/P.L. 104–69

Making further continuing appropriations for the fiscal year 1996, and for other purposes. (Dec. 22, 1995; 109 Stat. 767)

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