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Wednesday
May 29, 1996

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Presidential Documents

Title 3—

The President

Proclamation 6901 of May 24, 1996

Prayer for Peace, Memorial Day, 1996

By the President of the United States of America

A Proclamation

On the last Monday of May each year, our Nation takes time to remember those who have given their lives to safeguard America's freedom. Courageous and loyal citizens have died on battlefields around the world in defense of the United States, our interests, and our values, thus ensuring more than two centuries of independence and a society based on individual rights. Their selflessness demands our profound gratitude and calls us to consider anew the awesome price of liberty.

On this special day, let us reflect upon the supreme sacrifice made by our fellow citizens lost in battle. All were proud members of our national community, and all perished while protecting our country's honor and the American way of life. Let us share in the grief of the families whose loved ones remain unaccounted for or fell while defending this great Nation. And let us pray, each in our own way, for peace throughout this land and across the globe. As beneficiaries of the freedoms our troops secured, we can best pay tribute to their deeds by leaving to future generations an America that continues to be a beacon of justice and freedom for people everywhere.

In respect and recognition of the courageous men and women to whom we pay tribute, the Congress, by joint resolution approved on May 11, 1950 (64 Stat. 158), has requested the President to issue a proclamation calling upon the people of the United States to observe each Memorial Day as a day of prayer for permanent peace and designating a period on that day when the American people might unite in prayer.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim Memorial Day, May 27, 1996, as a day of prayer for permanent peace, and I designate the hour beginning in each locality at 11:00 a.m. of that day as a time to join in prayer. I urge the press, radio, television, and all other information media to take part in this observance.

I also request the Governors of the United States and the Commonwealth of Puerto Rico, and the appropriate officials of all units of government, to direct that the flag be flown at half-staff during this Memorial Day on all buildings, grounds, and naval vessels throughout the United States and in all areas under its jurisdiction and control, and I request the people of the United States to display the flag at half-staff from their homes for the customary forenoon period.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fourth day of May, in the year of our Lord nineteen hundred and ninety-six, and of the Independence of the United States of America the two hundred and twentieth.

William J. Clinton

[FR Doc. 96–13596
Filed 5–28–96; 8:45 am]
Billing code 3195–01–P

Presidential Documents

Executive Order 13007 of May 24, 1996

Indian Sacred Sites

By the authority vested in me as President by the Constitution and the laws of the United States, in furtherance of Federal treaties, and in order to protect and preserve Indian religious practices, it is hereby ordered:

Section 1. *Accommodation of Sacred Sites.* (a) In managing Federal lands, each executive branch agency with statutory or administrative responsibility for the management of Federal lands shall, to the extent practicable, permitted by law, and not clearly inconsistent with essential agency functions, (1) accommodate access to and ceremonial use of Indian sacred sites by Indian religious practitioners and (2) avoid adversely affecting the physical integrity of such sacred sites. Where appropriate, agencies shall maintain the confidentiality of sacred sites.

(b) For purposes of this order:

(i) ''Federal lands'' means any land or interests in land owned by the United States, including leasehold interests held by the United States, except Indian trust lands;

(ii) ''Indian tribe'' means an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to Public Law No. 103–454, 108 Stat. 4791, and ''Indian'' refers to a member of such an Indian tribe; and

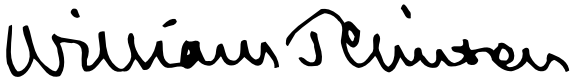
(iii) ''Sacred site'' means any specific, discrete, narrowly delineated location on Federal land that is identified by an Indian tribe, or Indian individual determined to be an appropriately authoritative representative of an Indian religion, as sacred by virtue of its established religious significance to, or ceremonial use by, an Indian religion; provided that the tribe or appropriately authoritative representative of an Indian religion has informed the agency of the existence of such a site.

Sec. 2. *Procedures.* (a) Each executive branch agency with statutory or administrative responsibility for the management of Federal lands shall, as appropriate, promptly implement procedures for the purposes of carrying out the provisions of section 1 of this order, including, where practicable and appropriate, procedures to ensure reasonable notice is provided of proposed actions or land management policies that may restrict future access to or ceremonial use of, or adversely affect the physical integrity of, sacred sites. In all actions pursuant to this section, agencies shall comply with the Executive memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments.''

(b) Within 1 year of the effective date of this order, the head of each executive branch agency with statutory or administrative responsibility for the management of Federal lands shall report to the President, through the Assistant to the President for Domestic Policy, on the implementation of this order. Such reports shall address, among other things, (i) any changes necessary to accommodate access to and ceremonial use of Indian sacred sites; (ii) any changes necessary to avoid adversely affecting the physical integrity of Indian sacred sites; and (iii) procedures implemented or proposed to facilitate consultation with appropriate Indian tribes and religious leaders and the expeditious resolution of disputes relating to agency action on Federal lands that may adversely affect access to, ceremonial use of, or the physical integrity of sacred sites.

Sec. 3. Nothing in this order shall be construed to require a taking of vested property interests. Nor shall this order be construed to impair enforceable rights to use of Federal lands that have been granted to third parties through final agency action. For purposes of this order, ''agency action'' has the same meaning as in the Administrative Procedure Act (5 U.S.C. 551(13)).

Sec. 4. This order is intended only to improve the internal management of the executive branch and is not intended to, nor does it, create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by any party against the United States, its agencies, officers, or any person.



THE WHITE HOUSE,
May 24, 1996.

[FR Doc. 96–13597
Filed 5–27–96; 8:45 am]
Billing code 3195–01–P

Presidential Documents

Notice of May 24, 1996

Continuation of Emergency With Respect to the Federal Republic of Yugoslavia (Serbia and Montenegro) and the Bosnian Serbs

On May 30, 1992, by Executive Order 12808, President Bush declared a national emergency to deal with the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States constituted by the actions and policies of the Governments of Serbia and Montenegro, blocking all property and interests in property of those Governments. President Bush took additional measures to prohibit trade and other transactions with the Federal Republic of Yugoslavia (Serbia and Montenegro) by Executive Orders 12810 and 12831, issued on June 5, 1992, and January 15, 1993, respectively. On April 25, 1993, I issued Executive Order 12846, blocking the property and interests in property of all commercial, industrial, or public utility undertakings or entities organized or located in the Federal Republic of Yugoslavia (Serbia and Montenegro), and prohibiting trade-related transactions by United States persons involving those areas of the Republic of Bosnia and Herzegovina controlled by Bosnian Serb forces and the United Nations Protected Areas in the Republic of Croatia. On October 25, 1994, because of the actions and policies of the Bosnian Serbs, I expanded the scope of the national emergency to block the property of the Bosnian Serb forces and the authorities in the territory that they control within the Republic of Bosnia and Herzegovina, as well as the property of any entity organized or located in, or controlled by any person in, or resident in, those areas.

On December 27, 1995, I issued Presidential Determination No. 96–7, directing the Secretary of the Treasury, *inter alia*, to suspend the application of sanctions imposed on the Federal Republic of Yugoslavia (Serbia and Montenegro) pursuant to the above-referenced Executive orders and to continue to block property previously blocked until provision is made to address claims or encumbrances, including the claims of the other successor states of the former Yugoslavia. This sanctions relief, in conformity with United Nations Security Council Resolution 1022 of November 22, 1995 (hereinafter the ''Resolution''), was an essential factor motivating Serbia and Montenegro's acceptance of the General Framework Agreement for Peace in Bosnia and Herzegovina initialled by the parties in Dayton, Ohio, on November 21, 1995, and signed in Paris on December 14, 1995 (hereinafter the ''Peace Agreement''). The sanctions imposed on the Federal Republic of Yugoslavia (Serbia and Montenegro) were accordingly suspended prospectively, effective January 16, 1996. Sanctions imposed on the Bosnian Serb forces and authorities and on the territory that they control within the Republic of Bosnia and Herzegovina were subsequently suspended prospectively, effective May 10, 1996, also in conformity with the Peace Agreement and Resolution.

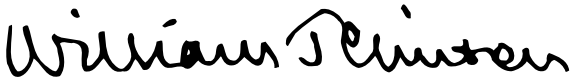
In the last year, substantial progress has been achieved to bring about a settlement on the conflict in the former Yugoslavia acceptable to the parties. Before agreeing to the sanctions suspension, the United States insisted on a credible reimposition mechanism to ensure the full implementation of the Peace Agreement. Thus, Resolution 1022 provides a mechanism to reimpose the sanctions if the Federal Republic of Yugoslavia or the Bosnian Serb authorities fail significantly to meet their obligations under the Peace Agreement. It also provides that sanctions will not be terminated until after the first free and fair elections occur in the Republic of Bosnia and Herzegovina, as provided for in the Peace Agreement, and provided that

the Bosnian Serb forces have continued to respect the zones of separation as provided in the Peace Agreement. The Resolution also provides for the continued blocking of assets potentially subject to conflicting claims and encumbrances, including the claims of the other successor states of the former Yugoslavia, until provision is made to address them.

Because the resolution of the crisis and conflict in the former Yugoslavia that resulted from the actions and policies of the Government of the Federal Republic of Yugoslavia (Serbia and Montenegro), and of the Bosnian Serb forces and the authorities in the territory that they control, will not be complete until such time as the Peace Agreement is implemented fully and the terms of Resolution 1022 have been met, the national emergency declared on May 30, 1992, as expanded in scope on October 25, 1994, and the measures adopted pursuant thereto to deal with that emergency must continue beyond May 30, 1996.

Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing the national emergency with respect to the Federal Republic of Yugoslavia (Serbia and Montenegro) and the Bosnian Serb forces and those areas of the Republic of Bosnia and Herzegovina under the control of the Bosnian Serb forces.

This notice shall be published in the Federal Register and transmitted to the Congress.



THE WHITE HOUSE,
May 24, 1996.

[FR Doc. 96–13579
Filed 5–28–96; 8:45 am]
Billing code 4810–25–M

Rules and Regulations

Federal Register
Vol. 61, No. 104
Wednesday, May 29, 1996

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

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

DEPARTMENT OF TRANSPORTATION

Federation Aviation Administration

14 CFR Part 25

[Docket No. NM–126; Special Conditions No. 25–ANM–16]

Special Conditions: Dassault Aviation, Mystere Falcon 50 Airplane; High-Intensity Radiated Fields

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Dassault Aviation, Mystere Falcon 50 airplane modified by Garrett Aviation Services of Springfield, Illinois. This airplane will be equipped with a Collins EFIS–86C(14) Electronic Flight Instrument System that provides critical data to the flightcrew. The applicable regulations do not contain adequate or appropriate safety standards for the position of these systems from the effects of high-intensity radiated fields. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is May 21, 1996. Comments must be received on or before July 15, 1996.

ADDRESSES: Comments on these final special conditions, request for comments, may be mailed in duplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, Attn: Rules Docket (ANM–7), Docket No. NM–126, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; or delivered in duplicate to the Office of the Assistant Chief Counsel at the above address. Comments must be marked: Docket No. NM–126. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Connie Beane, FAA, Standardization Branch, ANM–113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; telephone (206) 227–2796; facsimile (206) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA has determined that good cause exists for making these special conditions effective upon issuance; however, interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket and special conditions number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. These special conditions may be changed in light of comments received. All comments submitted will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this request must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. NM–126.'' The postcard will be date stamped and returned to the commenter.

Background

On March 7, 1996, Garrett Aviation Services of Springfield, Illinois, applied for a supplemental type certificate to modify Dassault Aviation, Mystere Falcon 50 airplanes. The Dassault Aviation, Mystere Falcon 50 is a business jet with three aft mounted turbine engines. The airplane can carry three crew and 19 passengers depending on the configuration, and is capable of operating to an altitude of 49,000 feet. The proposed modification incorporates the installation of a Collins EFIS–86C(14) Electronic Flight Instrument System (EFIS)), which is potentially vulnerable to high-intensity radiated fields (HIRF) external to the airplane.

Supplemental Type Certification Basis

Under the provisions of § 21.101 of the Federal Aviation Regulations (FAR), Garrett Aviation Services must show that the altered Dassault Aviation, Mystere Falcon 50 airplane continues to meet the applicable provisions of § 21.29; and part 25, effective February 1, 1965, as amended by Amendments 25–1 through 25–34 and § 25.255 of Amendments 25–42; § 25.979(d) and (e) of Amendments 25–38; § 25.1013(b)(1) of Amendments 25–36; § 25.1351(d) of Amendments 25–41; § 25.1353(c)(6) of Amendments 25–42; part 36 of the FAR effective December 1, 1969, as amended through Amendment 36–9; Special Federal Aviation Regulations (SFAR) 27 effective February 1, 1974, as amended through Amendment SFAR 27–1; and Special Conditions 25–86–EU–24. In addition, the certification basis may include other special conditions that are not relevant to these special conditions.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 25, as amended) do not contain adequate or appropriate safety standards for the Dassault Aviation, Mystere Falcon 50 airplane because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16 to establish a level of safety equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice, as required by §§ 11.28 and 11.29, and become part of the type certification basis in accordance with § 21.17(a)(2).

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

Novel or Unusual Design Features

The Dassault Aviation, Mystere Falcon 50 airplane incorporates a Collins EFIS–86c(14) system that provides critical date to the flightcrew. This system may be vulnerable to HIRF external to the airplane.

Discussion

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

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are issued for the Dassault Aviation, Mystere Falcon 50, which would require that new technology electrical and electronic systems, such as the EFIS, etc., be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

High-Intensity Radiated Fields (HIRF)

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

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

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

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

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

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

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

As discussed above, these special conditions would be applicable initially to the Garrett Aviation Services modified Dassault Aviation, Mystere Falcon 50. Should Garrett Aviation Services apply at a later date for a change to the supplemental type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

Conclusion

This action affects only certain design features on the Dassault Aviation, Mystere Falcon 50 airplane. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these features on the airplane.

The substance of these special conditions for this airplane has been subjected to the notice and comment procedure in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. For this reason, and because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions immediately. Therefore, these special conditions are being made effective upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation, safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, the following special conditions are issued as part of the supplemental type certification basis for the Garrett Aviation Services modified Dassault Aviation, Mystere Falcon 50 series airplanes.

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

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

Issued in Renton, Washington, on May 21, 1996.

Norman B. Martenson,

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

[FR Doc. 96–13426 Filed 5–28–96; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 96–NM–94–AD; Amendment 39–9635; AD 96–11–10]

RIN 2120–AA64

Airworthiness Directives; Israel Aircraft Industries (IAI), Ltd., Model 1125 Westwind Astra Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain IAI, Ltd., Model 1125 Westwind Astra series airplanes. This action requires a visual inspection for clearance between the hydraulic lines/vacuum lines and the electrical wire bundles, and repair or replacement of damaged lines or wire bundles with serviceable parts. This AD also requires installation of neoprene hose around the affected hydraulic lines and vacuum lines. This amendment is prompted by a report indicating that chafing was found on a hydraulic line. The actions specified in this AD are intended to prevent such chafing, which could

result in leakage of hydraulic fluid and subsequent loss of one of the two hydraulic systems.

DATES: Effective June 13, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 13, 1996.

Comments for inclusion in the Rules Docket must be received on or before July 29, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–94–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Technical Publications, Astra Jet Corporation, 77 McCullough Drive, Suite 11, New Castle, Delaware 19720. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2141; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION: The Civil Aviation Administration of Israel (CAAI), which is the airworthiness authority for Israel, recently notified the FAA that an unsafe condition may exist on certain Israel Aircraft Industries (IAI), Ltd., Model 1125 Westwind Astra series airplanes. The CAAI advises that it received a report indicating that chafing was found on a hydraulic line located at fuselage station 383.00. This chafing was the result of an electrical wire bundle sagging and coming in contact with the hydraulic lines in the area. Chafing of a hydraulic line can result in leakage of hydraulic fluid. This condition, if not corrected, could result in loss of one of the two hydraulic systems.

Explanation of Relevant Service Information

Astra Jet has issued Service Bulletin SB 1125–29–139, dated August 2, 1995, which describes procedures for a visual inspection for clearance between the hydraulic lines/vacuum lines and the electrical wire bundles, and repair or replacement of damaged lines or wire bundles with serviceable parts. The service bulletin also describes procedures for installation of neoprene hose around the affected hydraulic lines and vacuum lines. Accomplishment of the installation will protect the hydraulic lines located at fuselage station 383.00 from possible chafing. The CAAI classified this service bulletin as mandatory and issued Israeli AD No. 96–19, dated February 8, 1996, in order to assure the continued airworthiness of these airplanes in Israel.

FAA's Conclusions

This airplane model is manufactured in Israel and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAAI has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAAI, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent chafing of the hydraulic lines, which could result in leakage of hydraulic fluid and subsequent loss of one of the two hydraulic systems. This AD requires a visual inspection for clearance between the hydraulic lines/vacuum lines and the electrical wire bundles, and repair or replacement of damaged lines or wire bundles with serviceable parts. This AD also requires installation of neoprene hose around the affected hydraulic lines and vacuum lines. The actions are required to be accomplished in accordance with the service bulletin described previously.

Determination of Rule's Effective Date

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 96–NM–94–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

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

96–11–10 Israel Aircraft Industries (IAI), Ltd.: Amendment 39–9635. Docket 96–NM–94–AD.

Applicability: Model 1125 Westwind Astra series airplanes, serial numbers 004 through 076 inclusive; 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 request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously. To prevent chafing of the hydraulic lines, which could result in leakage of hydraulic fluid and subsequent loss of one of the two hydraulic systems, accomplish the following:

(a) Within 30 days after the effective date of this AD, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD in accordance with Astra Jet Service Bulletin SB 1125–29–139, dated August 2, 1995.

(1) Perform a visual inspection for clearance between the hydraulic lines/vacuum lines and the electrical wire bundles at fuselage station 383.00, in accordance with the service bulletin. Prior to further flight, repair or replace any damaged line or wire bundle with a serviceable part in accordance with the service bulletin.

(2) Install neoprene hose around the affected hydraulic lines and vacuum lines in accordance with the service bulletin.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

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

(d) The actions shall be done in accordance with Astra Jet Service Bulletin SB 1125–29–139, dated August 2, 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 Technical Publications, Astra Jet Corporation, 77 McCullough Drive, Suite 11, New Castle, Delaware 19720. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on June 13, 1996.

Issued in Renton, Washington, on May 20, 1996.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–13230 Filed 5–28 –96; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 95–NM–145–AD; Amendment 39–9636; AD 96–11–11]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all McDonnell Douglas Model DC–9 series airplanes, that requires inspection(s) to detect cracking in the nose skin of the fuselage, and various follow-on actions. This amendment also provides for an optional modification, which would defer certain repetitive inspections, if no cracking is detected. This amendment is prompted by reports of cracking in the upper nose skin of the fuselage due to fatigue. The actions specified by this AD are intended to prevent fatigue-related cracking, which could compromise the structural integrity of the airplane.

DATES: Effective July 3, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 3, 1996.

ADDRESSES: The service information referenced in this AD may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Department C1–L51 (2–60). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ron Atmur, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627–5224; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all McDonnell Douglas Model DC–9 series airplanes was published in the Federal Register on January 19, 1996 (61 FR 1301). That action proposed to require inspection(s) to detect cracking in the nose skin of the fuselage, and various follow-on actions. That action also proposed a provision for an optional modification, which would defer certain repetitive inspections, if no cracking is detected.

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

Support for the Proposal

Two commenters support the proposed rule.

Request to Extend the Compliance Time

One commenter requests that the ''grace period'' of the compliance time for the accomplishment of the high frequency eddy current (HFEC) inspection be extended from the proposed 3,000 landings to 4,000 landings. This will allow the HFEC

inspection to be accomplished during a regularly scheduled maintenance check, thereby eliminating any additional expenses. In addition, the commenter indicates that it has accomplished the HFEC inspection on 86 Model DC–9 series airplanes and has found ''a high rate of positive findings'' (i.e., cracking).

The FAA does not concur with the commenter's request to extend the ''grace period'' of the compliance time. In developing an appropriate compliance time for this action, the FAA considered the safety implications, parts availability, and normal maintenance schedules for timely accomplishment of the HFEC inspection. In consideration of these items, as well as the numerous reports of cracking in the upper nose skin of the fuselage of airplanes in service, the FAA has determined that a ''grace period'' of 3,000 landings, as proposed, is appropriate. However, under the provisions of paragraph (b) of the final rule, the FAA may approve requests for adjustments to the compliance time if data are submitted to substantiate that such an adjustment would provide an acceptable level of safety.

Request to Allow DER Approval of Repairs

This commenter also requests that proposed paragraph (a)(3) be revised to permit the approval of repairs (of any cracked areas beyond the repair limits specified in McDonnell Douglas DC–9 Service Bulletin 53–262) by Designated Engineering Representatives (DER) of the McDonnell Douglas Corporation; this will allow a more expeditious response time on repair recommendations.

The FAA does not concur with the commenter's request to revise paragraph (a)(3) of this AD. While DER's are authorized to determine whether a design or repair method complies with a specific requirement, they are not authorized to make the discretionary determination as to what the applicable requirement is. Further, where repair data does not exist, it is essential that the FAA have feedback as to the type of repairs being made. The FAA has determined that the Manager of the Los Angeles Aircraft Certification Office (ACO) should approve any such repairs or other deviations to the AD's requirements. Given that possible new relevant issues might be revealed during this process, it is imperative that the FAA, at this level, have such feedback. Only by reviewing deviation approvals can the FAA be assured of this feedback and of the adequacy of the repair methods. However, the FAA, in conjunction with the Aviation Rulemaking Advisory Committee (ARAC) currently is considering guidelines to address this issue, and may eventually develop additional FAA policy on this subject.

Request to Allow a Temporary Repair

One commenter requests that the FAA revise the proposal to allow a temporary repair, having a life limit of 8,000 flight cycles, to be accomplished in accordance with Structural Repair Manual 53–04, Figure 12B, Class III, until the proposed permanent repair can be accomplished. This would minimize down time for the operator.

The FAA does not concur. The FAA does not consider it appropriate to include various provisions in an AD applicable to a single operator's unique use of an affected airplane. Paragraph (b) of this AD provides for the approval of alternative methods of compliance to address these types of unique circumstances.

Request for Clarification of Use of Previously Approved Repairs

One commenter requests clarification as to the use of repairs that have been previously approved by the Manager, Los Angeles ACO, in accordance with AD 94–03–01, amendment 39–8907 (59 FR 6538, February 11, 1994).

The FAA agrees that clarification is necessary. The FAA considers the subject area of this AD to be identical to the subject area in AD 94–03–01. Therefore, repairs that have been approved previously by the Manager, Los Angeles ACO, are considered to be approved as alternative methods of compliance with paragraphs (a)(2) and (a)(3) of this AD. Accordingly, the FAA has revised the final rule to include a new paragraph (b)(2) to clarify this.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 889 Model DC–9 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 568 airplanes of U.S. registry will be affected by this AD, that it will take approximately 10 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $340,800, or $600 per airplane, per inspection.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. However, since the issuance of the proposal, the FAA has been advised that the initial inspection required by this AD has been accomplished on at least 86 affected airplanes. Therefore, the future cost impact of this AD on U.S. operators is reduced by approximately $51,600.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

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

96–11–11 McDonnell Douglas: Amendment 39–9636. Docket 95–NM–145–AD.

Applicability: All Model DC–9–10, –20, –30, –40, –50, and C–9 (military) 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 request approval for an alternative method of compliance in accordance with paragraph (b)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue-related cracking, which could compromise the structural integrity of the airplane, accomplish the following:

(a) Prior to the accumulation of 40,000 total landings, or within 3,000 landings after the effective date of this AD, whichever occurs later, perform a high frequency eddy current (HFEC) inspection to detect cracking in the nose skin of the fuselage, in accordance with McDonnell Douglas DC–9 Service Bulletin 53–262, dated October 11, 1994.

(1) If no cracking is detected, accomplish either paragraph (a)(1)(i) or (a)(1)(ii) of this AD, in accordance with the service bulletin.

(i) Repeat the HFEC inspection thereafter at intervals not to exceed 4,000 landings; or

(ii) Accomplish the modification of the upper nose skin of the cockpit fuselage in accordance with the service bulletin. Prior to the accumulation of 60,000 landings after accomplishment of this modification, perform a visual inspection of the upper nose skin of the cockpit fuselage in accordance with the service bulletin. Repeat the visual inspection thereafter at intervals not to exceed 25,000 landings.

(2) If any cracking is detected and it is within the repair limits specified in the service bulletin, prior to further flight, repair the cracked nose skin in accordance with the service bulletin. Prior to the accumulation of 60,000 landings after accomplishment of this repair, perform a visual inspection to detect cracking of the repair; and prior to further flight, repair any cracking found during this inspection; in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(3) If any cracking is detected and it is beyond the repair limits specified in the service bulletin, prior to further flight, repair the cracked nose skin in accordance with a method approved by the Manager, Los Angeles ACO.

(b)(1) 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, Los Angeles ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

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

(b)(2) Alternative methods of compliance, approved in accordance with AD 94–03–01, amendment 39–8907, are approved as alternative methods of compliance with paragraphs (a)(2) and (a)(3) of this AD. This approval only applies to repairs that are subject to the requirements of this AD.

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

(d) The inspections, modification, and certain repairs shall be done in accordance with McDonnell Douglas DC–9 Service Bulletin 53–262, dated October 11, 1994. 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 McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Department C1–L51 (2–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on July 3, 1996.

Issued in Renton, Washington, on May 20, 1996.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–13231 Filed 5–28–96; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 95–CE–82–AD; Amendment 39–9637; AD 96–11–12]

RIN 2120–AA64

Airworthiness Directives; Beech Aircraft Corporation Model C90A Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Beech Aircraft Corporation (Beech) Model C90A airplanes equipped with an optional Beech electric trim system or a Collins autopilot system. This action requires modifying the elevator electric trim tab actuator assembly. Failure of the elevator electric trim tab system on a Beech Model C90A prompted the proposed AD action. The actions specified by the proposed AD are intended to prevent possible failure of the elevator electric trim tab system, which, if not detected and corrected, could cause loss of airplane maneuverablity and possible loss of control of the airplane.

DATES: Effective July 24, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 24, 1996.

ADDRESSES: Service information that applies to this AD may be obtained from Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 95–CE–82–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Harvey E. Nero, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4137; facsimile (316) 946–4407.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to Beech Aircraft Corporation (Beech) Model C90A airplanes equipped with an optional Beech electric trim system or a Collins autopilot system was published in the Federal Register on November 28, 1995 (60 FR 58583). The action proposed to require procedures for modifying the elevator electric trim tab actuator assembly. Accomplishment of this action will be in accordance with Beech Service Bulletin (SB) No. 2631, Issued: June 1995, Revised: September 1995.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

After careful review of all available information related to the subject presented above, the FAA has

determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

The FAA estimates that 300 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 6 workhours per airplane to accomplish this action, and that the average labor rate is approximately $60 an hour. Parts are estimated to be $160 per airplane. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $156,000 or $520 per airplane. Beech has informed FAA that no parts have been distributed to owners/operators for this modification; therefore, this figure is based on the assumption that no owners/operators have accomplished the proposed inspection and modification.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

96–11–12. Beech Aircraft Corporation: Amendment 39–9637; Docket No. 95–CE–82–AD.

Applicability: The following Model C90A Airplanes, certificated in any category, that are equipped with an optional Beech electric trim system or a Collins autopilot system:

(1) Serial numbers LJ–1111 through LJ–1410 that were equipped at manufacture assembly with a pin-type cable guard actuator assembly (P/N 33–524023–51) on the elevator electric trim tab actuator assembly.

(2) All serial numbers (except LJ–1 through LJ–1110) equipped with a pin-type cable guard actuator assembly (P/N 33–524023–51) installed through field approval.

Note 1: Steps 1 through 4 of the ACCOMPLISHMENT INSTRUCTIONS section of Beech Service Bulletin (SB) No. 2631, Issued: June 1995, Revised: September 1995, provide procedures for determining which assembly is installed.

Note 2: 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 request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as follows, unless already accomplished:

(1) Within 150 hours time-in-service (TIS) after the effective date of this AD; or

(2) Upon installation of an optional Beech elevator electric trim tab system or a Collins autopilot system, whichever occurs first.

To prevent possible failure of the optional Beech electric trim system or the Collins autopilot system, which, if not detected and corrected, could cause loss of airplane maneuverability and possible loss of control of the airplane, accomplish the following:

(a) Modify all elevator electric trim tab actuator assemblies, part number (P/N) 33–524023–51 to the P/N 33–524023–77 or P/N 33–524023–79 level, by accomplishing the procedures in the ACCOMPLISHMENT INSTRUCTIONS section of Beechcraft Mandatory Service Bulletin SB No. 2631, Issued: June 1995, Revised: September 1995.

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

(c) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita Aircraft Certification Office.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita Aircraft Certification Office.

(d) The modification required by this AD shall be done in accordance with Beechcraft Mandatory Service Bulletin No. 2631, Issued: June 1995, Revised: September 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 Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., 7th Floor, suite 700, Washington, DC.

(e) This amendment (39–9637) becomes effective on June 24, 1996.

Issued in Kansas City, Missouri, on May 22, 1996.

Bobby Sexton,

Action Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–13273 Filed 5–28–96; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 71

[Airspace Docket No. 96–ANE–12]

Amendment to Class E Airspace; Pittsfield, MA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action revises the Class E airspace area at Pittsfield, MA (PSF) to provide for adequate controlled airspace for those aircraft using the GPS RWY 8 Instrument Approach Procedure to Pittsfield Municipal Airport.

DATES: Effective 0901 UTC, August 15, 1996.

Comments for inclusion in the Rules Docket must be received on or before June 28, 1996.

ADDRESSES: Send comments on the proposal to: Manager, Operations

Branch, ANE–530, Federal Aviation Administration, Docket No. 96–ANE–12, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7530; fax (617) 238–7596. Comments may also be submitted electronically to the following Internet address: neairspace__comments@mail.hq.faa.gov

The official docket file may be examined in the Office of the Assistant Chief Counsel, New England Region, ANE–7, Room 401, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7050; fax (617) 238–7055.

An informal docket may also be examined during normal business hours in the Air Traffic Division, Room 408, by contacting the Manager, Operations Branch at the first address listed above.

FOR FURTHER INFORMATION CONTACT: Joseph A. Bellabona, Operations Branch, ANE–530.6, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7536; fax (617) 238–7596.

SUPPLEMENTARY INFORMATION: A new Standard Instrument Approach Procedure to Pittsfield Municipal Airport, the GPS RWY 8 approach, requires additional Class E airspace area at Pittsfield, MA. This action extends the Class E airspace area at Pittsfield, MA southwesterly in order to provide adequate controlled airspace for those aircraft using the GPS RWY 8 instrument approach. Class E airspace designations for airspace areas extending upward from 700 feet above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9C, dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in this Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment, and, therefore, issues it as a direct final rule. The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the Federal Register indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the Federal Register, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a direct final rule, and was not preceded by a notice of proposed rulemaking, 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 or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this 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 action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 96–ANE–12.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

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 noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as these routine matters will only affect air traffic procedures and air navigation. It is certified that this rule will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 6005—Class E Airspace Areas Extending Upward from 700 Feet or more Above the Surface of the Earth

* * * * *

ANE MA E5 Pittsfield, MA [Revised]

Pittsfield Municipal Airport, MA
(lat. 42°25′36″ N, long. 73°17′34″ W)

That airspace extending upward from 700 feet above the surface within a 4-mile radius of Pittsfield Municipal Airport, and within 3.9 miles on each side of the Pittsfield Municipal Airport 244° bearing extending from the 4-mile radius to 9.1 miles southwest of Pittsfield Municipal Airport, and within 4 miles on each side of the Pittsfield Municipal Airport 065° bearing extending from the 4-mile radius to 16.2 miles northeast of Pittsfield Municipal Airport; excluding that

airspace within the Great Barrington, MA, and Hudson, NY, Class E airspace areas.

* * * * *

Issued in Burlington, MA, on May 28, 1996

David J. Hurley,

Manager, Air Traffic Division, New England Region.

[FR Doc. 96–13424 Filed 5–28–96; 8:45 am]

BILLING CODE 4910–B–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

15 CFR Part 2011

Implementation of Tariff-Rate Quota for Imports of Sugar

AGENCY: Office of the United States Trade Representative (USTR).

ACTION: Final rule.

SUMMARY: This rule makes final the interim final rule published on October 4, 1990 in the Federal Register governing certificates of quota eligibility for imports of sugar, specialty sugar, and allocations for ''Other Specified Countries and Areas'', with a change responding to comments received on that interim final rule and with conforming changes to reflect the entry into force of the Agreement Establishing the World Trade Organization (WTO).

EFFECTIVE DATE: May 29, 1996.

ADDRESSES: Office of the United States Trade Representative, Office of Agricultural Affairs, 600 17th Street NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Thomas Perkins, Senior Economist for Agricultural Affairs, Room 421, Office of the United States Trade Representative, Washington, DC 20506; telephone: (202) 395–6127.

SUPPLEMENTARY INFORMATION: As a result of the Uruguay Round Agreements, approved by the Congress in section 101 of the Uruguay Round Agreements Act (URAA) (Pub. L. 103–465), the United States has replaced the previous tariff-rate quota (TRQ) for imports of certain sugars, syrups, and molasses with a new tariff-rate quota provided in Schedule XX—United States of America annexed to the Marrakesh Protocol to the General Agreement on Tariffs and Trade 1994 (GATT 1994). Pursuant to section 111 of the URAA, the President proclaimed a number of changes to the Harmonized Tariff Schedule of the United States (HTS) to implement the new sugar TRQ (President Proclamation No. 6763 of December 23, 1994). The changes include, among other things, changes in the HTS item numbers for imports of sugar, the deletion of notes to the HTS, and the proclaiming of new notes to the HTS.

A number of conforming changes need to be made to the sugar regulations issued by the United States Trade Representative (USTR) to reflect these changes to the HTS. This rule makes those conforming changes, as well as some technical and clerical amendments. Those conforming changes include correcting the references to the HTS to reflect the new HTS item numbers and removing subpart C as unnecessary in light of the fact that the allocations under the new TRQ will be announced annually.

In addition, when the United States Trade Representative promulgated the current rule on October 4, 1990 (55 FR 40648), it did so as an interim rule and invited public comments. This rule includes an amendment to the definition of specialty sugar in response to the comments received.

Summary of Issues Raised by Public Comments

Four public comments were received.

Specialty Sugars

One commenter requested that certain edible sugar decorations be added to the list of products eligible for potential treatment as ''specialty sugars.'' Pursuant to this public comment, this final rule adds to that list sugar decorations. Two informal comments that were received after the December 4, 1990, deadline requested that various other specified sugar products be added to the list of products eligible for treatment as ''specialty sugars.'' The Office of the United States Trade Representative, responding to these written comments, has added to the list: golden granulated sugar, muscovado, molasses sugar and sugar cubes. The United States Trade Representative has determined that these specific items are appropriate because they represent specialty sugars within the normal commerce of the United States.

The United States Trade Representative also has determined that it is appropriate to provide in the definition for other forms of sugar determined by the United States Trade Representative to be specialty sugar products within the normal commerce of the United States.

Another commenter requested that rock candy be removed from the list of products which are eligible for potential treatment as specialty sugar. The commenter's suggestion was not adopted primarily because rock candy appears to qualify as specialty sugar.

Reallocation of Quota Shortfalls

Finally, a commenter suggested that the rule contain a provision that if a country were not fully utilizing its allocation under the tariff-rate quota, then that country's allocation would be automatically reallocated to other countries. The commenter's suggestion was not adopted in the final rule because a general provision to that effect is unnecessary given alternative means by which unused allocations may be reallocated on a case-by-case bais when appropriate. Moreover, the HTS authorizes the USTR, in consultation with the Secretaries of State and Agriculture, to modify or suspend a country's allocation for the remainder of a quota year whenever he or she determines that a country will not be filling such allocation and he or she finds that such action is appropriate to carry out the rights or obligations of the United States under any international agreement to which the United States is a party or is appropriate to promote the economic interests of the United States.

Review

This rule has been determined to be a ''significant regulatory action'' under Executive Order 12866.

Pursuant to the Unfunded Mandates Reform Act of 1995, USTR has assessed the effects of this rulemaking action on state, local, and tribal governments, and the private sector. This action does not compel the expenditure of $100 million or more by any state, local, or tribal government, or by anyone in the private sector, and therefore a statement under section 202 of the Act is not required.

Pursuant to the Paperwork Reduction Act of 1980, the Office of Management and Budget has approved the information collection requirements imposed by this rule under Office of Management and Budget control number 0551–0014. Comments on any burden resulting from the information collection requirements of this regulation may be forwarded to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. These programs are not subject to the provisions of Executive Order 12372 which required intergovernmental consultation with State and local officials.

No regulatory flexibility analysis is required for this rule since neither 5 U.S.C. 553 nor any other provision of law requires publication of a general notice of proposed rulemaking with respect to this rule. However, the United States Trade Representative has also determined that the rule will not have

a significant economic impact on a substantial number of small entities.

List of Subjects in 15 CFR Part 2011

Certificates of quota eligibility, imports, specialty sugars, sugar.

Accordingly, the interim rule amending 15 CFR part 2011 which published at 55 FR 40648 (October 4, 1990) is adopted as a final rule with the following changes:

PART 2011—ALLOCATION OF TARIFF-RATE QUOTA ON IMPORTED SUGARS, SYRUPS AND MOLASSES

1. The authority citation for part 2011 is revised to read as follows:

Authority: 19 U.S.C. 3601, Presidential Proclamation No. 6763, Additional U.S. note 5 to chapter 17 of the Harmonized Tariff Schedule of the United States.

Section 2011.101 is revised to read as follows:

§ 2011.101 General.

This subpart sets forth the terms and conditions under which certificates of quota eligibility will be issued to foreign countries that have been allocated a share of the U.S. sugar tariff-rate quota. Except as otherwise provided in this subpart, sugar imported from a foreign country may not be entered unless such sugar is accompanied by a certificate of quota eligibility. This subpart applies only to the ability to enter sugar at the in-quota tariff rates of the quota (subheadings 1701.11.10, 1701.12.10, 1701.91.10, 1701.99.10, 1702.90.10, and 2106.90.44 of the HTS). Nothing in this subpart shall affect the ability to enter articles at the over-quota tariff rate (subheadings 1701.11.50, 1701.12.50, 1701.91.30, 1701.99.50, 1702.90.20, 2106.90.46).

3. Section 2011.102 is amended by redesignating paragraphs (g) through (m) as paragraph (h) through (n) respectively, adding a new paragraph (g), and revising paragraphs (a), (c), (e), (f), (j), (k), (l), and (n) (as so redesignated) to read as follows:

§ 2011.102 Definitions.

* * * * *

(a) ''Additional U.S. Note 5'' means additional U.S. Note 5 to chapter 17 of the HTS, including any amendments thereto.

* * * * *

(c) ''Certificate of quota eligibility'' or ''certificate'' means a certificate issued by the Secretary to a foreign country that, when duly executed and issued by the certifying authority of such foreign country, authorizes the entry into the United States of sugar produced in such country.

* * * * *

(e) ''Enter'' or ''Entry'' means to enter or withdraw from warehouse, or the entry or withdrawal from warehouse, for consumption in the customs territory of the United States.

(f) ''Foreign country'' means, for any quota period, any foreign country or area with which an agreement or arrangement described in section 2011.106 is in effect for that quota period and to which the United States Trade Representative has allocated a particular quantity of the quota.

(g) ''HTS'' means the Harmonized Tariff Schedule of the United States.

* * * * *

(j) ''Quota'' means the tariff-rate quota on imports of sugar provided in additional U.S. Note 5.

(k) ''Quota period'' means the period October 1 of a calendar year through September 30 of the following calendar year.

(1) ''Raw value'' has the meaning provided in additional U.S. Note 5.

* * * * *

(n) ''Sugar'' means sugars, syrups, and molasses described in subheadings 1701.11.10, 1701.12.10, 1701.91.10, 1701.99.10, 1702.90.10, and 2106.90.44 of the HTS, but does not include for any foreign country for any quota period specialty sugars as defined in subpart B of this part if a quantity of the quota for that quota period has been reserved for specialty sugars and an amount of that quota quantity has been allocated to that country.

4. Section 2011.103 is amended by revising paragraphs (a) and (b)(3) to read as follows:

§ 2011.103 Entry into the United States.

(a) General. Except as otherwise provided in §§ 2011.104, 2011.109, and 2011.110, no sugar that is the product of a foreign country may be permitted entry unless at the time of entry the person entering such sugar presents to the appropriate customs official a valid and properly executed certificate of quota eligibility for such sugar.

(b) * * *

(3) This paragraph (b) shall not affect the manner in which the amount of sugar (raw value) entered is determined fo purposes of administering the quota.

5. Section 2011.104(a) is revised to read as follows:

§ 2011.104 Waiver.

(a) General. The Secretary may waive, with respect to individual shipments, any or all of the requirements of this subpart if he or she determines that a waiver will not impair the proper operation of the sugar quota system, that it will not have the effect of modifying the allocation of sugar made pursuant to the provisions of subdivision (b) of additional U.S. Note 5, and that such waiver is justified by unusual, unavoidable, or otherwise appropriate circumstances. Such circumstances include, but are not limited to, loss or destruction of the certificate, unavoidable delays in transmittal of the certificate to the port of entry, and clerical errors in the execution or issuance of the certificate.

* * * * *

6. Section 2011.105(b) is revised to read as follows:

§ 2011.105 Form and applicability of certificate.

* * * * *

(b) Other limitations. The Secretary may attach such other terms, limitations, or conditions to individual certificates of quota eligibility as he or she determines are appropriate to carry out the purposes of this subpart, provided that such other terms, limitations, or conditions will not have the effect of modifying the allocation of sugar made pursaunt to the provisions of subdivision (b) of additional U.S. Note 5. Such terms, limitations, or conditions may include, but are not limited to, maximum quantities per certificate and a specified period of time during which the certificate shall be valid. In no event shall the maximum quantity per certificate exceed 10,000 short tons.

* * * * *

7. Section 2011.107(b) introductory text is revised to read as follows:

§ 2011.107 Issuance of certificates to foreign countries.

* * * * *

(b) Adjustments. The Secretary may adjust the amount of certificates issued to a certifying authority for any quota period, provided that such adjustment will not have the effect of modifying the allocation of sugar made pursaunt to the provisions of subdivision (b) of additional U.S. Note 5 to reflect:

* * * * *

8. Section 2011.109(a) is revised to read as follows:

§ 2011.109 Suspension or revocation of individual certificates.

(a) Suspension or revocation. The Secretary may suspend, revoke, modify or add further limitations to any certificate if the Secretary determines that such action or actions is necessary to ensure the effective operation of the import quota system for sugar and that

such suspension, revocation, modification or addition of further limitations will not have the effect of modifying the allocation of sugar made pursuant to the provisions of subdivision (b) of additional U.S. Note 5.

* * * * *

9. Section 2011.201 is revised to read as follows:

§ 2011.201 General.

This subpart sets forth the terms and conditions under which certificates will be issued to U.S. importers for importing specialty sugars from specialty sugar source countries. Specialty sugars imported from specialty sugar source countries may not be entered unless accompanied by a specialty sugar certificate. This subpart applies only to the ability to enter specialty sugar at the in-quota tariff rates of the quota (subheadings 1701.11.10, 1701.12.10, 1701.91.10, 1701.99.10, 1702.90.10, and 2106.90.44 of the HTS). Nothing in this subpart shall affect the ability to enter articles at the over-quota tariff rate (subheadings 1701.11.50, 1701.12.50, 1701.91.30, 1701.99.50, 1702.90.20, 2106.90.46).

10. Section 2011.202 is amended by removing paragraph (g), redesignating paragraphs (h) through (j) as paragraphs (g) through (i), respectively, revising paragraphs (b), (c), (f), (g), and (i), as redesignated, and adding a new paragraph (j) as follows:

§ 2011.202 Definitions.

* * * * *

(b) ''Certificate'' means a specialty sugar certificate issued by the Certifying Authority permitting the entry of specialty sugar.

(c) ''Certifying Authority'' means the Team Leader, Import Quota Programs, Foreign Agricultural Service, U.S. Department of Agriculture, or his or her designee.

* * * * *

(f) ''Person'' means any individual, partnership, corporation, association, estate, trust, or other legal entity, and, wherever applicable, any unit, instrumentality, or agency, of a government, domestic or foreign.

(g) ''Quota'' means the tariff-rate quota on imports of sugar provided in additional U.S. Note 5 to chapter 17 of the Harmonized Tariff Schedule of the United States.

* * * * *

(i) ''Specialty sugar'' means brown slab sugar (also known as slab sugar candy), pearl sugar (also known as perl sugar, perle sugar, and nibs sugar), vanilla sugar, rock candy, demerara sugar, dragees for cooking and baking, fondant (a creamy blend of sugar and glucose), ti light sugar (99.2% sugar with the residual comprised of the artificial sweeteners aspartame and acesulfame K), caster sugar, golden syrup, ferdiana granella grossa, golden granulated sugar, muscovado, molasses sugar, sugar decorations, sugar cubes, and other sugars, as determined by the United States Trade Representative, that would be considered specialty sugar products within the normal commerce of the United States, all of which in addition:

(1) are sugars, syrups, or molasses described in subheading 1701.11.10, 1701.12.10, 1701.91.10, 1701.99.10, 1702.90.10, or 2106.90.44 of the Harmonized Tariff Schedule of the United States,

(2) are the product of a specialty sugar source country, and

* * * * *

(j) ''Specialty sugar source country'' means any country or area to which the United States Trade Representative has allocated an amount of the quantity reserved for the importation of specialty sugars under additional U.S. Note 5 to chapter 17 of the Harmonized Tariff Schedule of the United States.

11. Section 2011.203 is amended by revising paragraphs (a) and (c) to read as follows:

§ 2011.203 Issuance of specialty sugar certificates.

(a) Specialty sugars imported into the United States from specialty sugar source countries may be entered only if such specialty sugars are accompanied by a certificate issued by the Certifying Authority.

* * * * *

(c) Subject to quota availability, an unlimited number of complying shipments may enter under a given certificate and a given certificate may cover more than one type of specialty sugar. Issuance of a certificate does not guarantee the entry of any specific shipment of specialty sugar, but only permits entry of such sugar if the amount allocated to the specialty sugar source country is not already filled.

12. Section 2011.204 is revised to read as follows:

§ 2011.204 Entry of specialty sugars.

An importer or the importer's agent must present a certificate to the appropriate customs official at the date of entry of specialty sugars. Entry of specialty sugars shall be allowed only in conformity with the description of sugars and other conditions, if any, stated in the certificate.

13. Section 2011.206 is amended by revising paragraph (c) to read as follows:

§ 2011.206 Suspension or revocation of individual certificates.

* * * * *

(c) The determination of the Certifying Authority under paragraph (a) that the importer has failed to comply with the requirements of this subpart may be appealed to the Director, Import Policy and Trade Analysis Division, Foreign Agricultural Service (FAS), U.S. Department of Agriculture, Washington, D.C. 20250, within 30 days from the date of suspension or revocation. The request for reconsideration shall be presented in writing and shall specifically state the reason or reasons why such determination should not stand. The Director shall provide such person with an opportunity for an informal hearing on such matter. A further appeal may be made to the Administrator, FAS, U.S. Department of Agriculture, Washington, D.C. 20250, within five working days of receipt of the notification of the Director's decision. The Certifying Authority may take action under paragraph (b) during the pendency of any appeal.

14. Section 2011.207(a) is revised to read as follows:

§ 2011.207 Suspension of the certificate system.

(a) Suspension. The U.S. Trade Representative may suspend the provisions of this subpart whenever he or she determines that the quota is no longer in force or that this subpart is no longer necessary to implement the quota. Notice of such suspension and the effective date thereof shall be published in the Federal Register.

* * * * *

15. Subpart B of part 2011 is amended by adding § 2011.208 to read as follows:

§ 2011.208 Paperwork Reduction Act assigned number.

The Office of Management and Budget (OMB) has approved the information collection requirements contained in the regulations in this subpart in accordance with 44 U.S.C. Chapter 25 and OMB control number 0551–0014 has been assigned with corresponding clearance effective through April 30, 1997.

Subpart C—[Removed]

16. Subpart C of part 2011 is removed.

Signed at Washington, D.C. on May 15, 1996.

Charlene Barshefsky

Acting United States Trade Representative

[FR Doc. 96–12807 Filed 5–28–96; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 172

[Docket No. 94F–0189]

Food Additives Permitted for Direct Addition to Food for Human Consumption; Dimethyl Dicarbonate

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of dimethyl dicarbonate (DMDC) as a yeast inhibitor in sports drinks and fruit or juice sparklers. This action is in response to a petition filed by Miles, Inc. (now Bayer Corp.).

DATES: Effective May 29, 1996; written objections and requests for a hearing by June 28, 1996.

ADDRESSES: Written objections may be sent to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Martha D. Peiperl, Center for Food Safety and Applied Nutrition (HFS–217), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3077.

SUPPLEMENTARY INFORMATION:

I. Background

In a notice published in the Federal Register of June 28, 1994 (59 FR 33299), FDA announced that a food additive petition (FAP 4A4420) had been filed by Miles, Inc., Mobay Rd., Pittsburgh, PA 15205–9741 (now Bayer Corp., 100 Bayer Rd., Pittsburgh, PA 15205–9741), proposing that the food additive regulations in § 172.133 *Dimethyl dicarbonate* (21 CFR 172.133) be amended to provide for the safe use of DMDC as a yeast inhibitor in sports drinks and fruit or juice sparklers. The petition defines sports drinks as carbonated or noncarbonated, nonjuice-containing (less than or equal to 1 percent juice), flavored or unflavored beverages containing added electrolytes (5–20 milliequivalents (meq)/liter sodium ion (Na+) and 3–7 meq/liter potassium ion (K+)). Fruit or juice sparklers are defined as carbonated, dilute beverages containing juice, fruit flavor, or both, with juice content not to exceed 50 percent.

DMDC is currently approved in § 172.133 for use as a yeast inhibitor in wine, dealcoholized wine, and low alcohol wine (53 FR 41325, October 21, 1988; and 58 FR 6088, January 26, 1993) and in ready-to-drink tea beverages (59 FR 5317, February 4, 1994) (hereinafter referred to as the October 1988 final rule, the January 1993 final rule, and the February 1994 final rule, respectively).

As discussed below, FDA has evaluated data in the petition and other relevant material and concludes that DMDC is efficacious in preventing the growth of yeasts and molds in sports drinks and fruit or juice sparklers and that the proposed use of DMDC is safe.

II. Determination of Safety

Under the so-called ''general safety clause'' in section 409(c)(3)(A) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348(c)(3)(A)), a food additive cannot be approved for a particular use unless a fair evaluation of the data available to FDA establishes that the additive is safe for that use. FDA's food additive regulations (21 CFR 170.3(i)) define safe as ''a reasonable certainty in the minds of competent scientists that the substance is not harmful under the intended conditions of use.''

The food additive anticancer or Delaney clause in section 409(c)(3)(A) of the act (21 U.S.C. 348(c)(3)(A)) further provides that no food additive shall be deemed to be safe if it is found to induce cancer when ingested by man or animal. Importantly, however, the Delaney clause applies to the additive itself and not to the impurities in the additive. That is, where an additive itself has not been shown to cause cancer, but contains a carcinogenic impurity, the additive is properly evaluated under the general safety clause using risk assessment procedures to determine whether there is a reasonable certainty that no harm will result from the proposed use of the additive, *Scott* v. *FDA*, 728 F.2d 322 (6th Cir. 1984).

III. Safety of DMDC in Sports Drinks and Fruit or Juice Sparklers

DMDC is currently permitted as a yeast inhibitor in wine and wine substitutes (dealcoholized wine and low-alcohol wine) and in ready-to-drink tea beverages under § 172.133. In the October 1988, January 1993, and February 1994 final rules, the agency concluded that, because DMDC decomposes almost immediately after addition to aqueous beverages, there will be virtually no exposure to the additive from the consumption of the above-listed beverages.

Data submitted in the petition to support the proposed use of the additive at levels up to 250 parts per million (ppm) in sports drinks and fruit or juice sparklers are consistent with these findings. Specifically, data from a study of sparkling juice drink formulated with 250 ppm DMDC showed no detectable amount of the additive (limit of detection (LOD) = 40 parts per billion (ppb)) after 4 hours (Ref. 1). A study of water with 250 ppm DMDC added yielded the same result (Ref. 1). Based on these data and data incorporated from the petition that resulted in the October 1988 final rule (FAP 2A3636), the agency concludes that there will be virtually no consumer exposure to DMDC, per se, from the use of the additive in sports drinks and fruit or juice sparklers. Therefore, FDA concludes that DMDC itself presents no hazard to the consumer.

IV. Safety of Substances That May be Present in Sports Drinks and Fruit or Juice Sparklers Due to the Use of the Additive

DMDC is unstable in aqueous solution and breaks down almost immediately after addition to beverages. In aqueous liquids, the principal breakdown products are methanol and carbon dioxide. Dimethyl carbonate (DMC) may be present as an impurity in DMDC. Section 172.133 sets a specification of 0.2 percent DMC in DMDC. DMDC also may react with traces of ammonium ions in beverages to produce methyl carbamate (MC), a known carcinogen.

In previous evaluations of DMDC, the agency, in accordance with § 171.1 (21 CFR 171.1), reviewed the safety not only of DMDC but also of its decomposition products in aqueous beverages. The results of the agency's analysis of the additive's use in wine and wine substitutes were discussed extensively in the October 1988 and January 1993 final rules, and its use in ready-to-drink tea beverages was discussed in the February 1994 final rule. The agency applied the same type of analysis as in past reviews to its review of the petitioned use of DMDC. Aspects of the safety evaluation that were not previously addressed in final rules for other uses of DMDC are discussed below.

A. Methanol

As stated in previous final rules on DMDC, the tolerable (safe) level of exposure to methanol is 7.1 to 8.4 milligrams per kilogram body weight per day (mg/kg body weight/day), or approximately 426 to 504 mg/person/day for a 60 kg adult. FDA estimates that the cumulative methanol exposure for a consumer at the 90th percentile from its presence naturally in untreated fruit juice and wine and from all uses of

DMDC, including its currently regulated uses and the proposed use in sports drinks and fruit or juice sparklers, is 59 mg/person/day (Ref. 2). This estimate is based on a maximum level of methanol that can be derived from DMDC of 48.7 ppm methanol per 100 ppm DMDC used. This level is less than one-seventh of the tolerable safe level. The agency, therefore, concludes that there is an adequate margin of safety between total methanol consumption from all sources, including the petitioned use of DMDC, and the amount of methanol that can be safely ingested.

B. Methyl Carbamate

The reaction of ammonium ions in beverages with DMDC produces MC, a known carcinogen. The petitioner provided data showing that MC was detected at a level of 3.7 ppb in a fruit sparkler formulated with 250 ppm DMDC. MC was not detected in DMDC-treated sports drinks, using an analytical method with an LOD of 0.5 ppb. Using the residual level of 3.7 ppb and the LOD of 0.5 ppb for MC in fruit sparklers and sports drinks, respectively, the agency estimates the exposure to MC for all ages from the petitioned use of DMDC to be 1.5 microgram/person/day at the 90th percentile (Ref. 1). Using established procedures for quantitative risk assessment, the agency estimates that the 90th percentile upper-bound lifetime risk from potential exposure to MC from the petitioned use of DMDC is 1.5×10^{-8}, or less than 1 in 67 million, and the 90th percentile upper-bound lifetime risk from exposure to MC from all approved and petitioned uses of DMDC is 1.8×10^{-8}, or less than 1 in 56 million (Refs. 1 and 3).

Therefore, the agency concludes that there is a reasonable certainty of no harm from the exposure to MC that may result from the use of up to 250 ppm of DMDC in sports drinks and fruit or juice sparklers.

V. Conclusion on Safety

FDA has evaluated all of the data in the petition pertaining to the use of DMDC in sports drinks and fruit or juice sparklers, as well as other data in its files, and concludes that the additive is safe for its proposed use.

To ensure the safe use of the additive in sports drinks and fruit or juice sparklers, FDA, under 21 U.S.C. 348(c)(1)(A), finds that it is necessary to require directions on the food additive label limiting the level of use of the additive in these beverages to 250 ppm.

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

VI. Environmental Impact

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

The agency received one comment on the environmental assessment in response to the filing notice published in the Federal Register of June 28, 1994 (59 FR 33299). The comment states that approval of the subject additive could have two environmental benefits due to switching from hot-fill bottling of sports drinks and sparklers to cold-fill. The comment claims that this switch could greatly reduce water usage in the bottling process and could reduce cooling water flow into municipal wastewater treatment plants. However, the comment did not provide quantitative data on the magnitude of the claimed environmental benefits of the approval of this petition. FDA has concluded that the comment does not affect the agency's determination that the approval of this petition will have no significant impact on the environment. This comment can be seen at the Dockets Management Branch, along with the petitioner's environmental assessment and the agency's finding of no significant impact.

VII. Objections

Any person who will be adversely affected by this regulation may at any time on or before June 28, 1996, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

VIII. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Memorandum from the Chemistry Review Branch to the Direct Additives Branch, ''FAP 4A4420–Dimethyl Dicarbonate as a Yeast Inhibitor in Sports Drinks and in Fruit or Juice Sparkling Beverages,'' dated July 8, 1994.

2. Memorandum from the Chemistry Review Branch to the Direct Additives Branch, ''FAP 4A4420–DMDC as a Yeast Inhibitor in Sports Drinks and Sparkling Fruit or Juice Beverages. Background Methanol Exposure,'' dated May 8, 1996.

3. Memorandum from the Direct Additives Branch to the Quantitative Risk Assessment Committee, ''Estimation of the Upper-Bound Lifetime Risk from Methyl Carbamate (MC) Formed by the Reaction of Ammonium Ions with Dimethyl Dicarbonate (DMDC) During the Use of DMDC as Requested in FAP 4A4420 (Miles Inc.),'' dated May 23, 1995.

List of Subjects in 21 CFR Part 172

Food additives, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 172 is amended as follows:

PART 172—FOOD ADDITIVES PERMITTED FOR DIRECT ADDITION TO FOOD FOR HUMAN CONSUMPTION

1. The authority citation for 21 CFR part 172 continues to read as follows:

Authority: Secs. 201, 401, 402, 409, 701, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 342, 348, 371, 379e).

2. Section 172.133 is amended by adding new paragraphs (b)(3) and (b)(4)

and by revising paragraph (c)(2) to read as follows:

§ 172.133 Dimethyl dicarbonate.

* * * * *

(b) * * *

(3) Inhibitor of yeast in carbonated or noncarbonated, nonjuice-containing (less than or equal to 1 percent juice), flavored or unflavored beverages containing added electrolytes (5–20 milliequivalents (meq)/liter sodium ion (Na+) and 3–7 meq/liter potassium ion (K+)). The additive may be added to the beverage in an amount not to exceed 250 ppm.

(4) Inhibitor of yeast in carbonated, dilute beverages containing juice, fruit flavor, or both, with juice content not to exceed 50 percent. The additive may be added to the beverage in an amount not to exceed 250 ppm.

(c) * * *

(2) Directions to provide that not more than 200 ppm of dimethyl dicarbonate will be added to the wine, dealcoholized wine, or low alcohol wine and not more than 250 ppm of dimethyl dicarbonate will be added to the ready-to-drink tea or to the beverages described in parts (b)(3) and (b)(4) of this section.

Dated: May 17, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–13303 Filed 5–28–96; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 301 and 602

[TD 8671]

RIN 1545–AS83

Taxpayer Identifying Numbers (TINs)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to requirements for furnishing a taxpayer identifying number on returns, statements, or other documents. These regulations set forth procedures for requesting a taxpayer identifying number for certain alien individuals for whom a social security number is not available. These numbers are called ''IRS individual taxpayer identification numbers.'' These regulations also require foreign persons to furnish a taxpayer identifying number on their tax returns.

DATES: These regulations are effective May 29, 1996.

For dates of applicability of these regulations, see § 301.6109–1(h).

FOR FURTHER INFORMATION CONTACT: Lilo A. Hester, (202) 874–1490 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has 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 number 1545–1461.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The estimated annual burden for the collection of information contained in § 301.6109–1(d) is reflected in the burden of Form W–7.

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

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 June 8, 1995, the IRS published in the Federal Register (60 FR 30211) the withdrawal of the notice of proposed rulemaking published in the Federal Register on September 27, 1990 at 55 FR 39427, a notice of proposed rulemaking, and a notice of public hearing relating to taxpayer identifying numbers as contained in the Income Tax Regulations (26 CFR part 301) under section 6109 of the Internal Revenue Code (Code).

Written comments responding to the notice of proposed rulemaking were received, and a public hearing was held on September 28, 1995. After consideration of all the comments, the proposed regulations under 6109 of the Code are adopted as revised by this Treasury decision. The comments and revisions are discussed below.

Explanation of Provisions and Revisions

A. Principal Changes

Section 6109 of the Code generally provides that, when required by regulations, a person must furnish a taxpayer identifying number (TIN) for securing proper identification of that person on any return, statement, or other document made under the Code. The notice of proposed rulemaking contains two principal changes to the existing regulations. The first change is the introduction of a new IRS-issued TIN, called an IRS individual taxpayer identification number (ITIN), for use by alien individuals, whether resident or nonresident, who currently do not have, and are not eligible to obtain, social security numbers. The Social Security Administration generally limits its assignment of social security numbers to individuals who are U.S. citizens and alien individuals legally admitted to the United States for permanent residence or under other immigration categories which authorize U.S. employment. Therefore, this change is designed to help taxpayers (who need a TIN but cannot qualify for a social security number) maintain compliance with TIN requirements under the Code and regulations.

The second change is to modify the existing rule set forth in § 301.6109–1(g) that currently excludes from the general requirement of providing a TIN, foreign persons that do not have either (1) income effectively connected with the conduct of a U.S. trade or business or (2) a U.S. office or place of business or a U.S. fiscal or paying agent. Under these regulations, the exclusion is modified to require that any foreign person who makes a return of tax (i.e., income, gift, and estate tax returns, amended returns, or refund claims, but excluding information returns) furnish its TIN on that return. This change is intended to address the IRS' and Treasury's concern that, without TINs, taxpayers cannot be identified efficiently and tax returns cannot be processed effectively.

B. Comments

Regarding the assignment of ITINs under § 301.6109–1(d)(3)(iii) of the proposed regulations, commentators suggested that the IRS develop a process whereby either (1) the Social Security Administration (SSA) issues the ITIN when the individual is not eligible for a social security number, or (2) the Immigration and Naturalization Service (INS) (within the Department of Justice) and the U.S. consulate offices (within the Department of State) issue the ITIN

when issuing a U.S. visa. These suggestions were not adopted. The IRS is the most appropriate federal agency to assign the ITIN because the number is intended for tax use only. Having the IRS as the sole issuer of ITINs will facilitate the general public's acceptance of the fact that the assignment of an ITIN creates no inference regarding the immigration status of an alien individual or the right of that individual to be legally employed in the United States. Over the past few years, the IRS has had extensive discussions with the SSA, the INS, and the State Department regarding the IRS' development of a new numbering system. These agencies concur that the IRS is the appropriate initiator of a numbering system dedicated solely for tax purposes, and have expressed a willingness to support the IRS' efforts to develop the system, to disseminate information about obtaining an ITIN, and to otherwise facilitate IRS' assignment of the ITINs.

Regarding the IRS' solicitation of comments and suggestions regarding the type of documents that could be accepted to verify reliably a taxpayer's identity and foreign status, the commentators suggested passports and immigration documentation. This suggestion is already included partially in the proposed regulations which state that examples of acceptable documentary evidence may include items such as ''passport, driver's license, birth certificate, identity card or U.S. visa.'' However, the proposed regulations use the term *U.S. visa* rather than the term *immigration documentation*. The term *immigration documentation* is broader in scope than the term *U.S. visa*, and encompasses various identifying documents (including a U.S. visa) required by U.S. immigration laws to support an alien's request for entry, and entry, into the United States. As such, § 301.6109–1(d)(3)(iii) of the final regulations has been revised to substitute the term *immigration documentation* for the term *U.S. visa*.

Regarding the role of acceptance agents under § 301.6109–1(d)(3)(iv) of proposed regulations, some commentators suggested that acceptance agents should only be required to provide the necessary forms to the ITIN applicant and to forward the completed forms, together with copies of required documentation, to the IRS in order to avoid being held responsible for applicant's errors or being considered as the applicant's tax advisor. The adoption of this suggestion was not necessary because, under the proposed regulations, the precise role of an acceptance agent is a matter to be decided by written agreement between the particular person and the IRS. Under an agreement with the IRS, an acceptance agent could act as a conduit of information between the IRS and the applicant as suggested by the commentators or could take a more active role in the process by assuming responsibility for reviewing the required documentation and providing the necessary representations to the IRS for the issuance of a number. In the latter case, the acceptance agent would generally not be required to furnish any underlying documentation to the IRS, except as part of a verification process by which the IRS may periodically verify the agent's compliance with the agreement. Even in that case, the acceptance agent would not be considered a tax return preparer for purposes of section 7216 if it acted within the terms of the agreement with the IRS. In addition, under this agreement, an acceptance agent would not be responsible for an ITIN applicant's errors as long as the acceptance agent exercises due diligence under the agreement. The IRS is preparing further guidance on acceptance agent agreements.

The rule proposed in § 301.6109–1(b)(2)(iv) that would require foreign persons to furnish a TIN when making a return of tax has been restated to clarify that making a return of tax includes filing an amended return or a claim for refund. In addition, regarding this rule, commentators asked whether Form SS–4, Application for Employer Identification Number, is a return of tax for this purpose. For purposes of this rule, a return of tax includes income, estate, and gift tax returns, amended returns, or refund claims but excludes information returns, statements or other documents. Form SS–4 is a statement or document but not a return of tax; therefore, the foreign persons described in § 301.6109–1(b)(2)(iv) of the proposed regulations are not required to obtain an ITIN in order to sign a Form SS–4. For example, a foreign individual signing Form SS–4 as a principal officer of a corporation need not obtain an ITIN for the sole purpose of signing the form. See for comparison, however, § 301.6109–1(d)(4)(ii) regarding the requirement to furnish a previously-issued ITIN on Form SS–4 when a foreign individual is required to obtain an employer identification number for such individual's own business purposes. No further clarification is needed in these regulations.

Regarding the proposed regulations becoming effective for any return, statement, or other document filed after December 31, 1995, commentators suggested that the effective date be delayed. This suggestion was adopted. Accordingly, the final regulations are generally effective on the date of publication in the Federal Register, except that the requirement for an estate to obtain an employer identification number applies on and after January 1, 1984, and the requirement for a foreign person as described in § 301.6109–1(b)(2)(iv) to furnish a TIN on a tax return is effective for tax returns filed after December 31, 1996. The IRS will begin accepting applications for ITINs (Form W–7) on or after July 1, 1996.

Special Analyses

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

Drafting Information

The principal author of these regulations is Lilo A. Hester of the Office of Associate Chief Counsel (International), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

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 301 and 602 are amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

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

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

Section 301.6109–1 also issued under 26 U.S.C. 6109 (a), (c), and (d). * * *

Par. 2. Section § 301.6109–1 is amended as follows:

1. Paragraphs (a)(1), (b), (c), and (d)(2) are revised.

2. Paragraphs (d)(3) and (4) are added.

3. Paragraphs (f), (g), and (h) are revised.

The revisions and additions read as follows:

§ 301.6109–1 Identifying numbers.

(a) *In general*—(1) *Taxpayer identifying numbers*—(i) *Types.* There are generally three types of taxpayer identifying numbers: social security numbers, Internal Revenue Service (IRS) individual taxpayer identification numbers, and employer identification numbers. Social security numbers take the form 000–00–0000, IRS individual taxpayer identification numbers take the form 000–00–0000 but begin with a specific number designated by the IRS, and employer identification numbers take the form 00–0000000. Both social security numbers and IRS individual taxpayer identification numbers identify individual persons. For the definition of social security number and employer identification number, see §§ 301.7701–11 and 301.7701–12, respectively. For the definition of IRS individual taxpayer identification number, see paragraph (d)(3) of this section.

(ii) *Uses.* Except as otherwise provided in applicable regulations under this title or on a return, statement, or other document, and related instructions, taxpayer identifying numbers must be used as follows:

(A) Except as otherwise provided in paragraphs (a)(1)(ii) (B) and (D) of this section, an individual required to furnish a taxpayer identifying number must use a social security number.

(B) Except as otherwise provided in paragraph (a)(1)(ii)(D) of this section, an individual required to furnish a taxpayer identifying number but who is not eligible to obtain a social security number, must use an IRS individual taxpayer identification number.

(C) Any person other than an individual (such as corporations, partnerships, nonprofit associations, trusts, estates, and similar nonindividual persons) that is required to furnish a taxpayer identifying number must use an employer identification number.

(D) An individual, whether U.S. or foreign, who is an employer or who is engaged in a trade or business as a sole proprietor should use an employer identification number as required by returns, statements, or other documents and their related instructions.

* * * * *

(b) *Requirement to furnish one's own number*—(1) *U.S. persons.* Every U.S. person who makes under this title a return, statement, or other document must furnish its own taxpayer identifying number as required by the forms and the accompanying instructions. A U.S. person whose number must be included on a document filed by another person must give the taxpayer identifying number so required to the other person on request. For penalties for failure to supply taxpayer identifying numbers, see sections 6721 through 6724. For provisions dealing specifically with the duty of employees with respect to their social security numbers, see § 31.6011(b)-2 (a) and (b) of this chapter (Employment Tax Regulations). For provisions dealing specifically with the duty of employers with respect to employer identification numbers, see § 31.6011(b)-1 of this chapter (Employment Tax Regulations).

(2) *Foreign persons.* The provisions of paragraph (b)(1) of this section regarding the furnishing of one's own number shall apply to the following foreign persons—

(i) A foreign person that has income effectively connected with the conduct of a U.S. trade or business at any time during the taxable year;

(ii) A foreign person that has a U.S. office or place of business or a U.S. fiscal or paying agent at any time during the taxable year;

(iii) A nonresident alien treated as a resident under section 6013(g) or (h); and

(iv) Any other foreign person who, with respect to taxes imposed under this title (including income, estate, and gift taxes), makes a return of tax, an amended return, or a refund claim, but excluding information returns, statements, or documents.

(c) *Requirement to furnish another's number.* Every person required under this title to make a return, statement, or other document must furnish such taxpayer identifying numbers of other U.S. persons and foreign persons that are described in paragraph (b)(2)(i), (ii), or (iii) of this section as required by the forms and the accompanying instructions. If the person making the return, statement, or other document does not know the taxpayer identifying number of the other person, such person must request the other person's number. A request should state that the identifying number is required to be furnished under authority of law. When the person making the return, statement, or other document does not know the number of the other person, and has complied with the request provision of this paragraph, such person must sign an affidavit on the transmittal document forwarding such returns, statements, or other documents to the Internal Revenue Service, so stating. A person required to file a taxpayer identifying number shall correct any errors in such filing when such person's attention has been drawn to them.

(d) * * *

(2) *Employer identification number.* Any person required to furnish an employer identification number must apply for one, if not done so previously, on Form SS–4. A Form SS–4 may be obtained from any office of the Internal Revenue Service, U.S. consular office abroad, or from an acceptance agent described in paragraph (d)(3)(iv) of this section. The person must make such application far enough in advance of the first required use of the employer identification number to permit issuance of the number in time for compliance with such requirement. The form, together with any supplementary statement, must be prepared and filed in accordance with the form, accompanying instructions, and relevant regulations, and must set forth fully and clearly the requested data.

(3) *IRS individual taxpayer identification number*— (i) *Definition.* The term *IRS individual taxpayer identification number* means a taxpayer identifying number issued to an alien individual by the Internal Revenue Service, upon application, for use in connection with filing requirements under this title. The term *IRS individual taxpayer identification number* does not refer to a social security number or an account number for use in employment for wages. For purposes of this section, the term *alien individual* means an individual who is not a citizen or national of the United States.

(ii) *General rule for obtaining number.* Any individual who is not eligible to obtain a social security number and is required to furnish a taxpayer identifying number must apply for an IRS individual taxpayer identification number on Form W–7, Application for IRS Individual Taxpayer Identification Number, or such other form as may be prescribed by the Internal Revenue Service. Form W–7 may be obtained from any office of the Internal Revenue Service, U.S. consular office abroad, or any acceptance agent described in paragraph (d)(3)(iv) of this section. The individual shall furnish the information required by the form and accompanying instructions, including the individual's

name, address, foreign tax identification number (if any), and specific reason for obtaining an IRS individual taxpayer identification number. The individual must make such application far enough in advance of the first required use of the IRS individual taxpayer identification number to permit issuance of the number in time for compliance with such requirement. The application form, together with any supplementary statement and documentation, must be prepared and filed in accordance with the form, accompanying instructions, and relevant regulations, and must set forth fully and clearly the requested data.

(iii) *General rule for assigning number.* Under procedures issued by the Internal Revenue Service, an IRS individual taxpayer identification number will be assigned to an individual upon the basis of information reported on Form W–7 (or such other form as may be prescribed by the Internal Revenue Service) and any such accompanying documentation that may be required by the Internal Revenue Service. An applicant for an IRS individual taxpayer identification number must submit such documentary evidence as the Internal Revenue Service may prescribe in order to establish alien status and identity. Examples of acceptable documentary evidence for this purpose may include items such as an original (or a certified copy of the original) passport, driver's license, birth certificate, identity card, or immigration documentation.

(iv) *Acceptance agents*—(A) *Agreements with acceptance agents.* A person described in paragraph (d)(3)(iv)(B) of this section will be accepted by the Internal Revenue Service to act as an acceptance agent for purposes of the regulations under this section upon entering into an agreement with the Internal Revenue Service, under which the acceptance agent will be authorized to act on behalf of taxpayers seeking to obtain a taxpayer identifying number from the Internal Revenue Service. The agreement must contain such terms and conditions as are necessary to insure proper administration of the process by which the Internal Revenue Service issues taxpayer identifying numbers to foreign persons, including proof of their identity and foreign status. In particular, the agreement may contain—

(*1*) Procedures for providing Form SS–4 and Form W–7, or such other necessary form to applicants for obtaining a taxpayer identifying number; application form together with a certification that the acceptance agent has reviewed the required documentation and that it has no actual knowledge or reason to know that the documentation is not complete or accurate;

(*2*) Procedures for providing assistance to applicants in completing the application form or completing it for them;

(*3*) Procedures for collecting, reviewing, and maintaining, in the normal course of business, a record of the required documentation for assignment of a taxpayer identifying number;

(*4*) Procedures for submitting the application form and required documentation to the Internal Revenue Service, or if permitted under the agreement, submitting the application form together with a certification that the acceptance agent has reviewed the required documentation and that it has no actual knowledge or reason to know that the documentation is not complete or accurate;

(*5*) Procedures for assisting taxpayers with notification procedures described in paragraph (g)(2) of this section in the event of change of foreign status;

(*6*) Procedures for making all documentation or other records furnished by persons applying for a taxpayer identifying number promptly available for review by the Internal Revenue Service, upon request; and

(*7*) Provisions that the agreement may be terminated in the event of a material failure to comply with the agreement, including failure to exercise due diligence under the agreement.

(B) *Persons who may be acceptance agents.* An acceptance agent may include any financial institution as defined in section 265(b)(5) or § 1.165–12(c)(1)(v) of this chapter, any college or university that is an educational organization as defined in § 1.501(c)(3)–1(d)(3)(i) of this chapter, any federal agency as defined in section 6402(f) or any other person or categories of persons that may be authorized by regulations or Internal Revenue Service procedures. A person described in this paragraph (d)(3)(iv)(B) that seeks to qualify as an acceptance agent must have an employer identification number for use in any communication with the Internal Revenue Service. In addition, it must establish to the satisfaction of the Internal Revenue Service that it has adequate resources and procedures in place to comply with the terms of the agreement described in paragraph (d)(3)(iv)(A) of this section.

(4) *Coordination of taxpayer identifying numbers*—(i) *Social security number.* Any individual who is duly assigned a social security number or who is entitled to a social security number will not be issued an IRS individual taxpayer identification number. The individual can use the social security number for all tax purposes under this title, even though the individual is, or later becomes, a nonresident alien individual. Further, any individual who has an application pending with the Social Security Administration will be issued an IRS individual taxpayer identification number only after the Social Security Administration has notified the individual that a social security number cannot be issued. Any alien individual duly issued an IRS individual taxpayer identification number who later becomes a U.S. citizen, or an alien lawfully permitted to enter the United States either for permanent residence or under authority of law permitting U.S. employment, will be required to obtain a social security number. Any individual who has an IRS individual taxpayer identification number and a social security number, due to the circumstances described in the preceding sentence, must notify the Internal Revenue Service of the acquisition of the social security number and must use the newly-issued social security number as the taxpayer identifying number on all future returns, statements, or other documents filed under this title.

(ii) *Employer identification number.* Any individual with both a social security number (or an IRS individual taxpayer identification number) and an employer identification number may use the social security number (or the IRS individual taxpayer identification number) for individual taxes, and the employer identification number for business taxes as required by returns, statements, and other documents and their related instructions. Any alien individual duly assigned an IRS individual taxpayer identification number who also is required to obtain an employer identification number must furnish the previously-assigned IRS individual taxpayer identification number to the Internal Revenue Service on Form SS–4 at the time of application for the employer identification number. Similarly, where an alien individual has an employer identification number and is required to obtain an IRS individual taxpayer identification number, the individual must furnish the previously-assigned employer identification number to the Internal Revenue Service on Form W–7, or such other form as may be prescribed by the Internal Revenue Service, at the time of

application for the IRS individual taxpayer identification number.

* * * * *

(f) *Penalty.* For penalties for failure to supply taxpayer identifying numbers, see sections 6721 through 6724.

(g) *Special rules for taxpayer identifying numbers issued to foreign persons*—(1) *General rule*—(i) *Social security number.* A social security number is generally identified in the records and database of the Internal Revenue Service as a number belonging to a U.S. citizen or resident alien individual. A person may establish a different status for the number by providing proof of foreign status with the Internal Revenue Service under such procedures as the Internal Revenue Service shall prescribe, including the use of a form as the Internal Revenue Service may specify. Upon accepting an individual as a nonresident alien individual, the Internal Revenue Service will assign this status to the individual's social security number.

(ii) *Employer identification number.* An employer identification number is generally identified in the records and database of the Internal Revenue Service as a number belonging to a U.S. person. However, the Internal Revenue Service may establish a separate class of employer identification numbers solely dedicated to foreign persons which will be identified as such in the records and database of the Internal Revenue Service. A person may establish a different status for the number either at the time of application or subsequently by providing proof of U.S. or foreign status with the Internal Revenue Service under such procedures as the Internal Revenue Service shall prescribe, including the use of a form as the Internal Revenue Service may specify. The Internal Revenue Service may require a person to apply for the type of employer identification number that reflects the status of that person as a U.S. or foreign person.

(iii) *IRS individual taxpayer identification number.* An IRS individual taxpayer identification number is generally identified in the records and database of the Internal Revenue Service as a number belonging to a nonresident alien individual. If the Internal Revenue Service determines at the time of application or subsequently, that an individual is not a nonresident alien individual, the Internal Revenue Service may require that the individual apply for a social security number. If a social security number is not available, the Internal Revenue Service may accept that the individual use an IRS individual taxpayer identification number, which the Internal Revenue Service will identify as a number belonging to a U.S. resident alien.

(2) *Change of foreign status.* Once a taxpayer identifying number is identified in the records and database of the Internal Revenue Service as a number belonging to a U.S. or foreign person, the status of the number is permanent until the circumstances of the taxpayer change. A taxpayer whose status changes (for example, a nonresident alien individual with a social security number becomes a U.S. resident alien) must notify the Internal Revenue Service of the change of status under such procedures as the Internal Revenue Service shall prescribe, including the use of a form as the Internal Revenue Service may specify.

(3) *Waiver of prohibition to disclose taxpayer information when acceptance agent acts.* As part of its request for an IRS individual taxpayer identification number or submission of proof of foreign status with respect to any taxpayer identifying number, where the foreign person acts through an acceptance agent, the foreign person will agree to waive the limitations in section 6103 regarding the disclosure of certain taxpayer information. However, the waiver will apply only for purposes of permitting the Internal Revenue Service and the acceptance agent to communicate with each other regarding matters related to the assignment of a taxpayer identifying number and change of foreign status.

(h) *Effective date*—(1) *General rule.* Except as otherwise provided in this paragraph (h), the provisions of this section are generally effective for information that must be furnished after April 15, 1974. However, the provisions relating to IRS individual taxpayer identification numbers apply after May 29, 1996. An application for an IRS individual taxpayer identification number (Form W–7) may be filed at any time on or after July 1, 1996.

(2) *Special rules*—(i) *Employer identification number of an estate.* The requirement under paragraph (a)(1)(ii)(C) of this section that an estate obtain an employer identification number applies on and after January 1, 1984.

(ii) *Taxpayer identifying numbers of certain foreign persons.* The requirement under paragraph (b)(2)(iv) of this section that certain foreign persons furnish a TIN on a return of tax is effective for tax returns filed after December 31, 1996.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 3. The authority for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 4. In § 602.101, the table in paragraph (c) is amended by revising the entry for 301.6109–1 to read as follows:

301.6109–1	1545–0003
	1545–0295
	1545–0367
	1545–0387
	1545–0957
	1545–1461

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: May 20, 1996

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 96–13397 Filed 5–28–96; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 906

[SPATS No. CO–029–FOR]

Colorado Regulatory Program

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

ACTION: Final rule; approval of amendment.

SUMMARY: Office of Surface Mining Reclamation and Enforcement (OSM) is approving a proposed amendment to the Colorado regulatory program (hereinafter referred to as the ''Colorado program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Colorado proposed revisions to and additions of rules pertaining to Colorado's responsibility as regulatory authority for regulating surface coal mining and reclamation operations and coal exploration; definitions; commercial use or sale of coal extracted during coal exploration; public availability of information; right of entry and operation information; public notice and comment on permit applications; procedures for review of permit applications; criteria for permit approval or denial; permit conditions; permit revisions; allowance of self-bonds; terms and conditions for self-bonds; criteria and schedule for release of performance bonds; termination of jurisdiction; performance standards for signs and markers, haul and access roads, effluent standards for discharges

of water from areas disturbed by surface coal mining and reclamation operations, blasting, and coal mine waste returned to underground mine workings; inspection frequency at abandoned sites; inspections based upon citizen requests; enforcement actions at abandoned sites; and show cause orders and patterns of violations involving violations of water quality effluent standards. The amendment was intended to revise the Colorado program to be consistent with the corresponding Federal regulations, incorporate the additional flexibility afforded by the revised Federal regulations, and improve operational efficiency.

EFFECTIVE DATE: May 29, 1996.

FOR FURTHER INFORMATION CONTACT: James F. Fulton, Telephone: (303) 672–5524.

SUPPLEMENTARY INFORMATION:

I. Background on the Colorado Program

On December 15, 1980, the Secretary of the Interior conditionally approved the Colorado program. General background information on the Colorado program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Colorado program can be found in the December 15, 1980, Federal Register (45 FR 82173). Subsequent actions concerning Colorado's program and program amendments can be found at 30 CFR 906.15, 906.16, and 906.30.

II. Proposed Amendment

By letter dated November 20, 1995, Colorado submitted a proposed amendment to its program (administrative record No. CO–675) pursuant to SMCRA (30 U.S.C. 1201 *et seq*.). Colorado submitted the proposed amendment at its own initiative; in partial response to May 7, 1986, and March 22, 1990, letters (administrative record No. CO–282 and CO–496) that OSM sent to Colorado in accordance with 30 CFR 732.17(c); and in response to the requirement that Colorado amend its program at 30 CFR 906.16(a).

OSM announced receipt of the proposed amendment in the December 7, 1995, Federal Register (60 FR 62789), provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy (administrative record No. CO–675–2). Because no one requested a public hearing or meeting, none was held. The public comment period ended on January 8, 1996.

During its review of the amendment, OSM identified apparent typographical errors and a concern relating to the regulatory authority's discretionary acceptance of self bonds. OSM notified Colorado of the typographical errors and concern by letter dated January 25, 1996 (administrative record No. CO–675–8). Colorado responded in a letter dated February 16, 1996, by submitting a revised amendment (administrative record No. CO–675–9).

Based upon the revisions to the proposed program amendment submitted by Colorado, OSM reopened the public comment period in the March 5, 1996, Federal Register (61 FR 8534; administrative record No. CO–675–10). The public comment period ended on March 20, 1996.

III. Director's Findings

As discussed below, the Director, in accordance with SMCRA and 30 CFR 732.15 and 732.17, finds that the proposed program amendment submitted by Colorado on November 20, 1995, is no less effective than the corresponding Federal regulations. Accordingly, the Director approves the proposed amendment.

1. Nonsubstantive Revisions to Colorado's Rules

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

Rule 2.07.3(3)(a)(iii) (30 CFR 773.13(a)(2)), concerning the content of Colorado's written notice upon receipt of applications, to replace the word ''submitted'' with the word ''inspected;''

Rule 2.07.7(1) (30 CFR 773.17), concerning permit conditions, to add ''[t]he'' prior to ''permittee;''

Rule 2.08.6(2)(b)(iii) (30 CFR 774.17(b)(iii), concerning transfer, assignment, or sale of permit rights, to delete an extraneous '';or'' at the end of the subsection; and

Rule 4.08.4(10) (30 CFR 816.67(d)(2)(i)), concerning the table showing the allowed maximum peak particle velocity in blasting operations, by replacing the signature for footnotes ''1'' and ''2'' with the symbol ''†.''

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

2. Substantive Revisions to Colorado's Rules That Are Substantively Identical to the Corresponding Provisions of the Federal Regulations

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

Rule 1.04(1) (30 CFR 840.11(g) and 842.11(e)), concerning the definition of ''Abandoned site;''

Rules 1.04 (31a), (31b), (47a), (71a) (76), (83b), (116) and (135a) (30 CFR 800.23(a)), concerning the respective definitions of ''Current liabilities,'' ''Fixed assets,'' ''Liabilities,'' ''Net worth,'' ''Parent corporation,'' ''Self-bond,'' and ''Tangible net worth;''

Rule 1.04(92) (30 CFR 700.5), concerning the definition of ''Person;''

Rule 2.02.7 (30 CFR 772.14), concerning the commercial use and sale of coal from exploration operations;

Rule 2.07.6(2) (30 CFR 773.15(c)), concerning findings that the State regulatory authority must make prior to approval of applications for permits and permit revisions;

Rules 2.07.7 (6), (7), and (8) (30 CFR 773.17 (a), (b), and (c)), concerning permit conditions;

Rule 2.08.6(4)(a) (30 CFR 774.17(d)(1)), concerning approval of transfer, assignment, or sale of permit rights;

Rules 3.02.4(1)(c) and 3.02.4(2)(e) (30 CFR 800.23 (b) through (f)), concerning the allowance of self-bonding and the conditions for approval of self-bonds;

Rules 3.03.3 (1) and (2) (30 CFR 700.11(d) (1) and (2)), concerning termination of jurisdiction;

Rule 4.11.3 (30 CFR 816.81(f)), concerning return of coal mine waste to underground mine workings;

Rule 5.02.2(4)(b) (30 CFR 840.11(f)(2)), concerning when the State regulatory authority can consider an operation an inactive surface coal mining and reclamation operation; and

Rules 5.03.2(1)(e) and 5.03.2(2)(h) (30 CFR 843.22), concerning enforcement procedures at abandoned sites;

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

3. Rules 1.03.1(1)(a), 2.03.3(8), 2.07.3(2), 2.07.3(2) (e) and (f), 2.07.3(3)(a), 2.07.3(4)(a), 2.07.4(2), and 2.07.4(3) (b) and (c), Permit Applications, Public Notice Requirements, Permit Review and Decision, and Bonding Requirements Prior to Permit Issuance

a. *Rules 1.03.1(1)(a), 2.07.3(2), 2.07.3(3)(a), 2.07.3(4)(a), and 2.07.4(2), Clarification of which permitting procedures apply to technical revisions, permit revisions, permits, or renewals of existing permits.* Colorado proposed to revise Rules 1.03.1(1)(a), 2.07.3(2), 2.07.3(3)(a), 2.07.3(4)(a), and 2.07.4(2), concerning requirements for (1) the applicant's submission of applications,

(2) the applicant's and Colorado's responsibility for public notice, and (3) Colorado's review of and decisions on applications, to clarify which rules apply to technical revisions, permit revisions, new permits, or renewals of existing permits. The requirements of these rules have not otherwise been revised.

The respective counterpart Federal regulations at 30 CFR 701.4(a), 30 CFR 773.13(a)(1), 30 CFR 773.13(a)(3), and 30 CFR 773.15(a)(1) set forth the requirements concerning application submittal, public notice, and the regulatory authority's responsibility for review and decision for minor revisions, significant permit revisions, permits, and permit renewals.

Colorado's requirements for technical revisions correspond to the Federal requirements for minor revisions; Colorado's requirements for permits and permit revisions correspond to the Federal requirements for permits and significant permit revisions. Proposed Rules 1.03.1(1)(a), 2.07.3(2), 2.07.3(3)(a), 2.07.3(4)(a), and 2.07.4(2) clarify the scope of existing requirements in a manner that is consistent with and no less effective than the respective counterpart Federal regulations at 30 CFR 701.4(a), 30 CFR 773.13(a)(1), 30 CFR 773.13(a)(3), 30 CFR 773.15(a)(1). Therefore, the Director approves proposed Rules 1.03.1(1)(a), 2.07.3(2), 2.07.3(3)(a), 2.07.3(4)(a), and 2.07.4(2).

b. *Rule 2.03.3(8), number of applications required to be submitted to the regulatory authority.* Colorado proposed to revise Rule 2.03.3(8) to require that three, rather than five, copies of a permit application with original signatures be submitted to the State.

The Federal regulations at 30 CFR 740.13(b)(2) state that, unless specified otherwise by the regulatory authority, seven copies of the complete permit application package shall be filed with the regulatory authority.

Because Colorado has elected to specify the number of applications that must be submitted, Colorado's proposed Rule 2.03.3(8) is consistent with and no less effective than the Federal regulations at 30 CFR 740.13(b)(2). Therefore, the Director approves proposed Rule 2.03.3(8).

c. *Rules 2.07.3(2) (e) and (f), Contents of public notices for operations affecting public roads.* Colorado proposed to revise Rules 2.07.3(2) (e) and (f), concerning contents of public notices for operations in which the applicant proposes, respectively, (1) that affected areas would be within 100 feet, measured horizontally, of a public road and (2) to close or relocate a public road. Colorado proposed to add to Rules 2.07.3(2) (e) and (f) the requirement that the published notices include—

> A statement indicating that a public hearing in the locality of the proposed mining operation for the purpose of determining whether the interests of the public and affected landowners will be protected may be requested by contacting the Division in writing within 30 days after the last publication of the notice.

The Federal regulations at 30 CFR 773.13(a)(1)(v) require that an applicant (for a permit, significant revision of a permit, or renewal of a permit), if seeking a permit to mine within 100 feet, measured horizontally, of the outside right-of-way of a public road or to relocate or close a public road, must place an advertisement in a local newspaper a concise statement describing the public road, the particular part to be relocated or closed, and the approximate timing and duration of the relocation or closing. The Federal regulations at 30 CFR 761.12(d)(2) require, in such cases, that the regulatory authority or public road authority designated by the regulatory authority shall provide an opportunity for a public hearing in the locality of the proposed mining operation for the purpose of determining whether the interests of the public and affected landowners will be protected.

The requirement that the applicant include in its public notice for a permit application the opportunity for a public hearing on the affect of mining on public roads, which Colorado proposes to add at Rules 2.07.3(2) (e) and (f), is consistent with and no less effective than the requirements in the Federal regulations at 30 CFR 773.13(a)(1) (v) and 761.12(d)(2). Therefore, the Director approves proposed Rules 2.07.3(2) (e) and (f).

d. *Rules 2.07.4(3) (b) and (c), the requirement for performance bond approval prior to permit issuance.* Colorado proposed to revise Rules 2.07.4(3) (b) and (c), concerning its decision on a permit application and the opportunity for public hearing, to clarify that no permit shall be issued until a performance bond has been submitted and approved.

The Federal regulations at (1) 30 CFR 773.15(d) require the regulatory authority, if it decides to approve a permit application, to require that the applicant file the performance bond or provide other equivalent guarantee before the permit is issued and (2) 30 CFR 800.11 (a) and (c) require that after a permit application is approved, but before any new area is disturbed, that the applicant submit and the regulatory authority approve the required performance bond.

The requirement proposed by Colorado at Rules 2.07.4(3) (b) and (c), that no approved permit shall be issued until a performance bond has been submitted and approved, is no less effective than the requirements of the Federal regulations at 30 CFR 773.15(d) and 800.11 (a) and (c). Therefore, the Director approves proposed Rules 2.07.4(3) (b) and (c).

4. Rule 1.04(89), Definition of ''Permit area''

Colorado proposed to revise the definition of ''Permit area'' at Rule 1.04(89) to (1) include the requirement that ''the permit area be identified through a complete and detailed legal description, as required by Rule 2.03.6,'' and (2) delete the requirement that the area ''shall be readily identifiable by appropriate markers on the site.'' Colorado stated that Rule 4.02.3 requires that only the perimeter of all areas affected by surface operations or facilities be identified by markers on site, and does not pertain to the extent of underground operations.

The Federal definition of ''Permit area'' at 30 CFR 701.5 does not include the requirement for a legal description. The requirement in Colorado's proposed definition of ''Permit area'' for identification by legal description would ensure the identification of the extent of both surface and underground coal mining and reclamation operations.

Therefore, the Director finds that Colorado's proposed definition of ''Permit area'' at Rule 1.04(89) is consistent with and no less effective than the Federal definition of ''Permit area'' at 30 CFR 701.5. The Director approves proposed Rule 1.04(89).

5. Rule 2.03.4(10), Permit Application Requirements Concerning Identification of Interests and Compliance Information

Colorado proposes, at Rule 2.03.4(10), to delete the requirement for ''a form approved by the Board'' on which an applicant would submit information required by 2.03.4 and by 2.03.5 (identification of interests and compliance information). The requirement that the required information be submitted in the permit application is otherwise unaltered.

The Federal regulation at 30 CFR 778.13(j) requires that information concerning identification of interests be submitted in any prescribed OSM format that is issued. The OSM format would be applicable only where OSM is the regulatory authority (RA). There is no requirement in the Federal regulation for a State RA to design a format.

Therefore, Colorado's proposed deletion of a required format for information at Rule 2.03.4(10) is no less effective than the Federal regulation at 30 CFR 778.13(j). The Director approves proposed Rule 2.03.4(10).

6. Rule 2.03.6(1), Contents of Permit Applications Pertaining to an Applicant's Legal Right to Enter a Proposed Permit Area

Proposed Rule 2.03.6(1), concerning the contents of permit applications pertaining to an applicant's legal right to enter a proposed permit area, is, with one exception, substantively identical to the Federal regulation at 30 CFR 778.15(a).

The exception is that Colorado proposed to add the requirement for the application to contain a ''complete and detailed legal description of the proposed permit boundary.'' The Federal regulation at 30 CFR 778.15(a) does not include this requirement. However, Colorado's inclusion of the requirement for a legal description of the proposed permit boundary to which the applicant has the legal right to enter adds specificity and is not inconsistent with the Federal regulation at 30 CFR 778.15(a).

Therefore, the Director finds that proposed Rule 2.03.6(1) is no less effective than the Federal regulation at 30 CFR 778.15(a) and approves it.

7. Rule 2.07.5(2)(c), Notice and Hearing Procedures for Persons Seeking and Opposing Disclosure of Confidential Information

OSM required at 30 CFR 906.16(a) (56 FR 1371, January 14, 1991) that Colorado amend its program to provide for notice and hearing procedures for persons seeking and opposing disclosure of confidential information.

Colorado proposed a new Rule 2.07.5(2)(c) that states—

> (I)nformation requested to be held as confidential under 2.07.5(2) shall not be made publicly available until after notice and opportunity to be heard is afforded persons seeking disclosure and those persons opposing disclosure of information and such information is determined by the Board not to be confidential, proprietary information. Information for which disclosure is sought shall not be made available to those persons seeking disclosure prior to or during such opportunity to be heard. Such information shall not be made available until a final decision is made by the Board allowing such disclosure.

The Federal regulations at 30 CFR 773.13(d)(3) require, in part, that the ''regulatory authority shall provide procedures, including notice and opportunity to be heard for persons both seeking and opposing disclosure, to ensure confidentiality of qualified confidential information.'' There is no requirement in the Federal program that the procedures be submitted to OSM for review as a program amendment.

Because Colorado's proposed Rule 2.07.5(2)(c) provides for notice and opportunity to be heard for both parties seeking disclosure and opposing disclosure of information requested to be held confidential, the Director finds that Rule 2.07.5(2)(c) is no less effective than the 30 CFR 773.13(d)(3) and satisfies the requirement that Colorado amend its program at 30 CFR 906.16(a). Therefore, the Director approves proposed Rule 2.07.5(2)(c) and removes the requirement that Colorado amend it program at 30 CFR 906.16(a).

8. Rules 2.07.6(2)(d) and 2.07.6(2)(d)(iii)(E), Findings Which Must be Made by the State Regulatory Authority Prior to Approval of Applications for Permits and Permit Revisions

Colorado proposed to revise Rules 2.07.6(2)(d) and 2.07.6(2)(d)(iii)(E), concerning the findings which must be documented prior to approval of applications for permits or permit revisions, to clarify that the findings pertaining to lands unsuitable for mining apply to the proposed ''affected areas'' rather than to the operations for mining coal within those affected areas. Colorado's definition of ''affected area'' at Rule 1.04(17) is no less effective than the definition of ''affected area'' in the Federal regulations at 30 CFR 701.5.

The Federal regulations at 30 CFR 773.15(c)(3) require findings documenting that the proposed permit area, subject to valid existing rights, is (1) not within an area under study or administrative proceedings under a petition to have an area designated as unsuitable for surface coal mining operations or (2) not within an area designated as unsuitable for mining.

Because the intent of the regulations governing lands unsuitable for mining is to ascertain whether reclamation is technologically and economically feasible, Colorado's proposed revision to clarify that the findings apply to the proposed affected areas rather than to the operations is consistent with the Federal regulations.

Therefore, the Director finds that proposed Rules 2.07.6(2)(d) and 2.07.6(2)(d)(iii)(E) are no less effective than the Federal regulations at 30 CFR 773.15(c)(3). The Director approves proposed Rules 2.07.6(2)(d) and 2.07.6(2)(d)(iii)(E).

9. Rule 2.07.6(2)(d)(iv), Public Notice and Opportunity for Public Hearing Regarding Proposed (1) Operations Located Within 100 Feet of a Public Road or (2) Operations Which Require Closure or Relocation of a Public Road

Colorado proposed to revise Rule 2.07.6(2)(d)(iv) by adding the option for an appropriate public road authority to conduct required hearings and make findings regarding proposed: (1) Operations located within 100 feet, measured horizontally, of a public road or (2) operations which propose to close or relocate a public road. The revisions clarify that it is the responsibility of Colorado to designate a responsible authority, and that either may approve public road relocation, closure, or that the affected area may be within 100 feet of such road. However, the aforementioned may be done only after public notice and opportunity for a public hearing. Moreover, either must make a written finding stating that the interests of the affected public and landowners will be protected.

The Federal regulations at 30 CFR 761.11(d) provide for either the regulatory authority or the appropriate public road authority to provide for public notice and opportunity for a public hearing and to make written findings stating that the interests of the affected public and landowners will be protected.

Because proposed Rule 2.07.6(2)(d)(iv) provides for public notice, opportunity for public hearing, and requirements for written findings that may be implemented by an appropriate public road authority, the Director finds that proposed Rule 2.07.6(2)(d)(iv) is no less effective than the Federal regulations at 30 CFR 761.11(d). Therefore, the Director approves proposed Rule 2.07.6(2)(d)(iv).

10. Rule 2.07.7(9), Permit Condition Requiring Continuous Bond Coverage

Colorado proposed adding a permit condition at Rule 2.07.7(9) which requires continuous bond coverage but allows for adjustment of the bond amount from time to time to reflect changes in the cost of reclamation due to factors such as inflation and market forces.

Proposed Rule 2.07.7(9) has no direct counterpart in the Federal regulations at 30 CFR 773.17 as a condition to a permit. However, the Federal regulations at (1) 30 CFR 773.17(a) require as a permit condition that the permittee conduct operations only on those lands that are subject to the performance bond in effect pursuant to Subchapter J and (2) 30 CFR 800.4(g)

require that the regulatory authority require in the permit that adequate bond coverage be in effect at all times.

Because the permit condition at proposed Rule 2.07.7(9) contains provisions that are consistent with the requirements of the Federal regulations at 30 CFR 773.17(a) and 800.4(g), the Director finds that proposed Rule 2.07.7(9) is no less effective than these Federal regulations. The Director approves proposed Rule 2.07.7(9).

11. Rules 2.08.4 (1) Through (4), Revisions and Revision Application Requirements

With two exceptions, Colorado proposed revisions to Rules 2.08.4 (1) through (4), concerning revisions and revision application requirements, that are editorial in nature. The Federal regulation at 30 CFR 774.13(b)(2) requires that the regulatory authority establish (1) time periods with which it will act on applications for permit revisions and (2) the scale or extent of revisions for which all permit application information requirements and procedures shall apply. The proposed editorial revisions at Rules 2.08.4 (1) through (4) reorganize existing requirements (without altering the substance of the requirements) to more clearly delineate what types of changes in a proposed operation would require either a permit revision, a technical revision, or a minor revision. These editorial revisions are consistent with the corresponding Federal regulation at 30 CFR 774.13(b)(2).

The first exception is the proposed deletion of Rule 2.08.4(1)(c), which requires that the permittee submit a permit revision in order to continue liability insurance policy, capability of self-insurance, or performance bond, upon which the original permit was issued. OSM has no counterpart requirement to this State rule. The Colorado rule proposed for deletion is less effective than the Federal program in that it would allow an operation to be permitted without continuous bond coverage. The deletion of this rule is consistent with the requirements of the Federal regulations at 30 CFR 800.15 (a) through (d) which provide for adjustments in bond amounts, but which require continuous bond coverage.

The second exception is the proposed addition of Rule 2.08.4(1)(d), which requires a permit revision for any extensions to the area covered by a permit, except for incidental boundary revisions. The corresponding Federal regulation at 30 CFR 774.13(d) provides that any extension to the area covered by the permit, except for an incidental boundary revision, shall be made by application for a new permit. However, in Colorado's approved program, the procedural requirements of Rule 2.07 are the same for permit revisions and new permit applications. Furthermore, existing Rule 2.08.4(5)(d) requires for all types of permit revision applications such information as may be necessary to determine if the proposed revision will comply with Colorado's approved program. In the ''Statement of Basis, Specific statutory Authority, and Purpose'' for its August 23, 1988, amendment (administrative record No. 384), Colorado stated that—

> (f) or the Division to make the findings required by Rule 2.07.6(2), which applies to '* * * permit or (permit) revision applications * * *,' it will be necessary for the permittee to submit adequate information pertaining to baseline, operations plan and reclamation plan. Additional information may be requested by the Division if not in sufficient detail pursuant to Rule 2.08.4(4)(d) (recodified as Rule 2.08.4(5)(d)).

OSM interprets this as meaning that all informational requirements applicable to new permits would also be applicable to permit revisions when they involve an extension of area to be covered by a permit other than an incidental boundary change.

Based on the above discussion, the Director finds that the revisions proposed at Rules 2.08.4 (1) through (4) are consistent with and no less effective than the Federal regulations at 30 CFR 774.13(b) (2) and (d) and 800.15 (a) through (d). The Director approves proposed Rules 2.08.4 (1) through (4).

12. Rules 2.08.4(6)(b) (i) and (ii), Public Hearing and Notice Requirements for Technical Revisions

Colorado proposed recodification of existing Rules 2.08.4 (4) and (5) as 2.08.4 (5) and (6). In addition, Colorado proposed: (1) revising Rule 2.08.4(6)(b)(i) to clarify that informal conference procedures do not apply to technical revisions, and (2) adding Rule 2.08.4(6)(b)(ii) to provide a 10-day public comment period for proposed technical revisions. Colorado's defines, at Rule 1.04(136), ''Technical revisions'' to mean—

> A minor change, including incidental permit boundary revisions, to the terms or requirements of a permit issued under these rules, which change shall not cause a significant alteration in the operator's reclamation plan. The term includes, but is not limited to, increases in coal production, reduction or termination of approved environmental monitoring programs, or design changes for regulated structures or facilities.

The Federal regulation at 30 CFR 773.13(c) provides that any person may request an informal conference; however, this provision is applicable only to applications for permits, significant permit revisions, and permit renewals. There is no Federal provision applicable to technical revisions as defined in Colorado's program. Therefore, Colorado's clarification, at proposed Rule 2.08.4(6)(b)(i), that informal conference procedures do not apply to technical revisions is consistent with the Federal regulations at 30 CFR 773.13(c).

Technical revisions, as defined in Colorado's program, are not subject to the requirements in the Federal regulations at 30 CFR 774.13(b)(2) for notice, public participation, and notice of decision. These Federal requirements are applicable to applications for permits and significant permit revisions. Therefore, Colorado's proposed allowance at Rule 2.08.4(6)(b)(ii) for a 10-day comment period on technical revisions provides for a greater degree of public participation than required by the Federal program.

Based on the above discussion, the Director finds that the revisions proposed at Rules 2.08.4(6)(b) (i) and (ii) are consistent with and no less effective than the Federal regulations at 30 CFR 773.13(c) and 774.13(b)(2). The Director approves proposed Rules 2.08.4(6)(b) (i) and (ii).

13. Rule 3.03.1(5), Release of Bond Coverage for Liability Associated With Temporary Drainage and Sediment Control Facilities

Colorado proposed to add Rule 3.03.1(5) which provides that—

> (R)elease of bond coverage for liability associated with temporary drainage and sediment control facilities including impoundments and conveying systems shall be authorized only after final inspection, acceptance, and approval by the Division. Such approval shall be granted based on determination by the Division that backfilling and grading, topsoiling, and reseeding of such facilities have been completed in compliance with the approved plan. Vegetative cover must be adequate to control erosion and similar to the surrounding reclaimed area. Reclaimed temporary drainage control facilities shall not be subject to the extended liability period of 3.03.3(2) or the bond release criteria of 3.03.1(2).

a. *OSM's policy concerning the term of liability for reclamation of temporary sediment control facilities.* Section 515(b)(20) of SMCRA provides that the revegetation responsibility period shall commence ''after the last year of augmented seeding, fertilizing, irrigation, or other work'' needed to assure revegetation success. In the

absence of any indication of Congressional intent in the legislative history, OSM interprets this requirement as applying to the increment or permit area as a whole, not individually to those lands within the permit area upon which revegetation is delayed solely because of their use in support of the reclamation effort on the planted area. As implied in the preamble discussion of 30 CFR 816.46(b)(5), which prohibits the removal of ponds or other siltation structures until 2 years after the last augmented seeding, planting of the sites from which such structures are removed need not itself be considered an augmented seeding necessitating an extended or separate liability period (48 FR 44038–44039, September 26, 1983).

The purpose of the revegetation responsibility period is to ensure that the mined area has been reclaimed to a condition capable of supporting the desired permanent vegetation. Achievement of this purpose will not be adversely affected by this interpretation of section 515(b)(20) of SMCRA since (1) the lands involved are small in size and widely dispersed and (2) the delay in establishing revegetation on these sites is due not to reclamation deficiencies or the facilitation of mining, but rather to the regulatory requirement that ponds and diversions be retained and maintained to control runoff from the planted area until the revegetation is sufficiently established to render such structures unnecessary for the protection of water quality.

Direct support for this proposed exception from statutory responsibility period standards can be found in the fact that, on May 16, 1983, OSM promulgated 30 CFR 816.22(a)(3) and 817.22(a)(3), which, in analogous fashion, provide limited exceptions to the requirement in section 515(b)(5) of SMCRA that the operator remove and save topsoil from all lands to be affected by mining activities. In addition, it may reasonably be argued that the areas from which ponds are removed are likely to be no larger than those areas reseeded or replanted pursuant to normal husbandry practices, for which the Federal regulations do not require restarting of the revegetation responsibility period.

However, nothing in this interpretation of section 515(b)(20) of SMCRA shall be construed as exempting such lands from meeting the revegetation requirements of section 515(b)(19) of SMCRA prior to final bond release. As required by 30 CFR 816.46(b)(6), when siltation structures are removed, the land on which they were located must be regraded and revegetated in accordance with the reclamation plan and the requirements of 30 CFR 816.111 through 816.116, with the exception of 30 CFR 816.116(c), which requires a period of extended responsibility for successful revegetation on reclaimed areas (September 15, 1993, 58 FR 48333).

b. *Comparison of Colorado's proposed Rule 3.03.1(5) with OSM's proposed policy clarification*. Colorado proposed Rule 3.03.1(5) specifies that a bond release decision shall be based ''on determination by the Division that backfilling and grading, topsoiling, and reseeding of such facilities has been completed in compliance with the approved [reclamation] plan.'' Vegetative cover must be adequate to control erosion and similar to the reclaimed area or surrounding undisturbed area. Because the reseeding must be found to be in compliance with the reclamation plan in the approved permit, Colorado has ensured that the vegetation of these reclaimed areas would be subject to (1) Colorado's counterparts to the Federal regulations at 30 CFR 816.111 and 817.111, and (2) those portions of Colorado's counterparts to the Federal regulations at 816.116 and 817.116 related to the attainment of the postmining land use (other than quantitative measurement techniques and liability periods).

Because Colorado's proposed Rule 3.03.1(5) also specifies that vegetative cover must be adequate to control erosion and similar to the reclaimed area or surrounding undisturbed area, the areas where the temporary sediment control structures had been located are expected to be similar to the remainder of the surrounding reclaimed or undisturbed area. This requirement would tend to discourage the removal of ponds or diversions toward the end of the liability period for the surrounding area. If removal of the structures occurs toward the end of the liability period for the larger reclaimed area, the areas where the ponds or diversions existed would not qualify for final bond release until reclamation has been established with some degree of permanence.

Based on the above discussion, the Director finds that Colorado's proposed Rule 3.03.1(5) is consistent with and no less effective than the Federal regulations at 30 CFR 817.46(b) (5) and (6) and sections 515(b) (19) and (20) of SMCRA, as clarified by OSM in the September 15, 1993, Federal Register (58 FR 48333).

14. Rules 4.02.2(2) (a) Through (c), Information Required on Identification Signs

Colorado proposed revising Rule 4.02.2(2)(a), concerning the required information on identification signs displayed at each point of access to the permit area from public roads, to recodify one existing provision as Rule 4.02.2(2)(b), and to add at Rule 4.02.2(2)(c) the requirement that such signs must include the name, address and telephone number of the office where the mining and reclamation permit is filed. With the exception of this added requirement, Rules 4.02.2(2) (a) through (c) are substantively identical to the Federal regulation at 30 CFR 816.11(c)(2).

Colorado's proposed inclusion of the requirement, that the name, address and telephone number of the office where the mining and reclamation permit is filed, provides for information on the mine identification sign that will facilitate the public's ability to participate in the development, revision, and enforcement of regulations, standards, reclamation plans, or programs established by Colorado and is, therefore, not inconsistent with the Federal regulation at 30 CFR 816.11(c)(2).

Based on the above discussion, the Director finds that proposed Rules 4.02.2(2) (a) through (c) are no less effective than the Federal regulation at 30 CFR 816.11(c)(2). The Director approves Rules 4.02.2(2) (a) through (c).

15. Rules 4.03.1(d) (i) and (ii) and 4.03.2(f) (i) and (ii), Engineer's Certification of the construction or Reconstruction of Haul and Access Roads

Colorado proposes to revise Rules 4.03.1(d)(i) and 4.03.2(f)(i) to provide an exemption at Rules 4.03.1(d)(ii) and 4.03.2(f)(ii) from the requirement for an engineer's certification of the construction or reconstruction of haul and access roads that were completed prior to August 1, 1995, if the applicant provides a relevant showing, on a case-by-case basis, which may include monitoring data or other evidence, whether the road meets the performance standards of, respectively, Rules 4.03.1 or 4.03.2.

On August 1, 1995, Colorado promulgated the existing requirement at Rules 4.03.1(d)(i) and 4.03.2(f)(i) for certification of the design and construction of haul and access roads not within the disturbed area. Therefore, proposed Rules 4.03.1(d) (i) and (ii) and 4.03.2(f0 (i) and (ii) provide the exemption from the certification only

for those haul and access roads that existed prior to the promulgation of the requirement, i.e., only for existing structures.

The Federal regulations corresponding to Rules 4.03.1(1)(d) and 4.03.2(1)(f) are at 30 CFR 816.151(a) ad 817.151(a). These regulations became effective on December 8, 1988 (53 FR 45190). Like the State rules, they require the certification of the ''construction and reconstruction'' of primary roads, which are analogous to Colorado's haul and access roads.

OSM has implemented these Federal regulations by requiring the certification of primary roads that were newly constructed or reconstructed on or after December 8, 1998. For a road that existed prior to December 8, 1988, and that an operator continued to use thereafter, OSM has not required a certification but is has required, in accordance with 30 CFR 780.12(a)(4) and 784.12(a)(4), that the operator show that the road meets the performance standards of 30 CFR, Subchapter K. The applicable performance standards in Subchapter K. The applicable performance standards in Subchapter K are at 30 CFR 816.150(b), 816.151 (b) through (e), 817.150(b), and 817.151 (b) through (e).

Colorado's Rule 2.05.3(3)(b)(i)(D) is similar in its requirements to the Federal regulations at 30 CFR 780.12(a)(4) and 784.12(a)(4). This State rule requires for each existing structure (such as an existing road) a ''[s]howing, including relevant monitoring data or other evidence, whether the structure meets the design requirements or performance standards of Rule 4.'' Colorado's exemption requires that the applicant show that the existing haul or access road that existed prior to August 1, 1995, meets the performance standards of Rule 4.03.2. Rule 4.03.2 contains all of the applicable performance standards that correspond to the Federal regulations at 30 CFR 816.150(b), 816.151 (b) through (e), 817.150(b), and 817.151 (b) through (e).

Based on the above discussion, the Director finds that proposed Rules 4.03.1(d) and 4.03.2(f) are consistent with and no less effective than the Federal regulations at 30 CFR 816.151(a) and 817.151(a), concerning roads, and 780.12(a)(4) and 784.12(a)(4), concerning existing structures. The Director approves proposed Rules 4.03.1(d) (i) and (ii) and 4.03.2(f) (i) and (ii).

16. Rules 4.05.2(7), 5.03.3(1)(a), 5.03.3(2)(a) (i) and (ii), and 5.03.3(20(b), Compliance with the Effluent Limitations for Coal Mining Promulgated by the U.S. Environmental Protection Agency Set Forth in 40 CFR Part 434 and Enforcement Procedures Concerning Violations of Effluent Limitations

a. *Rule 44.05.2(7), Compliance with effluent limitations for coal mining.* Colorado proposed to revise Rule 4.05.2(7), concerning water quality standards and effluent limitations, by adding the requirement that the discharges of water from areas disturbed by surface coal mining and reclamation operations shall be made in compliance with the effluent limitations for coal mining promulgated by the U.S. Environmental Protection Agency set forth in 40 CFR part 434, as these rules existed on July 1, 1993.

This requirement is substantively identical to the Federal requirement at 30 CFR 816.42 and 817.42 with the exception that the Federal regulations refer to discharges of water from areas disturbed by ''surface and underground mining activities'' rather than areas disturbed by ''surface coal mining and reclamation operations.''

Colorado defines ''surface coal mining and reclamation operations'' at Rule 1.04(133) to mean surface coal mining operations and all activities necessary and incident to the reclamation of such operations. Colorado's Rule 1.04(132) defines ''surface coal mining operations'' to mean—

(a) (a)ctivities conducted on the surface of lands in connection with a surface coal mine or activities subject to the requirements of Section 34–33–121 of the Act which involve surface operations and surface impacts incident to an underground coal mine. * * * and (b) (t)he areas upon which such activities occur or where such activities disturb and natural land surface. Such areas shall also include an adjacent land the use of which is incidental to any such activities, * * *.

Section 34–33–121 of the Colorado Surface Coal Mining Reclamation Act provides for the surface effects of underground coal mining and Rule 4 sets forth the minimum performance standards and design requirements to be used for surface coal mining and reclamation operations incident to underground mining activities. Colorado defines ''underground mining activities'' at Rule 1.04(144) to mean a combination of

(a) (s)urface operations incident to underground extraction of coal or in situ processing, such as * * *; and (b) (u)nderground operations such as * * *, subject to review for surface and hydrologic impacts in accordance with Rules 2 and 4.

The Federal regulations at 30 CFR 701.5 define ''surface mining activities'' to mean those surface coal mining and reclamation operations incident to the extraction of coal from the earth by removing the materials over a coal seam, before recovering the coal, by auger coal mining, or by the recovery of coal from a deposit that is not in its original geologic location. In addition, these Federal regulations define ''underground mining activities'' to mean a combination of (a) (s)urface operations incident to underground extraction of coal or in situ processing, such as construction, use, maintenance, and reclamation of roads, above-ground repair areas, storage areas, processing areas, shipping areas, areas upon which are sited support facilities including hoist and ventilating ducts, areas utilized for the disposal and storage of waste, and areas on which materials incident to underground mining are placed; and (b) (u)nderground operations such as underground construction, operation, and reclamation of shafts, adits, underground support facilities, in situ processing, and underground mining, hauling, storage, and blasting.

The term ''underground mining activities'' as defined at Colorado's Rule 1.04(144) is substantively identical to the counterpart Federal definition of the same term at 30 CFR 705.1, except Colorado requires that surface operations incident to underground extraction of coal or in situ processing and underground operations are subject to review for surface and hydrologic impacts in accordance with Rules 2 and 4.

Based upon the reference at Rule 1.04(132) to Colorado's Act and Rule 4, which in turn pertain to the surface effects of underground coal mining and underground mining activities, the use of the term ''surface coal mining and reclamation operations'' at Rule 4.05.2(7) is no less effective that the Federal regulations at 30 CFR 816.42 and 817.42 which pertain to surface mining activities and underground mining activities.

Therefore, based upon the above discussion the Director finds that Colorado's proposed Rule 4.05.2(7) is consistent with and no less effective than the Federal regulations at 30 CFR 816.42 and 817.42 pertaining to water quality standards and effluent limitations. The Director approves proposed Rule 4.05.2(7).

b. Rules 5.03.3(1)(a) and 5.03.3(2)(1)(1), (2)(a)(ii), and (2)(b), Enforcement procedures concerning violations of effluent limitations. Colorado proposed to revise Rule

5.03(1)(a), concerning show cause orders, and Rules 5.03.3(2)(a) (i) and (ii) and 5.03.3(2)(b), concerning patterns of violations, to add new language providing that—

Notices of violation issued by the Water Quality Control Division which cite a one day exceedance of the water quality effluent standards referenced in 4.05.22 shall be included by the Division in determining whether a pattern of violations exists.

The Federal regulations at 30 CFR 843.13(a)(1), (2), and (3) which are the Federal counterpart provisions for orders to show cause when it is determined that a pattern of violations exists or has existed, do not contain a separate requirements that notices of violations of the water quality effluent standards shall be considered by the Director in determining whether a pattern of violations exists. However, these same Federal regulations do not exclude violations of water quality effluent limitations from the violations reviewed to determine whether a pattern of violations exists or has existed. In addition, section 521(d) of SMCRA provides that

(a)s a condition of approval of any State program submitted pursuant to section 503 of this Act, the enforcement provisions thereof shall, at a minimum, incorporate sanctions no less stringent than those set forth in this section, and shall contain the same or similar procedural requirements relating thereto. Nothing herein shall be construed so as to eliminate any additional enforcement rights or procedures which are available under State law to a State regulatory authority by which are not specifically enumerated herein.

Colorado's proposed Rules 5.03.3(1)(a), 503.3(2)(a), (i) and (ii), and 5.03.3(2)(b) provide for enforcement procedures that are not specified in the Federal regulations at 30 CFR 843.12(a) (1), (2), and (3). However, the enforcement procedures are consistent with these Federal regulations and with section 521(d) of SMCRA.

Therefore, the Director finds that proposed Rules 5.03.3(1)(a), 503.3(2)(a) (i) and (ii), and 5.03.3(2)(b) are no less stringent than section 521(d) of SMCRA and no less effective than the Federal regulations at 30 CFR 843.13(a) (1), (2) and (3). The Director approves proposed Rules 5.03.3(1)(a), 5.03(2)(a) (i) and (ii), and 5.03.3(2)(b).

17. Rule 4.08.3(2)(b)(i), Blasting Areas

Colorado proposed to revise Rule 4.08.3(2)(b)(i), concerning blasting areas identified in the blasting schedule, by deleting the requirement for specific approval of a blasting area in excess of 300 acres.

The Federal regulations at 30 CFR 864.64(a)(1) do not place limits on blasting areas, but allow the regulatory authority to limit the area covered, timing, and sequence of blasting as listed in the schedule, if such limitations are necessary and reasonable in order to protect the public health and safety or welfare. With the deletion of the requirement for approval of a blasting area in excess of 300 acres, Colorado's proposed Rule 4.08.3(2)(b)(i) is substantively identical to the requirement in the Federal regulations at 30 CFR 816.64(c)(2) which requires that the blasting schedule shall contain identification of the specific areas in which blasting will take place.

Therefore, the Director finds that (1) Colorado's proposed deletion of the requirement for approval of a blasting area in excess of 300 acres from Rule 4.08.3(2)(b)(i) is consistent with and no less effective than the Federal regulations at 30 CFR 864.64(a) (1) and (2) proposed Rule 4.08.3(2)(b)(i) is no less effective than the Federal regulations at 30 CFR 816.64(c)(2). The Director approves proposed Rule 4.08.3(2)(b)(i).

18. Rules 5.02.5(1), 5.02.5(1)(a), and 5.02.5(1)(b)(i), Inspections Based Upon a Citizens' Requests

a. *Rule 5.02.5 (1) and (1)(a), A person's right to request and inspection and Colorado's response time to a person's request for an inspection.* Colorado proposed to revise Rule 5.02.5(1) to provide that any person who believes there is a violation of Colorado's approved program or permit conditions, or that any imminent danger or harm exists, may request an inspection for violations. Colorado proposed to revise Rule 5.02.5(1)(a) to add the provision that the State will conduct such an inspection within 10 days of receipt of a written request, but that if the request gives Colorado sufficient basis to believe that imminent danger or harm exists, the inspection shall be conducted no later than the next day, following the receipt of such a request.

The Federal regulation at 30 CFR 840.11(b)(1)(i) provides that OSM shall immediately conduct a Federal inspection when it has reason to believe on the basis of information available (other than information resulting from a previous Federal inspection) that there exists a violation of the Federal program, permit condition, or that there exists any condition, practice, or violation which creates an imminent danger to the health or safety of the public or is causing or could reasonably be expected to cause a significant, imminent environmental harm to land, air, or water resources.

Colorado's proposed Rule 5.02.5 (1) and (1)(a) differ from the Federal regulation at 30 CFR 840.11(b)(1)(i) in that they distinguish between those citizen's requests that provide sufficient basis to believe that imminent danger or harm exists and those that do not. Colorado has, in effect, defined in its proposed rules the term ''immediately'' which is not defined in the Federal program, nor is it discussed in the preamble to the Federal regulations. The Federal regulations at 30 CFR 840.11(b)(1) do not make a distinction in response time between whether or not a citizen's request provides sufficient reason to believe that imminent danger or harm exists.

However, Colorado's proposal to determine the response time to a citizen's request for an inspection, based on whether there is reason to believe there exists imminent harm or danger, is a reasonable interpretation of the Federal regulations and one that would not result in a response or an inspection that would be less effective than the one required in the Federal regulations. Therefore, the Director finds that Colorado's proposed Rules 5.02.5 (1) and (1)(a) are consistent with and no less effective than the Federal regulation at 30 CFR 840.11(b)(1)(i). The Director approves proposed Rule 5.02.5 (1) and (1)(a).

b. *Rule 5.02.5(1)(b) (i) and (ii), When a citizen's request for inspection gives sufficient reason to believe that there is cause for an inspection.* Colorado proposed to revise Rule 5.02.5(1)(b), which defines when it will have sufficient basis to believe there is cause for an inspection requested by a citizen, by replacing the word ''and'' with the word ''or'' between paragraphs (i) and (ii), so that these proposed rules define the ''sufficient basis to believe'' exists when

(i) (T)he request alleges facts that, if true, would constitute any of the above-described violations; or

(ii) (T)he request either states the basis upon which the facts are known by the requesting citizen or provides other corroborating evidence sufficient to give the Division a basis to believe that the violation has occurred.

The corresponding Federal regulation at 30 CFR 842.11(b)(2) states that an authorized representative shall have reason to believe that a violation, condition or practice exists if the facts alleged by the informant would, if true, constitute a condition, practice or violation referred to in 30 CFR 842.11 (b)(1)(i).

Colorado's existing Rule 5.02.5(1)(b)(i) is substantially identical to the Federal regulation at 30 CFR 842.11(b)(2). Existing Rule 5.02.5(1)(b)(ii) provides a more stringent condition than does Colorado's Rule 5.02.5(1)(b) (i) and the Federal regulation at 30 CFR 842.11(b)(2). However, proposed Rules 5.02.5(1)(b) (i) and (ii) no longer require that a citizen's request for an inspection meet the criterium of Rule 5.02.5(1)(b)(ii), but provide that the criterium at Rule 5.02.5(1)(b)(ii) is optional.

Therefore, the Director finds that Colorado's proposed Rules 5.02.5(1)(b) (i) and (ii) are no less effective than the Federal regulation at 30 CFR 842.11(b)(2) in responding to a citizen's complaint. The Director approves proposed Rules 5.02.5(1) (b) (i) and (ii).

19. Rules 5.02.2(8) (a) Through (c), Inspection Frequency at Abandoned Sites; and Rule 5.03.2(3), Enforcement Procedures at Abandoned Sites

a. *Rules 5.02.2(8) (a) through (c), Inspection frequency at abandoned sites.* Colorado proposed adding Rules 5.02.2(8) (a), (b), and (c), to identify the criteria and requirements for public notice that must be implemented for determining the inspection frequency of abandoned sites.

Proposed Rules 5.02.2(8)(a), (b), and (c) are, with one exception, substantively identical to the Federal regulations at 30 CFR 840.11(h) (1) and (2). The exception is proposed Rule 5.02.2(8)(c), which states that—

(T)he Division shall implement a final inspection frequency based on its findings and any additional information received during the comment period.''

Proposed Rule 5.02.2(8)(c) has no counterpart in the Federal program. This is a declarative statement of the duties of the regulatory authority and does not alter the substance of the requirements concerning the criteria and the requirements for public notice that must be used when determining the inspection frequency of abandoned sites.

Therefore, based on the above discussion, the Director finds that proposed Rules 5.02.2(8) (a) through (c) are no less effective than the respective Federal regulations at 30 CFR 840.11(h) (1) and (2). The Director approves proposed Rules 5.02.2(8) (a) through (c).

b. *Rule 5.03.2(3), Enforcement procedures at abandoned sites.* Colorado proposed revising Rule 5.03.2(3), concerning notices of violation and subsequent failure-to-abate cessation orders (FTACO), by adding the statement that Colorado—

May refrain from issuing a failure-to-abate cessation order for such failure to abate a violation or failure to accomplish an interim step, if the operation is an abandoned site as defined in 1.04(1).

Existing Rule 5.03.2(3) is substantively identical to 30 CFR 843.11(b)(1). However, there is no provision at 30 CFR 843.11(b)(1) concerning enforcement of notices of violation at abandoned sites. The Federal regulations at 30 CFR 843.22 provide that a cessation order need not be issued at an abandoned site if abatement of the violation is required under any previously issued notice or order. Colorado's proposed allowance at Rule 5.03.2(3) to refrain from issuing an FTACO if the site qualifies as an abandoned site would apply only when abatement of the violation is already required under a previously issued notice of violation.

Therefore, based on the above discussion, the Director finds that proposed Rule 5.03.2(3) is no less effective than 30 CFR 843.22. The Director approves proposed Rule 5.03.2(3).

IV. Summary and Disposition of Comments

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

1. Public Comments

OSM invited public comments on the proposed amendment, but none were received.

2. Federal Agency Comments

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

The U.S. Forest Service responded on December 15, 1995, and March 26, 1996, that it had no comments on the proposed amendment (administrative record Nos. CO–675–3 and CO–675–13).

The U.S. Natural Resources Conservation Service responded on December 20 and 21, 1995, that it had no comments on the proposed amendment (administrative record No. CO–675–4).

The U.S. Army Corps of Engineers responded on December 27, 1995, that it had found the proposed amendment to be satisfactory (administrative record No. CO–675–5).

The U.S. Mine Safety and Health Administration (MSHA) responded on December 27, 1995, and March 20, 1996, that the proposed amendment did not conflict with MSHA standards (administrative record Nos. CO–675–7 and CO–675–12).

3. Environmental Protection Agency (EPA) Concurrence and Comments

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

OSM solicited EPA's concurrence with the proposed amendment (administrative record CO–675–1). On April 10, 1996, EPA gave its written concurrence and stated that it had no comments on the proposed revisions (administration record No. CO–675–14).

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

Pursuant to 30 CFR 732.17(h)(4), OSM solicited comments on the proposed amendment from the SHPO and ACHP (administrative record No. CO–675–1). Neither the SHPO nor ACHP responded to OSM's request.

V. Director's Decision

Based on the above findings, the Director approves Colorado's proposed amendment as submitted on November 20, 1995, and revised on February 16, 1996, and removes the requires amendment at 30 CFR 906.16(a).

The Director approves, as discussed in:

Finding No. 1, Rule 2.07.3(a)(iii), Rule 2.07.7(1), Rule 2.08.6(2)(b)(iii), and Rule 4.08.4(10), concerning nonsubstantive revisions to previously approved rules that consist of editorial revisions;

Finding No. 2, Rules 1.04(1), 1.04 (31a), (31b), (47a), (71a), (76), (83b), (92), (116), and (135a); Rule 2.02.7; Rule 2.07.6(2); Rules 2.07.7 (6), (7), and (8); Rule 2.08.6(4)(a); Rules 3.02.4(1)(c) and 3.02.4(2)(e); Rules 3.03.3 (1) and (2); Rule 4.11.3; Rule 5.02.2(4)(b); and Rules 5.03.2(1)(e) and 5.03.2(2)(h); concerning substantive revisions to previously approved rules that are substantively identical to the Federal regulations;

Finding No. 3, Rules 1.03.1(1)(a), 2.03.3(8), 2.07.3(2), 2.07.3(2) (e) and (f), 20.07.3(3)(a), 2.07.3(4)(a), 2.07.4(2), and 2.07.4(3) (b) and (c), concerning permit applications, public notice requirements, permit review and decision, and bonding requirements prior to permit issuance;

Finding No. 4, Rule 1.04(89), concerning the definition of ''Permit area;''

Finding No. 5, Rule 2.03.4(10), concerning permit application requirements concerning identification of interests and compliance information;

Finding No. 6, Rule 2.03.6(1), concerning contents of permit applications pertaining to an applicant's legal right to enter a proposed permit area;

Finding No. 7, Rule 2.07.5(2)(c), concerning notice and hearing procedures for persons seeking and opposing disclosure of confidential information;

Finding No. 8, Rules 2.07.6(2)(d) and 2.07.6(2)(d)(iii)(E), concerning findings which must be made by the State regulatory authority prior to approval of applications for permits and permit revisions;

Finding No. 9, Rule 2.07.6(2)(d)(iv), concerning public notice and opportunity for public hearing regarding proposed (1) operations located within 100 feet, measured horizontally, of a public road or (2) operations which require closure or relocation of a public road;

Finding No. 10, Rule 2.07.7(9), concerning permit conditions requiring continuous bond coverage;

Finding No. 11, Rules 2.08.4 (1) through (4), concerning permit revisions and permit revision application requirements;

Finding No. 12, Rules 2.08.4(6)(b) (i) and (ii), concerning public hearing and notice requirements for technical revisions;

Finding No. 13, Rule 3.03.1(5), concerning release of bond coverage for liability associated with temporary drainage and sediment control facilities;

Finding No. 14, Rules 4.02.2(2) (a) through (c), concerning information required on identification signs;

Finding No. 15, Rules 4.03.1(d) (i) and (ii) and 4.03.2(f) (i) and (ii), concerning an engineer's certification of the construction or reconstruction of haul and access road;

Finding No. 16, Rules 4.05.2(7), 5.03.3(1)(a), 5.03.3(2)(a) (i) and (ii), and 5.03.3(2)(b), concerning (1) compliance with the effluent limitations for coal mining promulgated by the U.S. Environmental Protection Agency set forth in 40 CFR part 434 and (2) enforcement procedures concerning violations of effluent limitations;

Finding No. 17, Rule 4.08.3(2)(b)(i), concerning blasting areas;

Finding No. 18, Rules 5.02.5(1), 5.02.5(1)(a), and 5.02.5(1)(b)(i), concerning inspections based upon citizens' requests; and

Finding No. 19, Rules 5.02.2(8) (a) through (c), concerning inspection frequency at abandoned sites, and Rule 5.03.2(3), concerning enforcement procedures at abandoned sites.

The Federal regulations at 30 CFR part 906, codifying decisions concerning the Colorado program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

IV. Procedural Determinations

1. Executive Order 12866

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

2. Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of Tribe or State AMLR plans and revisions thereof since each such plan is drafted and promulgated by a specific Tribe or State, not by OSM. Decisions on proposed Tribe or State AMLR plans and revisions thereof submitted by a Tribe or State are based on a determination of whether the submittal meets the requirements of Title IV of SMCRA (30 U.S.C. 1231–1243) and the applicable Federal regulations at 30 CFR parts 884 and 888.

3. National Environmental Policy Act

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

4. Paperwork Reduction Act

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

5. Regulatory Flexibility Act

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

6. Unfunded Mandates Reform Act

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 906

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 7, 1996.

Richard J. Seibel,

Regional Director, Western Regional Coordinating Center.

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

PART 906—COLORADO

1. The authority citation for Part 906 continues to read as follows:

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

2. Section 906.15 is amended by adding paragraph (u) to read as follows:

§ 906.15 Approval of amendments to the Colorado regulatory program.

* * * * *

(u) The Director approves the proposed revisions submitted by Colorado on November 20,1 995, and revised on February 16,1 996.

3. Section 906.16 is amended by removing and reserving paragraph (a) to read as follows:

§ 906.16 Required program amendments.

* * * * *

(a)–(c) [Reserved.]

* * * * *

[FR Doc. 96–13266 Filed 5–28–96; 8:45 am]

BILLING CODE 4310–05–M

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30 CFR Part 913

[SPATS No. IL–089–FOR]

Illinois Regulatory Program

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

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving, with certain exceptions and additional requirements, a proposed amendment to the Illinois regulatory program (hereinafter referred to as the ''Illinois program'') under the Surface Mining Control and Reclamation act of 1977 (SMCRA). Illinois proposed revisions to and additions of regulations pertaining to termination of jurisdiction, permit fees, definitions, coal exploration, permitting, environmental resources, reclamation plans, special categories of mining, small operator assistance, bonding, performance standards, revegetation, inspection, enforcement, civil penalties, administrative and judicial review, and certification of blasters. The amendment is intended to revise the Illinois program to be consistent with the corresponding Federal regulations, incorporate the additional flexibility afforded by recently revised Federal regulations, clarify ambiguities, and improve operational efficiency.

EFFECTIVE DATE: May 29, 1996.

FOR FURTHER INFORMATION CONTACT: Roger W. Calhoun, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Minton-Capehart Federal Building, 575 North Pennsylvania Street, Room 301, Indianapolis, Indiana 46204–1521, Telephone: (317) 226–6700.

SUPPLEMENTARY INFORMATION:

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

I. Background on the Illinois Program

On June 1, 1982, the Secretary of the Interior conditionally approved the Illinois program. Background information on the Illinois program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the June 1, 1982, Federal Register (47 FR 23883). Subsequent actions concerning the conditions of approval and program amendments can be found at 30 CFR 913.15, 913.16, and 913.17.

II. Submission of the Proposed Amendment

By letter dated February 3, 1995 (Administrative Record No. IL–1615), Illinois submitted a proposed amendment to its program pursuant to SMCRA. Illinois submitted the proposed amendment in response to an August 5, 1993, letter (Administrative Record No. IL–1400) that OSM sent to Illinois in accordance with 30 CFR 732.17(c), in response to required program amendments at 30 CFR 913.16(s), (t), and (u), and at its own initiative. Illinois proposed to revise or add provisions to the following parts or sections of its program: 62 IAC 1700, general; 62 IAC 1701.Appendix A, definitions; 62 IAC 1761.11, areas where mining is prohibited or limited; 62 IAC 1772, requirements for coal exploration; 62 IAC 1773, requirements for permits and permit processing; 62 IAC 1774.13, permit revisions; 62 AC 1778.15, right of entry information; 62 IAC 1779, surface mining permit applications—minimum requirements for information on environmental resources; 62 IAC 1780.23, reclamation plan—premining and postmining information; 62 IAC 1783, underground mining permit applications: minimum requirements for information on environmental resources; 62 IAC 1784.15, reclamation plan—premining and postmining information; 62 IAC 1785, requirements for permits for special categories of mining; 62 IAC 1795, small operator assistance; 62 IAC 1800, bonding and insurance requirements for surface coal mining and reclamation operations; 62 IAC 1816, permanent program performance standards—surface mining activities; 62 IAC 1817, permanent program performance standards—underground mining activities; 62 IAC 1825.14, high capability lands—soil replacement; 62 IAC 1840, department inspections; 62 IAC 1843, state enforcement; 62 IAC 1845.12, when penalty will be assessed; 62 IAC 1847, notice of hearing; and 62 IAC 1850, training, examination and certification of blasters.

OSM announced receipt of the proposed amendment in the February 27, 1995, Federal Register (60 FR 19522), and in the same document opened the public comment period and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on March 29, 1995. A public hearing was requested and was held on March 24, 1995, as scheduled.

During its review of the amendment, OSM identified concerns relating to 62 IAC 1701.Appendix A, definition of wetlands; 62 IAC 1773.20, general procedures for improvidently issued permits; 62 IAC 1773.23, review of ownership of control and violation information; 62 IAC 1773.24, procedures for challenging ownership or control shown in the Applicant Violator System; 62 IAC 1774.13(d)(6), incidental boundary revisions; 62 IAC 1785.17, prime farmlands; 62 IAC 1816/1817.13 and 1816/1817.46(e)(2), siltation structures; 62 IAC 1816/1817.116(a)(3)(F) and 62 IAC 1816(a)(4)(A)(ii), revegetation standards for small isolated areas; 62 IAC 1816.116(a)(4)(D), revegetation standards for hay production; 62 IAC 1816.116(a)(4)(D), revegetation standards for hay production; 62 IAC 1816/1817.116(a)(5), wetlands revegetation; 62 IAC 1816/1817.116(c), revegetation reference areas; and 62 IAC 1816.Appendix A, permit specifics yield standards. OSM notified Illinois of the concerns by letters dated April 28 and August 3, 1995 (Administrative Record Nos. IL–1649 and IL–1660, respectively).

By letter dated November 1, 1995 (Administrative Record No. IL–1663), Illinois responded to OSM's concerns by submitting additional explanatory information and revisions to its proposed program amendment. Based upon the additional explanatory information and revisions to the proposed program amendment submitted by Illinois, OSM reopened the public comment period in the December 5, 1995, Federal Register (60 FR 62229) and provided an opportunity for a public hearing on the adequacy of the revised amendment. The public comment period closed on January 4, 19996. The public hearing scheduled for January 2, 1996, was not held because no one requested an opportunity to testify.

III. Director's Findings

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

A. Revisions to Illinois' Regulations That Are Not Substantive in Nature

Revisions not specifically discussed in this final rule concern nonsubstantive wording changes, corrected typographical errors, or revised cross-references and paragraph notations to reflect organizational changes within the amended regulations.

Throughout its revised regulations, Illinois proposed to change specific references of the ''Illinois Department of Mines and Minerals'' to the ''Illinois Department of Natural Resources, Office of Mines and Minerals'' in order to reflect a reorganization change which was effective July 1, 1995; to change its citation references of the ''Ill. Rev. Stat. 1989, ch. 96½, pars. 7901.01 et seq.'' to ''225 ILCS 720'' to reflect recodification of the Illinois Surface Coal Mining Land

Conservation and Reclamation Act (State Act) that occurred in 1992; and to change its references of the ''Soil Conservation Service'' and ''S.C.S.'' to the ''Natural Resources Conservation Service'' and ''NRCS'' to reflect that Federal agency's change in name.

The above proposed revisions do not alter the substance of the previously approved provisions in the Illinois regulations. Therefore, the Director finds that they will not render the Illinois regulations less effective than the Federal regulations.

B. Revisions to Illinois' Regulations That Are Substantively Identical to the Corresponding Provisions of the Federal Regulations

1. Revisions to Existing Regulations and New Regulations

62 IAC 1700.11(f), Termination of jurisdiction (30 CFR 700.11(d)); 62 IAC 1701.Appendix A, Definition of ''Applicant Violator System or AVS'' (30 CFR 773.5); 62 IAC 1701.Appendix A, Definition of ''Federal violation notice'' (30 CFR 773.5); 62 IAC 1701.Appendix A, Definition of ''Historic lands'' (30 CFR 762.5); 62 IAC 1701.Appendix A, Definition of ''Land eligible for remining'' (30 CFR 701.5); 62 IAC 1701.Appendix A, Definition of ''Ownership or control link'' (30 CFR 773.5); 62 IAC 1701.Appendix A, Definition of ''State violation notice'' (30 CFR 773.5); 62 IAC 1701.Appendix A, Definition of ''Substantially disturb'' (30 CFR 701.5); 62 IAC 1701.Appendix A, Definition of ''Violation notice'' (30 CFR 773.5); 62 IAC 1761.11(a)(4)(B), Areas where mining is prohibited or limited (30 CFR 761.11(d)(2)); 62 IAC 1773.15 (b)(1) and (b)(2), Review of violations (30 CFR 773.15 (b)(1) and (b)(2)); 62 IAC 1773.20(b), Improvidently issued permits review criteria (30 CFR 773.20(b)); 62 IAC 1773.20(c)(4), Improvidently issued permits remedial measures (30 CFR 773.20(c)(2)); 62 IAC 1773.21(a), Automatic suspension and rescission (30 CFR 773.21(a)); 62 IAC 1773.22, Verification of ownership or control application information (30 CFR 773.22); 62 IAC 1773.23, Review of ownership or control and violation information (30 CFR 773.23); 62 IAC 1773.24(a), procedures for challenging ownership or control links shown in the Applicant Violator System (30 CFR 773.24(a)); 62 IAC 1773.25, Standards for challenging ownership or control links and the status of violations (30 CFR 773.25); 62 IAC 1780.23(a) (1)–(2), Reclamation plan premining information for surface mining permit applications (30 CFR 780.23(a) (1)–(2)); 62 IAC 1780.23 (b) and (c), Reclamation plan postmining information for surface mining permit applications (30 CFR 780.23 (b) and (c)); 62 IAC 1784.15(a) (1)–(2), Reclamation plan premining information for underground mining permit applications (30 CFR 784.15(a) (1)–(2)); 62 IAC 1784.15 (b) and (c), Reclamation plan postmining information for underground mining permit applications (30 CFR 784.15 (b) and (c)); 62 IAC 1795.4(b), Definition of ''Qualified laboratory'' (30 CFR 795.3); 62 IAC 1795.6 (b), (b)(1), and (b)(2), Small operator assistance—eligibility for assistance (30 CFR 795.6 (a)(2), (a)(2)(i), and (a)(2)(ii)); 62 IAC 1795.9 (b)(1)–(b)(5), Small operator assistance—program services and data requirements (30 CFR 795.9 (b)(1)–(b)(5)); 62 IAC 1795.12(a)(2), Small operator assistance—applicant liability (30 CFR 795.12(a)(2)); 62 IAC 1816.79, Protection of underground mining (30 CFR 816.79); 62 IAC 1816.97(b), Endangered and threatened species—surface mining (30 CFR 816.97(b)); 62 IAC 1817.97(b), Endangered and threatened species—underground mining (30 CFR 817.97(b)); 62 IAC 1840.11 (g) and (h), Inspections by the Department—abandoned sites (30 CFR 840.11 (g) and (h)); 62 IAC 1843.13(a)(3), Suspension or revocation of permits (30 CFR 843.13(a)(3)); 62 IAC 1843.13(a)(4)(B), Suspension or revocation of permits (30 CFR 843.13(a)(4)(ii)); 62 IAC 1843.13(b), Suspension or revocation of permits (30 CFR 843.13(d)); and 62 IAC 1843.23, Enforcement actions at abandoned sites (30 CFR 843.22).

Because the above proposed revisions and/or additions are identical in meaning to the corresponding Federal regulations, shown in brackets, the Director finds that Illinois' proposed regulations are no less effective than the Federal regulations.

2. Deletions of Existing Regulations

62 IAC 1773.21(c), Improvidently issued permits—appeals of rescission notices (30 CFR 773.21(c), 59 FR 54306, October 28, 1994); 62 IAC 1779.22, Surface coal mining application requirements for premining land use information (30 CFR 779.22, 59 FR 27932, May 27, 1994); 62 IAC 1779.25(a)(11), Surface coal mining application requirements for premining slope measurements (30 CFR 779.25(a)(11), 59 FR 27932, May 27, 1994); 62 IAC 1783.22, Underground coal mining application requirements for premining land use information (30 CFR 783.22, 59 FR 27932, May 27, 1994); and 62 IAC 1783.25(a)(11), Underground coal mining application requirements for premining slope measurements (30 CFR 783.25(a)(11), 59 FR 27932, May 27, 1994).

The above proposed deletions are consistent with OSM's repeal of the Federal counterpart regulations, shown in brackets. Therefore, the Director finds that the proposed deletions will not render the Illinois regulations less effective than the Federal regulations.

C. Revisions to Illinois' Regulations That Are Substantive in Nature

1. 62 IAC 1700.16(a) Fees

Illinois proposed a revision to 62 IAC 1700.16(a) that requires fees collected under the provisions of the Surface Coal Mining Land Conservation and Reclamation Act (State Act) be deposited in the Coal Mining Regulatory Fund instead of the general revenue fund. This revision implements the requirements at 225 ILCS 720/9.07 of the State Act that OSM approved on November 21, 1994 (59 FR 59918). The Coal Mining Regulatory Fund was established to receive money for administration of the Illinois program. There is no direct Federal counterpart to 62 IAC 1700.16(a). However, the proposed amendment is not inconsistent with the general requirements for permit fees at section 507(a) of SMCRA and 30 CFR 777.17 of the Federal regulations. Therefore, the Director finds that the proposed revision to 62 IAC 1700.16(a) is not inconsistent with the requirements of SMCRA or the Federal regulations.

2. 62 IAC 1701.Appendix A Wetland Definition

Illinois proposed to add the definition of ''wetland'' from the Illinois Interagency Wetland Policy Act of 1989 (20 ILCS 830/I–6(a)) to its regulations at 62 IAC 1701.Appendix A. Illinois proposed the definition because it had proposed standards for wetland revegetation in its regulations at 62 IAC 1816/1817.116(a)(5). Illinois defined wetland to mean ''land that has a predominance of hydric soils (soils which are usually wet and where there is little or no free oxygen) and that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of hydrophytic vegetation (plants typically found in wet habitats) typically adapted for life in saturated soil conditions. Areas which are restored or created as the result of mitigation or planned construction projects and which function as a wetland are included within this definition even when all three wetland parameters are not present.''

In its letter dated April 28, 1995 (Administrative Record No. 1649), OSM requested Illinois to provide a statement which explains the meaning of the last sentence of the ''wetlands'' definition (Areas which are restored or created as the result of mitigation or planned construction projects and which function as a wetland are included within this definition even when all three wetland parameters are not present). At the May 31, 1995, meeting (Administrative Record No. 1654), Illinois explained that generally the ''hydric'' soil profile may not be fully developed in a newly created wetland. This concept is consistent with the U.S. Army Corps of Engineers (Corps) Wetlands Delineation Manual, Technical Report Y–87–1 (Administrative Record No. IL–1616). In the manual, the Corps states that ''Although wetland indicators of all three parameters (i.e. vegetation, soils, and hydrology) may be found in some man-induced wetlands, indicators of hydric soils are usually absent. Hydric soils require long periods (hundreds of years) for development of wetness characteristics, and most man-induced wetlands have not been in existence or a sufficient period to allow development of hydric soil characteristics * * *.''

The Federal regulations at 30 CFR Chapter VII do not contain a counterpart wetland definition. However, the Illinois definition is not inconsistent with the provisions of section 515(b)(24) of SMCRA or the Federal regulations at 30 CFR 816/817.97(f) pertaining to wetlands and habitats of unusually high value for fish and wildlife. These provisions require the operator to minimize disturbances and adverse impacts to fish and wildlife and to enhance wherever practical or restore habits or high value for fish and wildlife, including wetlands.

Based on the above discussion, the Director finds that Illinois' proposed definition of wetland is not inconsistent with SMCRA or the Federal regulations.

3. 62 IAC 1772.11(b)(5) Notice Requirements for Exploration Removing 250 Tons of Coal or Less

At 62 IAC 1772.11(b)(5), Illinois proposed to clarify that forms OG–7 and OG–8 are required to be submitted with a coal exploration notice only if such forms are required by the Department's Oil and Gas Division.

There is no direct Federal regulation counterpart. However, the Director finds the proposed regulation is not inconsistent with the general provisions governing coal exploration notice requirements at 30 CFR 772.11.

4. 62 IAC 1772.12(d)(2) Decision on an Application for Exploration Removing More Than Two Hundred and Fifty (250) Tons of Coal

Illinois proposed to revise 62 IAC 1772.12(d)(2) by replacing the word ''operation'' with the word ''permit'' in the phrase ''application for a coal exploration operation.'' The Director finds the revised language is substantively identical to the language in the Federal counterpart regulation at 30 CFR 772.12(d)(2); and it is, therefore, no less effective than the Federal regulation.

At 62 IAC 1772.12(d)(2)(C), Illinois proposed to delete its reference to the ''agency with jurisdiction over State Historic Preservation'' and replace it with the name of the agency, ''Illinois Historic Preservation Agency,'' that has jurisdiction over cultural and historical resources in Illinois. The Director finds that referencing the actual agency that has jurisdiction adds clarity to this provision and does not render the previously approved regulation less effective than the Federal counterpart regulation at 30 CFR 772.12(d)(2)(iii).

5. 62 IAC 1773.15(a)(1) Review of Permit Applications

Illinois offers the opportunity for both an informal conference and a public hearing on the decision to issue deny, or modify a permit application. Illinois is proposing to revise 62 IAC 1773.15(a)(1) by removing reference to its informal conference at section 1773.13(c) and adding a reference to its public hearing at section 1773.14. This is consistent with the Illinois Attorney General's legal opinion dated June 13, 1980, which was required by OSM in accordance with 30 CFR 731.14(c) prior to State program approval. In the Illinois Attorney General's opinion, the public hearing at 62 IAC 1773.14 met the requirements of the informal conference in the Federal regulations at 30 CFR 773.13(c). Illinois' informal conference at section 1773.13(c) was considered an optional, additional step for public participation in permit processing. Therefore, the Director finds that the Illinois regulation at 62 IAC 1773.15(a)(1), as amended, is no less effective than the counterpart Federal regulation at 30 CFR 773.15(a)(1).

6. 62 IAC 1773.24 Procedures for Challenging Ownership or Control Shown in the Applicant Violator System

Illinois proposed new provisions at 62 IAC 1773.24 (b) through (d) that provide procedures for challenges concerning the status of State violations to which persons shown on the Applicant Violation System (AVS) have been linked. These proposed procedures are substantively identical to the procedures in the Federal regulations at 30 CFR 773.24 (b) through (d) for challenges concerning an ownership or control link shown in the AVS or the status of a Federal violation. Therefore, the Director finds that Illinois' regulations at 62 IAC 1773.24 (b) through (d) for challenging the status of State violations are no less effective than 30 CFR 773.24 (b) through (d) of the Federal regulations for challenging the status of Federal violations.

7. 62 IAC 1774.13 Application Requirements and Procedures for Permit Revisions

a. *Section 1774.13(b)(2)(E).* At subsection (b)(2)(E), Illinois is proposing that a significant revision be required for land use changes involving greater than 5 percent of the ''Total permit acreage'' instead of the ''original total permit acreage.'' This proposed change in language allows adjustment to the previously approved 5 percent cumulative total limitation. The proposed addition of subsection 1774.13(b)(2)(E)(i) would allow the accumulation of the 5 percent limit to restart upon issuance of a significant revision that addresses all previous land use changes approved via insignificant revisions. The proposed addition of subsection 1774. 13(b)(2)(E)(ii) would allow acreage added by incidental boundary revisions to be included in the total permit acreage used to determine the 5 percent limit if the acreage has been addressed previously in a significant revision. Changing the land use on more than an accumulated 5 percent of the permit area through the insignificant revision process without giving the public an opportunity for review and comment through the significantly revision process would still not be allowed under the proposed revision. It is also noted that Illinois requires all alternative land use revisions, both significant and insignificant, to comply with its postmining land capability requirements at 62 IAC 1816.133 or 1817.133 and requires consultation with the landowner or the land management agency with jurisdiction over the lands before approval of either type of revision.

The Federal counterpart regulation for permit revisions at 30 CFR 774.13(b) requires the regulatory authority to establish guidelines for the scale or extent of revisions for which all the permit application requirements will apply. OSM determined in the September 28, 1983, Federal Register

948 FR 44344) that this requirement provided flexibility to the regulatory authority to establish guidelines suitable to the operation of individual State programs. Therefore, the Director finds that the proposed revisions represent a reasonable application by Illinois of the requirement in 30 CFR 774.13(b) and that 62 IAC 1774.13(b), as amended, is no less effective than the counterpart Federal regulation for permit revisions.

b. *Section 1774.13(d)(6).* Illinois is proposing to amend its regulations pertaining to incidental boundary revisions as a partial response to an August 5, 1993, letter (Administrative Record No. IL–1400) that was sent to Illinois in accordance with 30 CFR 732.17(c) and (e)(3). OSM had determined that Illinois' administration of its incidental boundary revision regulations appeared inconsistent with the approved regulatory program. At subsection (d)(6), Illinois originally proposed to require public notice and a ten-day comment period for incidental boundary revision applications which propose new surface acreage or planned subsidence shadow area to the original permit (Administrative Record No. IL–1615). During a May 31, 1995, public meeting (Administrative Record NO. 1654), Illinois and OSM discussed reducing the comment period from ten days to seen days because of time restrictions in processing incidental boundary revisions (90 days). Subsequent to this meeting, Illinois submitted revised language which reduced the comment period to seven days. Illinois had previously submitted a letter dated September 14, 1993 (Administrative Record No. IL–1402), that specified the internal control and management practices implemented to identify potential patterns of incidental boundary revision abuse and to prevent abuse.

The Director finds that the proposed amendment to Illinois' regulations at 62 AC 1774.13(d)(6) to allow public involvement in this incidental boundary revision review and approved process is consistent with the Federal regulations at 30 CFR 774.13(d). Furthermore, Illinois' proposed amendment and its implementation of internal management control measures for its incidental boundary revision review and approval process resolves the issues associated with OSM's August 5, 1993, 30 CFR part 732 action.

8. 62 IAC 1778.15 Right for Entry Information

a. *Section 1778.15(a).* At subsection (a), Illinois is proposing to remove the requirement for underground coal mining applications to contain a description of the documents upon which the applicant bases his or her legal right to enter and begin surface coal mining and reclamation operations in the shadow area, including the right to subside within the shadow area. Right of entry information would still be required to enter and begin surface coal mining and reclamation operations in the permit area. The language in the revised provision is substantively identical to the counterpart Federal provision at 30 CFR 778.15(a), which requires such a description only for the permit area. On April 5, 1983 (48 FR 14814), OSM revised the definition of ''permit area'' and associated terms to exclude areas overlying underground workings (shadow area). Therefore, the Director finds 62 IAC 177815(a), as revised, is no less effective than the counterpart Federal regulation.

b. *Section 1778.15(e).* At subsection (e), Illinois is proposing to clarify that underground mining applications in which the applicant claims to have valid existing rights to conduct planned subsidence operations within an area where mining is prohibited or limited, contain the necessary information and meet the requirements of 62 IAC 1778.16. (Relationship to Areas Designed Unsuitable for Mining) and 62 IAC 1761.12 (Procedures for determining whether mining operations are limited or prohibited). The existing provision specified this information for applications to conduct surface coal mining operations only. The Federal regulations at 30 CFR 778.15 pertaining to right of entry information contain no comparable requirement. However, the proposed additional requirement at 62 IAC 1778.15(e) is not inconsistent with the Federal regulation provisions at 30 CFR 761.12 pertaining to procedures for determining whether mining operations are limited or prohibited, § 778.16 pertaining to the proposed permit area relationship to areas designed unsuitable for mining, or § 784.20 pertaining to the requirement for an underground mining application to contain a substance control plan. Therefore the Director finds that the revised provision at subsection (e) does not render the Illinois regulations at 62 IAC 1778.15 less effective than the counterpart Federal regulations at 30 CFR 778.15, and he is approving it.

c. *Section 1778.15(f).* Illinois is proposing to add new subsection (f) to require applications for underground mining area (shadow area) to contain a notarized statement by a responsible official of the applicant attesting that all necessary mining rights, including the right to subside, if applicable, have been or will be obtained prior to mining. The Federal regulations at 30 CFR 778.15 pertaining to right of entry information contain no comparable requirements for underground mining shadow area. However, the proposed requirements at 62 IAC 1778.15(f) are not inconsistent with the Federal regulation provisions at 30 CFR 78.10 pertaining to the requirement for subsidence control plans for undergrounds mining applications. Therefore, the Director finds that the new provision at subsection (f) does not render the Illinois regulations at 62 IAC 1778.15 less effective than the counterpart Federal regulations at 30 CFR 778.18, and he is approving it.

9. 62 IAC 1780.23(a)(3) and 62 IAC 1784.15(a)(3) Reclamation Plan: Premining Information

Because the cited regulations governing surface mining permit application requirements at 62 IAC 1780.23(a) are identical to counterpart regulations governing underground mining permit application requirements at 62 IAC 1784.15(a), the discussion of changes are consolidated.

Illinois is proposing to add new subsection (a)(3) at 62 IAC 1780.23 and 1784,15. This is a recodification of the provisions deleted from existing 62 IAC 1779.25(a)(11)(D) for surface mines and 1783.25 (a)(11)(D) for underground mines with one minor exception. The recodified provisions pertain to a requirement for a premining soils map or contoured aerial photo of the proposed permit area. Both the current provisions and the recodified provisions, as originally proposed (Administrative Record No. IL–1663), require ''a solid map of medium intensity'' to be submitted with the permit application, while the revised recodified provisions require ''an intensive soil map'' to be submitted. This change in language was proposed because of a comment from the Natural Resources Conservation Service, during the State's own rulemaking process, that the terminology ''medium intensity'' was not consistent with the terminology of the National Cooperative Soil Survey for the State of Illinois. There are no Federal counterpart provisions. However, the Director finds that the addition of these previously approved requirements, including the change in terminology at 62 IAC 1780.23(a)(3) and 1784.15(a)(3), is not inconsistent with the Federal regulations.

10. 63 IAC 1785.17(a) Prime Farmlands

In subsection (1)(1), Illinois is proposing to delete the following language: ''Nothing in this Section shall

apply to any permit issued period to the date of enactment of the Federal Act, or to any revisions or renewals thereof, or to any existing surface mining operations for which a permit was issued prior to the date of enactment of the Federal Act, as determined by the Department prior to September 29, 1981. For lands for which a request for exemption was initially made or pending on or after September 29, 1981.'' Illinois also proposed to delete existing subsections (a)(5) and (a)(6) pertaining to an acreage limitation on the amount of exempted prime farmland and (a)(7)(B) pertaining to a preliminary exemption review. Illinois proposed to redesignate existing subsection (a)(1) to (a)(2)(A); (a)(2) to (a)(2)(B); (a)(3) to (a)(2)(C); (a)(4) to (a)(3); and (a)(7)(A) to (a)(4).

The Federal regulations do not contain counterpart provisions to the deleted language in subsections (a)(1), (a)(5), (a)(6), and (a)(7)(B). The proposed revisions at 62 IAC 1785.17(a) render Illinois' regulation requirements substantively identical to the counterpart Federal regulation requirements at 30 CFR 785.17(a) with one exception. At redesignated subsection (a)(4), Illinois retained an additional requirements for a scale map of the area proposed to be exempted. Therefore, the Director finds the revised provisions of 62 IAC 1785.17(a) are no less effective than the Federal regulation provisions at 30 CFR 785.17(a).

11. 63 IAC 1785.23 Minor Underground Mine Facilities Not at or Adjacent to the Processing or Preparation Facility or Area

Illinois originally adopted section 1785.23 to take into account the distinct differences between surface and underground mining. This category of facilities, which includes air shaft, fan and ventilation buildings, small support buildings or sheds, access power holes, and other small structures and associated roads, would be subject to an abbreviated permit application and review period on the basis that these types of structures have a very minimal impact on the land and the environment. There is no Federal counterpart to these previously approved provisions. In this amendment, Illinois proposed to clarify the public notice and opportunity to comment provisions at subsection (d) by revising paragraph (3) to require written comments from persons with an interest which is or may be adversely affected be filed within the 30-day public comment period and by revising paragraph (4) to require the Interagency Committee to submit review comments within 30 days of the date of receipt of the application. A proposed revision to subsection (e)(1) requires the Department to make its final decision to approve, deny, or modify the complete application for a permit within 20 days, rather than 10 days, following the close of the public comment period. Subsection (g)(1) is proposed to be amended to require the Department to notify persons who filed comments or objections to the application of its final decision, to replace the word ''disapprove'' with the word ''deny'' for consistency with other sections of the Illinois regulations dealing with approval and denial of permit applications, and its final action. Subsection (g)(2) is proposed to be revised by correcting the administrative and judicial review regulation citation.

While there are no direct Federal counterparts to these proposed revisions, the Director finds that the proposed revisions to 62 IAC 1785.23 will enhance the public participation and review process provisions for a minor underground mine facility permit application and that the proposed revisions are not inconsistent with the public participation and review provisions of section 510(a) of SMCRA and 30 CFR 773.13 and 773.15(a) of the Federal regulations.

12. 62 IAC 1795 Small Operator Assistance Program

On November 5, 1990, and October 24, 1992, the President signed into law the Omnibus Budget Reconciliation Act of 1990, Public Law 101–508 and the Energy Policy Act of 1992, Public Law 102–486, respectively. Included in these laws were amendments to the Small Operator Assistance Program (SOAP) authorized at section 507(c) of SMCRA. On May 31, 1994 (59 FR 28136), OSM published a final rule to amend the Federal regulations at 30 CFR part 795 to reflect these amendments.

In this amendment, Illinois proposed changes to its regulations to be consistent with and incorporate the additional flexibility afforded by the revised provisions of SMCRA and the Federal regulations. Illinois had previously proposed enabling statutory revisions pertaining to its SOAP at 225 ILCS 720/2.02 of the Illinois Surface Coal Mining Land Conservation and Reclamation Act (State Act), and these revisions were approved by OSM on November 21, 1994 (59 FR 59918). The Illinois SOAP regulations that contain revised provisions substantively identical to the counterpart Federal regulations are noted in finding B.1., and those that contain revised provisions that are not substantively identical to the counterpart Federal regulations are discussed below.

a. Section 1795.1 Scope and Purpose

Illinois proposed to amend the purpose statement at subsection (b) to reference the new and enhanced technical permitting services that can be provided to eligible operators under its SOAP program. Although the purpose statement in the counterpart Federal regulation at 30 CFR 795.1 was not changed to reflect these new and enhanced technical permitting services, the Federal regulation at 30 CFR 795.9(b) does list the specific technical services authorized for the SOAP by the Energy Policy Act of 1992. Therefore, the Director finds that the revised purpose statement at 62 IAC 1795.1 is no less effective than the counterpart Federal regulation purpose statement at 30 CFR 795.1.

b. Section 1795.9 Program Services and Data Requirements

At 62 IAC 1795.9(b)(6), Illinois proposed substantively identical language to that contained in the counterpart Federal regulation at 30 CFR 795.9(b)(6), including the listing of its counterpart regulation citations at 62 IAC 1780.16 and 1784.21, but also authorized the collection of information and production of plans for the information required under its regulations at 62 IAC 1779.19 and 1783.19. Sections 1779.19 for surface mines and 1783.19 for underground mines require a permit application to contain a map or aerial photograph that delineates existing vegetative types and a description of the plant communities within the proposed permit areas that include sufficient adjacent areas to allow evaluation of vegetation as important habitat for fish and wildlife for those species of fish and wildlife identified under 62 IAC 1780.16 and 1784.21, respectively. The Federal regulation at 30 CFR 795.9(b)(6) authorizes the collection of site-specific resources information and production of protection and enhancement plans for fish and wildlife habitats required by 30 CFR 780.16 and 784.21 and information and plans for any other environmental values required by the regulatory authority under SMCRA.

Since the counterpart Federal regulation at 30 CFR 795.9(b)(6) allows a regulatory authority to authorize assistance for the collection of information and production of plans for any other environmental value required under SMCRA, the Director finds the revised provisions of 62 IAC 1795.9(b)(6) are no less effective than the Federal regulation provisions.

c. Section 1795.12 Applicant Liability

At 62 IAC 1795.12(a)(3), Illinois proposed language which is substantively identical to the language in the Federal regulation at 30 CFR 795.12(a)(3) with the following exceptions. Illinois is requiring reimbursement if the ''original permittee's and transferee's'' total actual and attributed production exceeds 300,000 tons during the specified 12-month period, while the Federal regulation requires reimbursement if the ''transferee's'' total actual and attributed production exceeds 300,000 tons during the specified 12-month period. Illinois further clarified its requirement by proposing the following additional language. ''If the permit is transferred during the twelve (12) month period immediately following the permit issuance date, the determination of adherence to the twelve (12) month-300,000 tons limit shall be performed by combining the actual and attributed production of both parties for the twelve (12) month period immediately following the date of original permit issuance.'' Both the Illinois and Federal regulations contain the provision that holds the applicant and its successor jointly and severally obligated to reimburse the regulatory authority. The Director finds that since the attributed tonnage in Illinois' proposed revision does not exceed the 300,000 ton limit for the same time period specified in the Federal regulation, the revised regulation at 62 IAC 1795.12(a)(3) is no less effective than the counterpart Federal regulation.

At 62 IAC 1795.12(b), Illinois proposed to delete its definition of good faith. There is no Federal counterpart to this definition. Therefore, the Director finds this deletion is not inconsistent with the Federal regulations.

13. 62 IAC 1800 Bonding and Insurance Requirements for Surface Coal Mining and Reclamation Operations

a. Section 1800.5 Definitions

Illinois proposed to revise subsection (b)(4) to allow acceptance of irrevocable letters of credit from banks organized or authorized in other states and from banks organized or authorized in the United States by national charter rather than from only those organized or authorized to transact business in Illinois. Illinois is requiring a confirming bank be designated with an office in Illinois that is authorized to accept, negotiate, and pay the letter upon presentment in Illinois if the bank does not have an office for collection in Illinois. This is consistent with the Federal regulation at 30 CFR 800.5(b)(4) which requires the banks to be organized or authorized to transact business in the United States. Therefore, the Director finds the revised regulation at 62 IAC 1800.5(b)(4) is no less effective than the counterpart Federal regulation.

b. Section 1800.20 Surety Bonds

Illinois is proposing to remove subsections (b)(2) through (b)(5), which contained surety bond conditions. The counterpart Federal regulation at 30 CFR 800.20(b) does not contain the provisions proposed for removal. Therefore, the Director finds the removal of these provisions is not inconsistent with the Federal regulations.

c. Section 1800.21 Collateral Bonds

Illinois proposed to revise subsection (b)(1) to clarify that irrevocable letters of credit may be issued by banks organized or authorized to do business in Illinois, in another state of the United States or in the United States by national charter. Illinois is requiring a confirming bank be designated with an office in Illinois that is authorized to accept, negotiate, and pay the letter upon presentment in Illinois if the issuing bank does not have an office for collection in Illinois. This is consistent with the Federal regulation at 30 CFR 800.21(b)(1) which requires the banks issuing letters of credit to be organized or authorized to transact business in the United States. Therefore, the Director finds the revised regulation at 62 IAC 1800.21(b)(1) is no less effective than the counterpart Federal regulation.

14. 62 IAC 1816 and 62 IAC 1817 Permanent Program Performance Standards for Surface and Underground Mining Activities

The Illinois permanent program performance standard regulations for surface mining activities at 62 IAC 1816 and underground mining activities at 62 IAC 1817 that contain revised provisions substantively identical to the counterpart Federal regulations are noted in finding B.1., and those that contain revised provisions that are not substantively identical to the counterpart Federal regulations are discussed below. Since most of the surface mining and underground mining regulations are identical, the revisions are being combined for discussion purposes, unless otherwise noted.

a. Sections 1816.22(b) and 1817.22(b) Topsoil and Subsoil: Substitutes and Supplements

Illinois is proposing to remove subsection (b)(2) to eliminate the requirement that topsoil plans for substitutes or supplements be considered a significant revision unless specified circumstances apply. Existing subsection (b)(1) is redesignated subsection (b) because of the removal. The counterpart Federal regulations at 30 CFR 816.22(b) and 817.22(b) do not contain the removed language, and the revised provisions in 62 IAC 1816.22(b) and 1817.22(b) are substantively identical to these Federal counterparts. Therefore, the Director finds the removal of subsection (b)(2) will not render Illinois' regulations at 62 IAC 1816.22(b) and 1817.22(b) less effective than the Federal counterpart regulations.

b. Sections 1816.41(c) and 1817.41(c) Hydrologic Balance Protection: Ground Water Monitoring

At 62 IAC 1816.41(c)(2) and 1817.41(c)(2), Illinois proposed to revise subsection (c)(2) by specifying that the ground water monitoring reports, that are required to be submitted every three months, shall be submitted by the first day of the second month following the reporting period, unless the Department specifies an alternative reporting schedule. The Federal counterpart regulations at 30 CFR 816.41(c)(2) and 817.41(c)(2) require reports to be submitted every three months or more frequently as prescribed by the regulatory authority without specifying exact reporting schedules. Since Illinois has retained its requirement that ground water monitoring data be submitted every three months or more frequently if necessary, the Director finds the addition of a specific reporting schedule will not render the Illinois regulations at 62 IAC 1816.41(c)(2) and 1817.41(c)(2) less effective than the counterpart Federal regulations.

c. Section 1816.41(e) and 1817.41(e) Hydrologic Balance Protection: Surface Water Monitoring

Illinois proposed to revise subsection (e)(2) by removing the requirement to send NPDES reports to the Department concurrently with those sent to the Illinois EPA and adding the requirement that NPDES reports are to be sent to the Department by the first day of the second month following the reporting period. The Federal counterpart regulations at 30 CFR 816.41(e)(2) and 817.41(e)(2) require surface water monitoring reports to be submitted

every three months or more frequently as prescribed by the regulatory authority without specifying exact reporting schedules. Since Illinois has retained its requirement that surface water monitoring data be submitted every three months or more frequently if necessary, the Director finds the addition of a specific reporting schedule for submitting Illinois' required NPDES report will not render the Illinois regulations at 62 IAC 1816.41(e)(2) and 1817.41(e)(2) less effective than the counterpart Federal regulations.

d. Sections 1816.46(e) and 1817.46(e) Hydrologic Balance: Siltation Structures: Exemptions

Illinois proposed to revise the language in subsection (e) and incorporate the language from existing subsection (e)(1) to read as follows: ''Exemptions to the requirements to pass all drainage from disturbed areas through a siltation structure may be granted if the disturbed drainage area within the total disturbed area is small . . .'' Illinois added an additional exemption provision at new subsection (e)(1) that will allow the use of the alternate sediment control measures described in §§ 1816.45(b) and 1817.45(b) instead of siltation structures in instances where the disturbed drainage area within the total disturbed area is small and the permittee demonstrates that siltation structures are not necessary for drainage to meet the effluent limitations and water quality standards for the receiving waters. Sections 1816.45 for surface mining activities and 1817.45 for underground mining activities require that sediment control measures be designed, constructed, and maintained using the best technology currently available (BTCA). Furthermore, Illinois stated in the comment section of its revised amendment submittal dated November 1, 1995 (Administrative Record No. IL–1663), that ''the Department will require that any alternative sediment control measures be shown to be the best technology currently available.''

The Federal regulations do not contain a counterpart to the proposed exemption at 30 CFR 816.46(e)(1) and 817.46(e)(1). However, the Federal regulations at 30 CFR 816.45(a)(1) and 817.45(a)(1) require that BTCA be used to ''prevent, to the extent possible, additional contributions of sediment to streamflow or to runoff outside the permit area.'' Also, the Federal regulations at 30 CFR 816.46(b)(2) and 817.46(b)(2) which required all surface drainage from a disturbed area be passed through a siltation structure were remanded by the District Court in 1985 in *In re: Permanent Surface Mining Regulation Litigation (III)*, 620 F. Suppl. 1519 (D.D.C. 1985). Subsequently, OSM suspended these rules on November 20, 1986 (51 FR 41957). The effect of this suspension is that State regulatory authorities may determine on a case by case basis what is BTCA rather than requiring, in every situation, that drainage be passed through siltation structures. The use of BTCA is required by sections 515(b)(10)(B) and 516(b)(9)(B) of SMCRA. In the preamble of the 1986 suspension notice (51 FR 41957–41958), OSM stated that ''in situations where sediment control measures other than siltation structures are determined as BTCA, the performance standards of §§ 816.45 and 817.45 will control.'' The referenced sections are the Federal counterparts to Illinois regulations at 62 IAC 1816.45 and 1817.45. Therefore, since Illinois requires alternate sediment control measures be designed, constructed, and maintained using BTCA, the Director finds the proposed revisions will not render 62 IAC 1816.46(e) and 1817.46(e) less effective than the Federal regulations for sediment control for small disturbed drainage areas.

e. Sections 1816.116(a)(2)(B) and 1817.116(a)(2)(B) Revegetation Standards for Success: Success of Revegetation

The State Act was amended at 225 ILCS 720/3.15 to change the revegetation responsibility period from five years to two years for areas eligible for remining consistent with section 515(b)(20)(B) of SMCRA. At sections 1816.116(a)(2)(B) for surface mining and 1817.116(a)(2)(B) for underground mining, Illinois proposed to implement this statutory provision by revising the first sentence of each section to read: ''The period of extended responsibility shall continue for a period of not less than five (5) full years, except that on lands eligible for remining, the period of responsibility (until September 30, 2004) shall be two (2) full years.'' The counterpart Federal regulations at 30 CFR 816.116(c)(2) and 817.116(c)(2), as amended on November 27, 1995 (60 FR 58480), require the period of responsibility for lands eligible for remining included in permits issued before September 30, 2004, or any renewals thereof, to continue for a period of not less than two full years. The amended Federal regulations also require that ''to the extent that the success standards are established by paragraph (b)(5) of this section, the lands shall equal or exceed the standards during the growing season of the last year of the responsibility period.'' Illinois' counterparts to 30 CFR 816.116(b)(5) and 817.116(b)(5) at sections 1816.116 (a)(3)(A) and 1817.116(a)(3)(A) require remined areas to meet the specified standards in those sections during the last year of the responsibility period. Therefore, the Director finds that the revised regulations at 62 IAC 1816.116(a)(2)(B) and 1817.116(a)(2)(B) are no less effective than the counterpart Federal regulations.

f. Sections 1816.116(a)(2)(F) and 1817.116(a)(2)(F) Revegetation Standards for Success: Augmentation

(1) Existing provisions at subsection (a)(2)(F)(i), (ii), and (iii) concerning augmentation requirements for high capability land areas are proposed to be deleted. Illinois' provisions for high capability lands, including the provisions proposed for deletion, have no direct Federal counterparts. Therefore, the Director finds the deletion of these provisions is not inconsistent with the Federal regulations concerning revegetation success standards.

(2) Illinois is proposing to add the following augmentation provision for pasture, hayland, and grazing land at new subsection (a)(2)(F)(i): ''The five (5) year period of responsibility shall not recommence after deep tillage on areas where the operator has met the revegetation success standards of subsection (a)(3)(E) below.'' Subsection (a)(3)(E) pertains to the revegatation success standards for pasture, hayland, and grazing land areas. Illinois' proposed provision would allow augmentation, in the form of deep tillage, without restarting the period of extended responsibility for revegetation success and bond liability. The Federal regulations at 30 CFR 816.116(c)(1) and 817.116(c)(1) do not allow augumentation without restarting the period of extended responsibility. Although the Federal regulations at 30 CFR 816.116(c)(4) and 817.116(c)(4) allow regulatory authorities to approve selective husbandry practices without extending the period of responsibility for revegetation success and bond liability, they must first obtain approval for the practices from OSM. The regulatory authorities must provide proof that the proposed practices are normal husbandry practices within the region for unmined lands having land uses similar to the approved postmining land use of the disturbed areas. Illinois has neither proposed nor obtained approval for use of deep tillage as a normal husbandry practice in Illinois. Therefore, the Director finds the

proposed provisions at 62 IAC 1816.116(a)(2)(F)(i) and 1817.116(a)(2)(F)(i) are inconsistent with and less effective than the Federal regulation requirements at 30 CFR 816.116(c)(1) and 817.116(c)(1), and he is not approving them. Furthermore, he is requiring Illinois to remove 62 IAC 1816.116(a)(2)(F)(i) and 1817.116(a)(2)(F)(i) from its program.

(3) Illinois proposed to add augmentation provisions for wetlands at new subsection (a)(2)(F)(ii). A portion of the proposed provisions identify and clarify those actions which constitute augmentative practices. Augmentative practices include significant alterations to the size or character of the watershed, pumping used to maintain water levels, and applying neutralizing agents, chemical treatments or fertilizers to the wetland area. The Director finds that the augmented practices proposed by Illinois that would restart the period of extended responsibility for successful revegetation and bond liability on wetlands are not inconsistent with the Federal regulations at 30 CFR 816.116(c)(1) and 817.116(c)(1).

The proposed provisions also identify and clarify those actions which constitute non-augmentative (normal husbandry) practices and management techniques for wetland areas. Non-augmentative practices and management techniques include normal agricultural husbandry practices, such as routine liming and fertilization, and wetlands managed as wildlife food plot areas and water management using permanent water control structures.

On September 3, 1993 (Administrative Record No. IL–1219), OSM approved Illinois' designation of the agricultural practices described in the Illinois Agronomy Handbook (Administrative Record No. IL–1192A) and those practices which are a part of an approved conservation plan subject to the Food, Agriculture, Conservation and Trade Act of 1990 (7 U.S.C. 1421 *et seq.*) as normal agricultural husbandry practices for the State of Illinois. The approved practices include normal routine liming and fertilization of lands used for the production of food and/or forage. Therefore, in the State of Illinois, these approved agricultural practices would be used for the management of wildlife food plot areas.

Illinois in its submission dated February 3, 1995 (Administrative Record No. IL–1615), addresses the use of permanent water control structures as a normal husbandry practice to manage water levels in wetlands. Illinois supports this designation by citing two publications which indicate that this type of water level management is necessary to create suitable aerobic/anaerobic conditions for the germination of hyrophytic plants.

As shown above, the information and literature contained in the Illinois administrative record provide adequate documentation that agricultural techniques, such as routine liming and fertilization, are normal husbandry practices in the State of Illinois for lands used in the production of food and/or forage and that the use of permanent water control structures for managing the water levels of wetlands is a normal husbandry practice. These proposed practices should assist in ensuring the effectiveness of fish and wildlife management areas by providing regulation and guidelines for the enhancement of wetland and riparian vegetation areas as required by 30 CFR 816.97(f) and 817.97(f) of the Federal regulations. The Federal regulations at 30 CFR 816.116(c)(4) and 817.116(c)(4) allow the regulatory authority to approve selective husbandry practices with prior approval from OSM. Therefore, the Director finds the proposed regulations at new 62 IAC 1816.116(a)(2)(f)(ii) and 1817.116(a)(2)(F)(ii) are no less effective than the Federal regulations at 30 CFR 816.116(c)(4) and 817.116(c)(4).

g. Sections 1816.116(a)(3)(E) and 1817.116(a)(3)(E) Ground Cover and Production for Pasture, Hayland, and Grazing Land

In response to the required amendment at 30 CFR 913.16(s), subsection (a)(3)(E) is proposed to be amended to clarify that pasture and/or hayland or grazing land on non-previously disturbed areas are subject to a 90 percent ground cover standard for a minimum of any two years of a ten (10) year period prior to the release of the performance bond, except the first year of the five (5) year extended responsibility period. The counterpart Federal regulations at 30 CFR 816.116(b)(1) and 817.116(b)(1) require that for areas developed for use as grazing land or pasture land, ground cover and production of living plants on the revegetated area meet certain success standards approved by the regulatory authority. With Illinois' proposed revision, 62 IAC 1816.116(a)(3)(E) and 1817.116(a)(3)(E) now contain both ground cover and production success standards for pasture, hayland, and grazing land. Therefore, the Director finds the proposed regulation provisions pertaining to production and ground cover success standards for pasture, hayland, and grazing land are no less effective than the counterpart Federal regulations, and he is removing the required amendment at 30 CFR 913.16(s).

Illinois proposed to revise subsection (a)(3)(E) by removing the provision that limited the substitution of corn production for hay production on high capability pasture land to one attempt. The Federal regulations at 30 CFR 816.116 and 817.116 do not contain specific standards for high capability pasture land. However, the Federal regulations at 30 CFR 816.116(a)(2) and 817.116(a)(2) require that standards for success include criteria representative of unmined lands in the area being reclaimed to evaluate the appropriate vegetation parameters for production. The Illinois administrative record contains sufficient proof that high capability land is suitable for cropland and that crop/hay rotations are common practices in cropland areas surrounding mines (Administrative Record Nos. IL–1164 and IL–1192A). Therefore, since corn production standards are generally accepted to be more difficult to meet than hay production standards, the Director finds that the removal of this limitation provision will not render 62 IAC 1816.116(a)(3)(E) and 1817.116(a)(3)(E) less effective than the Federal regulations at 30 CFR 816.116(b)(1) and 817.116(b)(1).

Illinois also proposed to revise subsection (a)(3)(E) to allow one year substitution of crops in lieu of hay on limited capability land, provided the Department determines that the practice is proper management in accordance with its regulations at 62 IAC 1816.116(a)(2)(C) and 1817.116(a)(2)(C). The Illinois regulations at subsection (a)(2)(C) contain provisions pertaining to normal husbandry practices. In the amendment submittal dated February 3, 1995 (Administrative Record No. IL–1615), Illinois noted that it has required limited capability land to be returned to a land use other than cropland as a normal practice. However, Illinois explained that some operators have reclaimed limited capability land to a higher quality when all prime and high capability land acreage obligations have been met. The capabilities described in the Illinois program include limited capability (non-cropland capable land), high capability (cropland capable land), and prime farmland (cropland capable land). Therefore, the Director interprets the reference Illinois made to ''a higher quality'' to mean that the limited capability land had been reclaimed to either prime farmland or high capability standards. To the extend that Illinois will consider the quality of the soils when making its determination and will restrict its approval to limited capability

lands that are reclaimed to a higher quality, the Director finds the proposed provision does not render the Illinois regulations less effective than the Federal regulations at 30 CFR 816.116(b)(1) and 817.116(b)(1).

h. Section 1816.116(a)(3)(F) and 1817.116(a)(3)(F) Revegetation Success Standards for Non-Contiguous Areas Less Than or Equal to Four Acres

Illinois proposes to add new subsection (a)(3)(F) as follows: ''Non-contiguous areas less than or equal to four acres which were disturbed from activities such as, but not limited to, signs, boreholes, power poles, stockpiles and substations shall be considered successfully revegetated if the operator can demonstrate that the soil disturbance was minor, i.e., the majority of the subsoil remains in place, the soil has been returned to its original capability and the area is supporting its approved postmining land use at the end of the responsibility period.''

Although OSM recognizes the practicality to excluding the need to test for revegetation success for small areas such as signs, boreholes, powerpoles, and other small and minimally disturbed areas, this proposal cannot be approved. The provision does not limit the type of disturbance that could occur on such areas. It does not clarify the type of demonstration the operator is to make at the end of the responsibility period to prove that the soil has been returned to its original capability and to prove that the postmining land use has been achieved. Illinois' proposed revision would allow bond release without adequate proof of productivity on disturbed areas of four acres or less.

In order for OSM to approve this type of proposal, Illinois would need to provide additional regulatory language which would more closely correlate the maximum acreage to the types of activities which would qualify for the exemption. Illinois would also have to provide additional regulatory language as to what would constitute a satisfactory demonstration of minimum disturbance, achievement of original capability, and achievement of postmining land use. Absent this information, the Director finds that the proposed regulations at 62 IAC 1816.116(a)(3)(F) and 1817.116(a)(3)(F) are less effective than the Federal regulations at 30 CFR 816.116(a) and 817.116(a), and he is not approving them. Furthermore, he is requiring Illinois to remove these regulations from its program.

i. Section 1816.116(a)(4)(A)(ii) Use of the Agricultural Lands Productivity Formula, Section 1816.Appendix; Fields

Illinois proposed to add the following provision at subsection (a)(4)(A)(ii): ''The Department may approve a field to represent non-contiguous areas less than or equal to four acres of the same capability if it determines that the field is representative of reclamation of such areas. The small isolated areas shall be managed and vegetated in the same manner as the representative field.''

This proposal would allow the approval of the success of revegetation for non-contiguous disturbed areas based on the testing of a representative field of the same soil capability that had also been disturbed. The current Illinois program requires that fields of four acres or less be sampled in their entirety with yields determined by harvest weight. The Federal regulations at 30 CFR 816/817.116(a)(1) require that revegetation standards for success and statistically valid sampling techniques for measuring success be utilized by the regulatory authority and that the sampling techniques for measuring success use a 90 percent statistical confidence interval (i.e., one-sided test with a 0.10 alpha level). The Federal regulation at 30 CFR 823.15(b)(2) requires that prime farmland soil productivity be measured on a representative sample or on all of the mined and reclaimed prime farmland area using the reference crop determined under paragraph (b)(6) of this section. It also requires that a statistically valid sampling techniques at a 90 percent or greater confidence level be used as approved by the regulatory authority in consultation with the U.S. Natural Resources Conservation Service.

Illinois has not provided sufficient regulatory language as to how the determination that a field is representative of the small areas to be exempt from testing would be made and what information would be needed for a satisfactory demonstration of representation. Therefore, the Director finds that the proposed provisions at 62 IAC 1816.116(a)(4)(A)(ii) are less effective than the Federal regulations at 30 CFR 823.15, 816.116, and 817.116, and he is not approving them. Furthermore, he is requiring Illinois to remove these regulations from its program.

j. Section 1816.116(a)(4)(D) Use of the Agricultural Lands Productivity Formula, Section 1816.Appendix; Crops

Illinois is proposing to add oat crops to the list of crops that may be grown on prime farmland and other cropland areas to prove productivity. The Federal regulations at 30 CFR 823.15(b)(6) pertaining to prime farmland requires reference crops for proving soil productively be selected from the crops most commonly produced on the surrounding prime farmland. The Federal regulations at 30 CFR 816.116(a) and 817.116(a) pertaining to other cropland areas require the use of criteria representative of unmined lands in the area being reclaimed. Proof exists in the Illinois administrative record that oats is a commonly grown crop in Illinois and that it is one of the crops that is rotated with corn on unmined cropland areas. This use is described in a section of the Illinois Agronomy Handbook concerning crop rotations. Therefore, the Director finds the revised regulation requirement is not inconsistent with the Federal regulations.

k. Sections 1816.116(a)(5) and 1817.116(a)(5) Wetland Revegetation Success Standards

Illinois proposed to add provisions at subsection (a)(5)(A) that specify the criteria and sampling procedures in the U.S. Army Corps of Engineers Wetlands Delineation Manual which will be used to determine wetland revegetation success. New subsection (a)(5)(B) further requires that areas designed to support vegetation in the approved plan have a minimum areal coverage of 30 percent. The testing procedures in Sections 1816.117(d) (1) through (3) and 1817.117(d) (1) through (3) shall be used to evaluate the extent of cover in conjunction with other specified procedures. In OSM's letter to the State dated April 28, 1995 (Administrative Record No. IL–1649), Illinois was asked to provide a statement and technical support which justifies why a minimum areal coverage of 30 percent for wetlands will be consistent with the revegetation standards for ground cover for areas to be developed for fish and wildlife habitat at 30 CFR 816.116(a)(3) and 817.116(a)(3). As technical support for the 30 percent standard, Illinois provided a copy of a Michigan State University study (Journal of Wildlife Management 45(1):1–15) that compared dabbling duck and aquatic macroinvertebrate responses to manipulated wetlands under 30:70, 50:50, and 70:30 percent of cover to percent of water treatments and a U.S. Fish and Wildlife Service, Biological Services Program, publication on the qualitative values of wetlands with various degrees of emergent vegetation at the 20 percent to 70 percent levels (Administrative Record Nos. IL–1650B and IL–1653). Illinois provided a

statement that indicated the Michigan State University study determined that the 50:50 treatment was the most desirable vegetative cover. However, with the recognition that the percent of vegetative cover increases with time as open water decreases during wetlands development, Illinois determined use of the 30:70 as a minimum standard would provide more incentive for the industry to create wetlands.

There are no direct counterpart Federal regulations at 30 CFR 816.116 and 817.116 for determining wetland revegetation success. However, OSM's internal policy and procedures for construction of wetlands to supplement and enhance fish and wildlife habitat as a postmining land use (Directives System No. TSR–14, Transmittal Number 828) provide that wetland areas must meet the Federal definition of a wetland as defined by the U.S. Army Corps of Engineers Wetlands Delineation Manual prior to bond release. Illinois' requirement that the wetland vegetation criteria in the U.S. Army Corps of Engineers Wetlands Delineation Manual be achieved as proof of productivity should assure that the wetland areas meet the Federal definition of a wetland as defined by the Corps. Therefore, the Director finds that 62 IAC 1816.116(a)(5) and 1817.116(a)(5) are no less effective than the Federal regulations at 30 CFR 816.116(b)(3) and 817.116(b)(3) for areas to be developed for fish and wildlife habitat.

l. Sections 1816.117(a)(1) and 1817.117(a)(1) Revegetation: Tree and Shrub Vegetation; Lands Eligible for Remining

Illinois proposed to revise subsection (a)(1) by requiring the period of responsibility (until September 30, 2004) be two full years for trees and shrubs on lands eligible for remining. Also, until September 30, 2004, trees and shrubs planted on lands eligible for remining need not have been in place for three years prior to bond release and shall not be counted in determining success during the same calendar year in which they were planted.

The counterpart Federal regulations at 30 CFR 816.116(b)(3)(ii) and 817.116(b)(3)(ii) do not contain the proposed provisions. However, the Federal regulations at 30 CFR 816.116(c)(2)(ii) and 817.116(c)(2)(ii) were amended November 27, 1995 (60 FR 58480), to require a period of responsibility of two full years for lands eligible for remining included in permits issued before September 30, 2004, or any renewals thereof. This responsibility period requirement would apply to all applicable postmining land uses, including areas to be developed for fish and wildlife habitat. Also, a two year responsibility period effectively eliminates the requirement that trees and shrubs be left in place for three years. Therefore, the Director finds the Illinois regulations at 62 IAC 1816.117(a)(1) and 1871.117(a)(1), as revised, are no less effective than the counterpart Federal regulations.

m. Sections 1816.117(a)(3) and 1817.117(a)(3) Revegetation: Tree and Shrub Vegetation; Erosion Control Structures

Illinois proposed to amend subsection (a)(3) to clarify that erosion control structures, including pond embankments within an approved land use of fish and wildlife, forest, or recreation shall not require the planting of trees and shrubs. A herbaceous ground cover will be required, and the ground cover requirements of subsection (a)(2) are still applicable to erosion control structures. Illinois determined that tree and shrub growth on embankments is detrimental to their maintenance, and submitted an Illinois Department of Transportation (IDOT) booklet entitled ''Guidelines and Forms for Inspection of Illinois Dams'' to support this determination (Administrative Record No. IL–1617). The Director finds that prudent engineering practices dictate that large rooted plants should not be planted on erosion control structures because they can cause instability. Illinois has provided adequate support for its exemption of erosion control structures from the planting of trees and shrubs for the State of Illinois. Therefore, Illinois' proposed regulation provisions at 62 IAC 1816.117(a)(3) and 1817.117(a)(3) are not inconsistent with the Federal regulations at 30 CFR 816.116(b)(3)(ii) and 817.116(b)(3)(ii).

n. Sections 1816.117(b) and 1817.117(b) Revegetation: Tree and shrub Vegetation; Woody Plants

Illinois proposed to revise subsection (b) to clarify that planting arrangements such as hedgerows, border plantings, clump plantings, shelterbelts, and open herbaceous areas which increase diversity and edge effect within wildlife areas may be approved by the Department on a case-by-case basis prior to planting such areas. The Federal regulations at 30 CFR 816.116(b)(3)(i) and 817.116(b)(3)(i) require minimum stocking and planting arrangements be specified by the regulatory authority on the basis of local and regional conditions. Therefore, the Director finds that the proposed revision will not render Illinois' regulations at 62 IAC 1816.117(b) and 1817.117(b) inconsistent with the Federal regulations.

o. Sections 1816.117(c)(1),(c)(7) and 1817.117(c)(1),(c)(7) Revegetation: Tree and Shrub Vegetation; Sampling Procedure

Illinois proposed to revise subsection (c)(1) to establish a field system for trees and shrubs similar to that already adopted for agricultural areas by replacing the word ''area'' with the word ''field.'' This subsection is also revised by adding a requirement that once field boundaries are established in a submittal, the boundaries shall not be changed unless the Department approves a request in accordance with its permit revision regulations at 62 IAC 1774.13. At subsection (c)(7), Illinois proposed to remove the reference to ''Illinois Department of Conservation'' and change the word ''conduct'' to ''administer.'' The Federal regulations at 30 CFR 816.116(a)(1) and 817.116(a)(1) require that the regulatory authority select statistically valid sampling techniques for measuring success and include them in its program. The Director finds that the revised provisions at 62 IAC 1816.117 (c)(1) and (c)(7) 1817.117 (c)(1) and (c)(7) will not render Illinois' previously approved sampling procedures for measuring tree and shrub vegetation less effective than the Federal regulations.

15. 62IAC 1817.121(c)(3) Subsidence Control; Water Replacement

Illinois proposes to add new subsection (c)(3) to require operators to promptly replace any drinking, domestic, or residential water supply from a well or spring in existence prior to the application for a surface coal mining and reclamation operations permit, which has been affected by contamination, diminution, or interruption resulting from underground coal mining operations.

The proposed language is consistent with section 720(a)(2) of SMCRA, which was added October 24, 1992, by the Energy Policy Act. It is also consistent with the counterpart Federal regulation provision at 30 CFR 817.41(j), with one exception. The Federal provision specifies ''underground mining activities conducted after October 24, 1992.'' Whereas the Illinois provision will apply to activities conducted after adoption. However, by letter dated April 25, 1995 (Administrative Record No. IL–1533), Illinois indicated that its current regulations codified at 62 IAC 1817.121(c)(2) require repair or

compensation for subsidence-related material damage, including damage from activities conducted after October 24, 1992, to any structures or facilities, and this would include repair of or compensation for damage to water delivery systems such as well, cisterns, and water lines. Furthermore, on July 28, 1995 (60 FR 38677), OSM announced its decision on initial enforcement of the water replacement requirements for Illinois for activities conducted after October 24, 1992. It was decided that initial enforcement of the water replacement requirements in Illinois is not reasonably likely to be required and that implementation will be accomplished through the State program amendment process. Therefore, the Director finds 62 IAC 1817.121(c)(3) is no less effective than the Federal counterpart provision for subsidence-related water replacement.

However, it should be noted that the July 28, 1995, decision addressed only the initial enforcement schemes for water replacement (30 CFR 817.41(j)) and subsidence damage repair/compensation (30 CFR 817.121(c)(2)) provided for under section 720 of SMCRA, as amended by the Energy Policy Act of 1992, Pub. L. 102–486, 106 Stat. 2776 (1992). In addition to the basic water supply replacement requirement and the related subsidence damage repair requirement, the implementing Federal regulations that became effective March 31, 1995, contain other related supporting and permitting provisions. OSM anticipates that these other requirements will become effective in the same way as other revisions to the permanent program regulations; i.e., in primacy states such as Illinois, upon adoption of counterpart State regulatory program provisions (60 FR 16722). This process will be initiated separately by OSM under the provisions of 30 CFR 732.17(d).

16. 62 IAC 1816.151 and 1817.151 Primary Roads

At subsection (a), Illinois proposes to specify that the certification of the construction or reconstruction of primary roads shall be submitted within 30 days after completion of construction. Illinois defines ''completion of construction'' to mean that the road is being used for its intended purpose as determined by the Department. The counterpart Federal regulations at 30 CFR 816.151 and 817.151 do not set a time for submittal of primary road construction certifications or define ''completion of construction.'' However, the Director finds that the proposed revisions to 62 IAC 1816.151(a) and 1817.151(a) clarify the existing provisions and do not render the Illinois regulations less effective than the Federal counterparts.

17. 62 IAC 1816.190 (a), (b) and (c) and 1817.190 (a), (b) and (c) Affected Acreage Map

At subsection (a), Illinois proposed to require submittal of reports and maps of affected areas to the Department only by removing the phrase ''and to the county clerk.'' At subsection (b), Illinois is requiring the permittee to submit two copies of the reports and maps, plus an additional copy for each county in which the permit is located, which the Department will then forward to the county clerks. Illinois is also requiring that one of the copies contain the original signature of a company official. Also, statutory citations are being updated in subsections (b) and (c). There are no direct counterpart Federal regulations pertaining to an annual submittal of affected acreage reports and maps. However, the Director finds the proposed revisions to 62 IAC 1816.190 (a), (b), and (c) and 1817.190 (a), (b), and (c) would clarify and simplify the administration of Illinois' requirements for these annual submittals and would not render the Illinois regulations inconsistent with SMCRA or the Federal regulations.

18. 62 IAC 1816. Appendix A Agricultural Lands Productivity Formula—Permit Specifics Yield Standard

a. Illinois proposed revisions to the two existing paragraphs and reorganized them into subsections (a) and (b), respectively. Language is proposed at redesignated subsection (a) to clarify that yield standards must be calculated for each capability class in the disturbed area in the pit and that high capability and limited capability lands will be calculated in a manner similar to prime farmland. At redesignated subsections (a) and (b), Illinois proposed to replace the terms ''permit area and/or mining permit area'' with the term ''pit.''

Illinois has proposed to substitute the term ''pit'' for ''permit area'' in determining specific crop yield standards. The change proposed would alter the specific land area that would be included in the computation of the target yield utilizing the Illinois Agricultural Lands Productivity Formula (Illinois Productivity Formula). The counterpart Federal regulation for the establishment of yield standards on prime farmland is 30 CFR 823.15(b)(5). It requires that restoration of soil productivity shall be considered achieved when the average yield during the measurement period equals or exceeds the average yield of the reference crop established for the same period for nonmined soils of the same or similar texture or slope phase of the soil series in the surrounding area under equivalent management practices.

OSM initially had a major concern with the proposed revisions pertaining to how the ''pit'' area was to be utilized in calculations of the Illinois Productivity Formula. This concern was raised in public meetings held on May 31 and August 16, 1995. During these meetings representatives of Illinois explained how the area of the ''pit'' would be determined in a variety of circumstances. During the August 16, 1995, public meeting, Illinois stated that it would submit further clarification to OSM. Based on the State's clarification in the public meetings held on May 31 and August 16, 1995 (Administrative Record Nos. IL–1654 and IL–1662), and the subsequent submittal to OSM of additional clarification, including maps defining pit areas (Administrative Record No. IL–1663), the Director finds that the proposed revisions are no less effective than the Federal regulations and is approving the revisions.

This approval is based upon Illinois defining the use of the term ''pit'' in the following circumstances:

(1) Single pit within a single permit—The pit area is the same as the permit area.

(2) Multiple pits within a single permit—Each pit area will be clearly marked on the permit map that has been subjected to public review prior to approval.

(3) Single pit within several permits that have been consolidated into a single permit—The pit area will be the same as the area of the consolidated permit.

(4) Multiple pits within several permits that are consolidated into one permit—Each pit area will be clearly marked on the consolidated permit map that has been subjected to public review prior to approval.

In all circumstances, Illinois must assure that the crop yield standard is representative of the average yield of the reference crop established for the same period for nonmined soils of the same or similar texture or slope phase of the soil series in the surrounding area under equivalent management practices.

b. New subsection (c) was added and reads as follows:

> After mining operations have ceased, the Department shall recalculate the yield standards for the pit based solely on the soils which were disturbed. Recalculated targets shall be applicable to all areas tested for productivity subsequent to the recalculation.

Approved significant revisions after permanent cessation of mining shall cause the targets to be recalculated and applied to productivity fields tested after the recalculation.

This proposal provides that after mining has ceased in any pit, the yield standard would be recalculated for the pit utilizing only those soils actually disturbed. These recalculated yield standards would be applicable only to those areas not already tested. Again, the standard to which OSM must compare the change is the Federal requirement that the yield standard be developed from lands representative of the lands mined and reclaimed. This proposal should improve the accuracy of the calculated yield standard as it represents the soils actually disturbed by mining. Therefore, the Director finds that the proposed revisions are no less effective than the Federal regulations.

19. 62 IAC 1816. Appendix A Agricultural Lands Productivity Formula; Sampling Method

Illinois proposed a revision to the sampling method section of its productivity formula to require the Department and the Illinois Department of Agriculture to jointly request the operator to verify yields by harvest weight for specified reasons, including but not limited to verification of random sampling results and availability of sample enumerators. Prior to this revision, only the Department could make this request. However, as referenced in other sections, the Illinois Department of Agriculture works with the Department in implementing the Illinois Productivity Formula. Therefore, the Director finds the revision is not inconsistent with the Federal regulations.

20. 62 IAC 1825.14 High Capability Lands: Soil Replacement

Illinois added new subsection (e)(1)(E) to specify that excessive compaction is also indicated by other diagnostic methods approved by the Department, in consultation with the Illinois Department of Agriculture and the U.S. Department of Agriculture, Natural Resources Conservation Service. At subsection (e)(2), Illinois is proposing an additional method for the Department to evaluate excessive compaction. The permittee will have a choice between the existing provision and the new provision which specifies that compaction alleviation is required unless the permittee can demonstrate that the requirements of 62 IAC 1816.116 or 1816.117, as applicable, have been met without compaction alleviation on areas reclaimed in a similar manner. A second new provision in subsection (e)(2) requires the Department to retain sufficient bond at the time of Phase II bond release if it determines that compaction alleviation may be needed to achieve the revegetation success requirements.

There are no direct counterpart Federal regulations to Illinois' regulations for high capability lands at 62 IAC 1825. However, the Director finds that the revisions proposed at 62 IAC 1825.14(e) pertaining to soil compaction alleviation do not adversely affect other aspects of the Illinois program and are not inconsistent with the topsoil and subsoil provisions of the Federal regulations at 30 CFR 816.22 and 817.22.

21. 62 IAC 1840.17 Review of Decision Not to Inspect or Enforce

Illinois proposed to revise subsection (a) by allowing affected persons to request from the ''Director or his or her designee'' a review of a decision not to inspect or enforce. The Director finds that the proposed language at 62 IAC 1840.17(a) is consistent with the counterpart Federal regulation language at 30 CFR 842.15(a).

Illinois also proposed to revise subsection (a) by adding a new provision that requires the request for review to be submitted within 30 days from the date the citizen is notified of the decision and that specifies failure to file a request for informal review within this time period would result in a waiver of the right to such review. Although the counterpart Federal regulation at 30 CFR 842.15(a) does not include a deadline for filing a review request, the Illinois requirement at 62 IAC 1840.17(a) that such requests be filed within 30 days of the State's decision is not unreasonable. Using this approach, Illinois can ensure administrative efficiency by setting a firm deadline for appeals, without undue prejudice to the interest of citizens who may be adversely affected by the decisions not to inspect or enforce. Illinois affirmed that persons will be notified of this requirement via certified mail as part of the decision documents. Therefore, the Director finds the State's requirement that requests be filed within a specified time period ensures administrative efficiency in a manner that is not inconsistent with SMCRA or the Federal regulations. However, this approval is made with the understanding that notification of the 30-day time period within which to request, or else waive, the right to informal review will be included in the notice of decision not to inspect or enforce and that failure to include the notification will not limit the right for review.

Subsection (b) is proposed to be amended by changing the reviewing official for reviews of the authorized representative's decision not to inspect or enforce from the ''Supervisor of the Land Reclamation Division'' to the ''Director or his or her designee.'' This change is in line with a recent reorganization of the Illinois regulatory authority into a Department of Natural Resources, and it elevates the review level to the Director of the Department of Natural Resources. The Director finds the revised language at 62 IAC 1840.17(b) is consistent with the counterpart Federal regulation language at 30 CFR 842.15(b).

Subsection (c) is proposed to be amended to reference 62 IAC 1847.3 of the Illinois regulations for formal review, rather than Section 8.07 of the State Act. The Director finds that 62 IAC 1847.3 is the correct citation since this section contains the State's procedures for seeking administrative and judicial review of formal decisions not to inspect or enforce under 62 IAC 1840.17.

22. 62 IAC 1843.13 Suspension or Revocation of Permits

At existing subsections (a)(1), (a)(3) and (b) language was deleted in order to eliminate the mandatory determination that a pattern of violations exists under specified conditions and to eliminate an exception which allowed Illinois to decline to issue a show cause order if it determined that to issue the order would be ''demonstrably unjust.'' Existing subsections (c), (d), (e), and (f) were redesignated as (b), (c), (d), and (e), respectively. The Director finds that the deletion of the mandatory determination and exception provision language at 62 IAC 1843.13(a)(1), (a)(3), and (b) is consistent with changes made to the counterpart Federal regulations at 30 CFR 843.13 on August 16, 1982 (47 FR 35630).

23 62 IAC 1845.12 When Penalty Will Be Assessed

As required by 30 CFR 913.16(t), Illinois proposed to amend subsection (d) by adding language which assures that the Department will consider the factors set forth in Section 1845.13 in determining whether to assess a penalty below $1,100. Illinois also proposed to codify its long-standing policy of assessing a penalty when a violation is the permittee's second or more related violation within a 12-month period. The director finds that the proposed language is not inconsistent with the intent of the counterpart Federal

regulation at 30 CFR 845.12(c), and he is removing the required amendment at 30 CFR 913.16(t).

24. 62 IAC 1847 Administrative and Judicial Review

a. Section 1847.3 Hearings

(1) At subsection (a), Illinois is specifying that administrative review under this section also applies to decisions not to inspect or enforce under 62 IAC 1840.17, to decisions on minor underground mine facility permit applications pursuant to 62 IAC 1785.23, and to decisions on challenges to ownership or control links at 62 IAC 1773.24. The regulations at 62 IAC 1847.3 consolidate the procedures for most of the formal reviews provided for in the Illinois program. The proposed revision clarifies what additional portions of the Illinois program are covered under the administrative review procedures at 62 IAC 1847.3.

The Federal regulations provide for administrative hearings at 43 CFR 4.1360–1369 for permitting issues and at 43 CFR 4.1380–1387 for challenges to ownership or control links. The Federal regulations at 30 CFR 842.15 do not provide for a formal adjudicatory administrative hearing for decisions pertaining to review of decisions not to inspect or enforce, but do provide for a right of appeal under 43 CFR 4.1280–1286. The Director finds the regulations at 62 IAC 1847.3 are consistent with 43 CFR part 4 for purposes of administrative hearings on minor underground mine facility permit applications and challenges to ownership or control links. He also finds that allowing a formal adjudicatory administrative hearing for decisions pertaining to review of a decision not to inspect or enforce is not inconsistent with the Federal regulations at 30 CFR 842.15.

(2) Illinois is proposing revisions at subsections (f), (i), and (j) to clarify that the final decision of the Department in administrative review hearings held under 62 IAC 1847.3 is made by the Hearing Officer. At subsection (f), Illinois is replacing the word ''Director's'' with the word ''final.'' At subsection (i), Illinois is changing the time period from 15 to 10 days for filing of written exceptions and responses and requiring exceptions to be filed with the hearing officer instead of the Director. At subsection (j), Illinois is specifying that if no exceptions are filed pursuant to the hearing officer's proposed decision, the decision becomes final within 10 days rather than 15 days. The revision also adds language which provides that the hearing officer can affirm or modify his proposed decision or remand and rehear the issue in response to any exceptions filed.

The Federal regulations relative to appeals of a variety of administrative decisions, including 30 CFR 775.11 for decision on permits, require that administrative hearings under Federal programs be governed by 43 CFR part 4, which requires requests for review be filed with the Office of Hearings and Appeals, U.S. Department of the Interior. An Administrative Law Judge is assigned by the Office of Hearings and Appeals and he or she issues a written decision. A petition for discretionary review of the written decision can then be filed with the Board of Land Appeals. States do not have the same hierarchy available to them and must attempt to create an appeal process which is as effective as that provided in the Federal regulations. The Federal regulations specify general adjudicatory provisions that States must include in their administrative review hearing procedures, but allow the States discretion in how to implement these provisions. This would include the determination of who shall make final administrative hearing decisions. Therefore, the Director finds that the designation of a hearing officer to make final administrative hearing decisions does not render the Illinois regulations less effective than the Federal regulations. The Federal regulations contain no comparable provisions to those being revised concerning filing of written exceptions to a hearing officer's decision, time limits for filing written exceptions and responses to exceptions, and time limits for issuance of a final administrative decision. However, the Director finds that these proposed revisions will not render the regulations at 62 IAC 1847.3 inconsistent with SMCRA or the Federal regulations.

(3) In response to a required amendment, Illinois proposed to revise 62 IAC 1847.3(1)(2) to specify that judicial review of an administrative review decision may be requested if the hearing officer or the Department fail to act within specified time limits. The Federal regulations at 30 CFR 775.13(a)(2) also require that judicial review be granted if the regulatory authority or the hearing officer for administrative review fail to act within applicable time limits. Therefore, the Director finds that Illinois' revised regulation is no less effective than the counterpart Federal regulation, and he is removing the required amendment at 30 CFR 913.16(u).

b. Section 1847.4 Citation Hearings

Illinois is proposing revisions at subsections (g), (j), and (k) to clarify that the final decision of the Department in administrative review hearings pertaining to citations is made by the Hearing Officer. At subsection (g), Illinois is replacing the word ''Director's'' with the word ''final.'' At subsection (j), Illinois is proposing to change the time period from 15 to 10 days for filing of written exceptions and responses. Also, they are to be filed with the hearing officer instead of the Director. At subsection (k), Illinois is proposing to have the proposed decision become final in 10 days instead of 15 if no written exceptions are filed. Illinois is also proposing that the hearing officer instead of the Director issue the final administrative decision affirming or modifying or vacating the proposed decision if written exceptions are filed. These revisions are substantively identical to those proposed for 62 IAC 1847.3 (f), (i), and (j). Therefore, the Director is approving the proposed revisions at 62 IAC 1847.4 (g), (j), and (k) for the same reasons discussed in finding C.24.a.(2) for 62 IAC 1847.3 (f), (i), and (j).

c. Section 1847.5 Civil Penalty Assessment Hearings

Illinois is proposing revisions at subsections (j), (m), and (n) to clarify that the final decision of the Department in administrative review hearings pertaining to civil penalty assessments is made by the Hearing officer. At subsection (j), Illinois is changing the reference from the decision of the Director to the final decision. At subsection (m), Illinois is proposing to change the time period from 15 to 10 days for filing of written exceptions and responses. Also, they are to be filed with the hearing officer instead of the Director. At subsection (n), Illinois is proposing to have the proposed decision become final in 10 days instead of 15 if no written exceptions are filed. Illinois is also proposing that the hearing officer instead of the Director issue the final administrative decision affirming, modifying, or vacating the proposed decision if written exceptions are filed. These revisions are substantively identical to those proposed for 62 IAC 1847.3 (f), (i), and (j). Therefore, the Director is approving the proposed revisions at 62 IAC 1847.5 (j), (m), and (n) for the same reasons discussed in finding C.24.a.(2) for 62 IAC 1847.3 (f), (i), and (j).

d. Section 1847.6 Show Cause Hearings

Illinois is proposing revisions at subsections (i), (k), and (l) to clarify that the final decision of the Department in administrative review hearings pertaining to show cause orders is made by the hearing officer. At subsection (i), Illinois is replacing the word ''Director's'' with the word ''final.'' At subsection (k), Illinois is proposing to change the time period from 15 to 10 days for filing to written exceptions and responses. Also, they are to be filed with the hearing officer instead of the Director. At subsection (1), Illinois is proposing to have the proposed decision become final in 10 days instead of 15 if no written exceptions are filed. Illinois is also proposing that the hearing officer instead of the Director issue the final administrative decision affirming, modifying, or vacating the proposed decision if written exceptions are filed. These revisions are substantively identical to those proposed for 62 IAC 1847.3 (f), (i), and (j). Therefore, the Director is approving the proposed revisions at 62 IAC 1847.6 (i), (k), (l) for the same reasons discussed in finding C.24.a.(2) for 62 IAC 1847.3 (f), (i), and (j).

e. Section 1847.7 Bond Forfeiture Hearings

Illinois is proposing revisions at subsections (h), (j), and (k) to clarify that the final decision of the Department in administrative review hearings pertaining to bond forfeiture is made by the hearing officer. At subsection (h), Illinois is replacing the word ''Director's'' with the word ''final.'' At subsection (j), Illinois is proposing to change the time period from 15 to 10 days for filing of written exceptions and responses. Also, they are to be filed with the hearing officer instead of the Director. At subsection (k), Illinois is proposing to have the proposed decision become final in 10 days instead of 15 if no written exceptions are filed. Illinois is also proposing that the hearing officer instead of the Director issue the final administrative decision affirming, modifying, or vacating the proposed decision if written exceptions are filed. These revisions are substantively identical to those proposed for 62 IAC 1847.3 (f), (i), and (j). Therefore, the Director is approved the proposed revisions at 62 IAC 1847.7 (h), (j), and (k) for the same reasons discussed in finding C.24.a.(2) and 62 IAC 1847.3 (f), (i), and (j).

25. 62 IAC 1848.5 Notice of Hearing

Illinois proposed new subsection (f) to implement a July 7, 1993, amendment to Section 2.11 of the State Act pertaining to permit hearing notices. If the hearing concerns review of a permit decision under 62 IAC 1847.3, a notice containing specified information in a specified format shall be published in a newspaper of general circulation published in each county in which any part of the area of the affected land is located. The notice cannot be placed where legal notices and classified advertisements appear. The Federal regulations at 30 CFR 775.11 for administrative review hearings of permitting actions do not contain this specific requirement for a public notice. However, the Director finds that the addition of this new provision will not render 62 IAC 1848.5 less effective than the Federal regulations.

26. 62 IAC 1850 Training, Examination and Certification of Blasters

a. Section 1850.14 Examination

Illinois proposed to amend subsections (a) and (b) to allow notification of examinations to be done by telephone in those cases where it is not possible to give such notice in writing within the time specified in the regulations by removing references to written notification and notification by letter. The Director finds that the counterpart Federal regulations at 30 CFR 850.14 do not contain any specific requirements for notification of blaster certification examinations and that the proposed revisions do not alter the effectiveness of Illinois' previously approved blaster examination provisions. Therefore, the revised regulations at 62 IAC 1850.14 and no less effective than the counterpart Federal regulations.

b. Section 1850.15 Application and Certification

Subsection (a) is proposed to be amended by shortening the deadline for receipt of applications for certification from 45 days to 30 days and by shortening the deadline for review of applications from 30 to 15 days. Illinois also proposed a revision that will allow the option of including any applicant with an application received less than 15 days before a regularly scheduled session in that session or in the next session. The counterpart Federal regulation at 30 CFR 850.15(a) does not contain specific procedures governing applications for certification. The Director finds the proposed revisions will allow Illinois more flexibility in scheduling and administering its blaster certification examinations and will not alter the effectiveness of Illinois' previously approved provisions. Therefore, the revised regulations at 62 IAC 1850.15 are no less effective than the counterpart Federal regulations.

c. Section 1850.16 Denial, Issuance of Notice of Infraction, Suspension, Revocation, and Other Administrative Actions

Illinois proposed several nonsubstantive revisions at 62 IAC 1850.16: Subsection (b) is proposed to be entitled ''Notice of Infraction'' and subsection (c) is proposed to be entitled ''Notice to Show Cause; at subsections (b)(1) (A) and (D), various regulatory and statute citations are corrected, including the reference to SMCRA; and it subsections (b)(3) and (c)(2) and (c)(3), the hearing regulation reference is corrected to reference the State's new section for administrative review of blasting infractions at 62 IAC 1847.4 (e) and (g) through (p).

Subsection (b)(3) is proposed to be revised by clarifying the blaster is to file a request for review and hearing of a notice of infraction with the Department. The specific address listed in this subsection is removed since it is subject to change. The blaster's request for review is simplified by removing a requirement to include specified information, which would already be available to the Department. In subsections (b) and (c), the hearings for a notice of infraction and a notice to show cause are proposed to be held at one of the Department's offices, and the existing language, which limited the hearings to two locations, is removed. These changes will provide for greater opportunity to hold hearings in the locale of the requestors. The Director finds that the proposed revisions at 62 IAC 1850.16 simplify, clarify, and strengthen the Illinois provisions for administrative review of blaster certifications and are not inconsistent with the Federal regulations at 30 CFR 850.15.

d. Section 1850.17 Judicial Review

Illinois proposed to repeal 62 IAC 1850.17 concerning judicial review for final administrative decisions on blaster certifications. The Director finds that since the provision for judicial review of these administrative decisions is contained in previously approved 62 IAC 1847.4(p) and section 1847.4 is referenced in all applicable sections of 62 IAC 1850, this repeal will not render the Illinois blaster certification regulations less effective than the counterpart Federal regulations.

IV. Summary and Disposition of Comments

Public Comments

The Director solicited public comments and provided on an opportunity for a public hearing on the proposed amendment on two separate occasions. A public hearing was held on March 24, 1995, in Galesburg, Illinois (Administrative Record No. IL–1636). Comments on the proposed revisions to Illinois' regulations were received from Janis King, President of the Citizens Organizing Project; Dennis Sullivan, Vice-president of the Sauk Trail Organization for Preservation; Roger Holmes, President of the Knox County Farm Bureau; Robert L. Masterson, Zoning Administrator for the Knox County Zoning Department; Helen Pence; Anna Johnson and Patrick D. Shaw, Citizens Organizing Project; Tom Fitzgerald, Director of the National Citizens' Coal Law Project (NCCLP); Robert G. Darmody, Associate Professor of Pedology, University of Illinois, and Keith Shank.

Following is a summary of the substantive comments received on the proposed amendment. Comments identifying errors of a purely typographical or editorial nature, comments voicing general support or opposition to the proposed amendment but devoid of any specific statements, and comments which do not specifically relate to requirements in the proposed regulations are not discussed. The summarized comments and responses to the comments are organized by the section of the amended regulations to which they pertain.

62 IAC 1700.11(f) Termination of jurisdiction

Comment: To the extent that the requirements of 62 Ill. Code 280 incorporate all of the counterpart 30 CFR Subchapter B interim program performance standards and other requirements, the proposed adoption of the termination of jurisdiction regulations appear to conform to 30 CFR 700.11(d).

Response: The Illinois regulations at 62 IAC 280 incorporate by reference the applicable provisions of subchapter B of the Federal regulations.

62 IAC 1701.Appendix A Definition of Wetland

Comment 1: Two commenters expressed concern that not requiring all three of the wetland parameters to be present prior to bond release could result in environmental damage and incomplete reclamation.

Response: As discussed in finding C.2, Illinois' explanation that the hydric soil profile may not be fully developed in an artificial wetland is consistent with the U.S. Army Corps of Engineers' determination that indicators of hydric soils are usually absent in man-induced wetlands. Furthermore, as discussed in finding C.14.k, Illinois proposed and the Director approved wetland revegetation regulations at 62 IAC 1816.116(a)(5) and 1817.116(a)(5) that require the use of the wetland vegetation criteria and sampling procedures specified in the U.S. Army Corps of Engineers Wetlands Delineation Manual, Technical Report Y–87–1. Therefore, reclaimed areas must meet specified revegetation success standards prior to bond release.

Comment 2: One commenter expressed concern regarding the requirement that a mitigated wetland area function as a wetland to be considered wetlands, and recommended that it be deleted because of the possible difficulties in applying the requirement. The commenter expressed the belief that all mitigation areas should be protected regardless as to whether they exhibit tangible wetlands functions.

Response: The proposed definition does not conflict with any existing Federal regulation. OSM interprets the requirement for a functioning wetland to be applicable to areas reclaimed as planned wetlands which have attained that land use as determined by a trained professional of the State's staff, but may not clearly meet each of the three parameters contained in the definition. As discussed in finding C.2, the U.S. Army Corps of Engineers recognizes that man-induced wetlands (restored or created wetland) may not contain all three parameters.

Pre-existing wetlands mitigation requirements and conditions relating to surface coal mining activities are determined by the U.S. Army Corps of Engineers under section 404 of the Clean Water Act. In accordance with section 702(a)(3) of SMCRA, Federal and State program requirements cannot supersede, amend, modify, or repeal requirements under section 404 of the Clean Water Act, including mitigation plans for those wetlands which existed in the premining landscape and are being replaced in accordance with a Section 404 permit. If mitigation of pre-existing wetlands is required, the mine operator must meet the requirements and conditions of the U.S. Army Corps of Engineers.

However, section 515(b)(24) of SMCRA requires surface coal mining operations ''to the extent possible using the best technology currently available, minimize disturbances and adverse impacts of the operation on fish, wildlife, and related environmental values, and achieve enhancement of such resources where practicable.'' Furthermore, the Illinois program implements this SMCRA requirement at 62 IAC 1816.97 and 1817.97 by requiring the protection of fish, wildlife, and related environmental values, including wetlands.

Comment 3. One commenter believed that the State should be requested to commit to permit, require bonds, and apply all reclamation to wetland mitigation areas.

Response: As discussed above, mitigation of pre-existing wetlands is conducted under the authority of the U.S. Army Corps of Engineers under section 404 of the Clean Water Act. Pursuant to the requirements of section 702(a)(3) of SMCRA, OSM does not have the authority to require States to permit, require bonds, and apply all reclamation standards to off-site wetland mitigation areas. Furthermore, on-site wetland mitigation areas are subject only to those requirements of a Federal or State program that do not supersede, amend, modify, or repeal requirements under Section 404 of the Clean Water Act.

62 IAC 1701.Appendix A Definition of Violation Notice

Comment: Two commenters were concerned that the definition of violation notice would not include violations involving underground mining operations because of its reference to ''surface coal mining operations'' only .

Response: Illinois' defines ''surface coal mining operations'' at 62 IAC 1701.Appendix A to mean ''activities conducted on the surface of lands in connection with a surface coal mine or subject to the requirements of Section 516 of the Federal Act, surface operations and surface impacts incident to an underground coal mine, the products of which enter commerce, or the operations of which directly or indirectly affect interstate commerce.'' Therefore, the proposed definition of ''violation notice'' requires Illinois to consider violations in connection with both surface and underground coal mines.

62 IAC 1761.11(d)(12) [Recodfied 1761.11(a)(4)(B)] Areas Where Mining is Prohibited or Limited

Comment: Two commenters were concerned with the deletion of the phrase ''including surface areas impacted by planned subsidence'' from this provision. One commenter believed that the deletion ''could be construed to mean an intent to prohibit any planned

subsidence within 100 feet of a public road, or an intent to completely eliminate from consideration the location of planned or unplanned subsidence relative to public roads.'' This commenter supported the application to public roads.'' This commenter supported the application of the 30 CFR 761.11 prohibitions to underground mining that has the potential to cause direct or indirect surface impacts, and believed that unless it can be demonstrated that material damage will not occur from the underground operation (planned or room and pillar), the permit should not be issued.

Response: The language in the revised regulation at existing 62 IAC 1761.11(d)(2) [recodified 1761.11(a)(4)(B)] is substantively identical to the corresponding Federal regulation at 30 CFR 761.11(d)(2); and, therefore, is not inconsistent with the Federal requirements.

62 IAC 1773.15(b) Review of Violations

Comment 1: Two commenters were concerned that the phrase ''surface coal mining and reclamation operations'' restricted the provision at 62 IAC 1773.15(b)(1) for evaluating violator status of permit applicants to violations in connection with surface coal mines.

Response: Illinois' definition of ''surface coal mining and reclamation operations'' at 62 IAC 1701.Appendix A includes its definition of ''surface coal mining operations.'' As discussed above, under 62 IAC 1701.Appendix A, definition of ''violation notice,'' Illinois must consider violations in connection with both surface and underground coal mines.

Comment 2: One commenter objected to the provision at 62 IAC 1773.15(b)(2) that allows a permit to be conditionally issued if an outstanding violation is in the process of being corrected.

Response: The proposed regulation at 62 IAC 1773.15(b)(2) is substantively identical to the Federal regulation at 30 CFR 773.15(b)(2), and, therefore, is not inconsistent with the Federal requirements.

Comment 3: One commenter acknowledged that the State rule and the Federal rule are identical, but expressed the opinion that both rules are inconsistent with the Federal Act.

Response: The appropriateness of the Federal rule is not at issue in this rulemaking.

62 IAC 1773.24 (b) Through (d) Procedures for Challenging Ownership or Control Links Show in the AVS

Comment: It is not clear from the proposed revision to 62 IAC 1773.24 (b) through (d), that the phrase ''other person'' in the context of who beyond the applicant may appeal a decision concerning whether an ownership and control link has been demonstrated or rebutted, includes persons (such as neighbors of the proposed mining operation) who have an interest which is or may be adversely affected by the decision to lift an ownership and control link and permit block.

Response: The Illinois regulation at 62 IAC 1773.24(b), as revised on November 1, 1995, specifically states that the ''other person'' must be eligible under the provisions of subsection (a)(3). To be eligible under the provisions of subsection (a)(3). To be eligible under the provisions of subsection (a)(3), the ''other person'' must be shown in the AVS in an ownership or control link to any person cited in a state violation notice.

62 IAC 1773.25(c)(1)(B) Standards for Challenging Ownership or Control Links

Comment: How can a person who ''owns or controls'' not have authority to determine manner in which surface mining operations are conducted? The criteria for exclusion from responsibility for a violation is contrary to the liability of ownership.

Response: Illinois' regulation at 62 IAC 1773.25(c)(1)(B) is substantively identical to the Federal regulation at 30 CFR 773.25(c)(1)(ii). These regulations refer to a person who is subject to a presumption of ''ownership or control.'' This presumption is refutable under the definition of ''owned or controlled'' or ''owns or controls'' at 30 CFR 773.5.

62 IAC 1774.13(b)(2)(E) Permit Revisions

Comment 1: The proposed change in this rule, to the extent that it allows an increase in the acreages for which the postmining land use may be changed without public notice and comment, is opposed as being arbitrary and inconsistent with the purpose of the Act of enfranchising the public in permitting matters.

The proposal would allow a ''rolling'' 5% limit, that would restart whenever the prior land use changes had been subject to public review, rather than cumulating such changes. The concern is that a 5% limit is unrelated to the significance of the land use change, which, depending on the type of land and pre- and post-mining land use, could be locally significant (i.e. high quality farmland to hayland/pasture, agricultural to industrial or commercial, etc.) The NCCLP suggests that an abbreviated public comment period should be provided in all cases where the post-mining land use is to be changed, as is apparently provided with all incidental boundary revisions.

Response: Neither SMCRA nor the Federal regulations require a public comment period for all postmining land use changes. Section 511(b)(2) of SMCRA and the Federal regulations at 30 CFR 774.13(b) require the regulatory authority to establish guidelines for the scale or extent of revisions for which all the permit application requirements will apply, including public notice. As discussed in finding C.7.a, the Director found that the proposed change represents a reasonable application by Illinois of this requirement.

Since Illinois requires all alternative land use revisions, both significant and insignificant, to comply with 62 IAC 1816.133 or 1817.133, the concern that Illinois would approve a proposal to allow a disturbed area to be restored to a lower or a lesser land use is unfounded. These sections of the Illinois program pertain to postmining land capability requirements, including the requirement that the disturbed areas be restored to a condition capable of supporting prior uses or higher or better uses. Illinois also requires consultation with the landowner or the land management agency with jurisdiction over the lands before approval of either type of revision.

Comment 2: One comment questioned whether Illinois had a definition for ''insignificant change'' with relation to its proposed provisions for land use changes.

Response: Illinois does not have a specific definition for ''insignificant change'' in its regulations at 62 IAC 1774.13. However, subsections 1774.13(b)(2) (A) through (E) specify departures from the methods or conduct of mining or reclamation operations which would not be considered significant, including changes in land use. Subsection 1774.13(b)(2)(E) contains the criteria used to determine whether a land use change is significant or insignificant. This final determination must be made on a case-by-case basis. As discussed in finding C.7.a, the Federal counterpart regulation for permit revisions at 30 CFR 774.13(b) requires the regulatory authority to establish guidelines for the scale or extent of revisions.

62 IAC 1774.13(d)(6) Incidental Boundary Revisions

Comment: The NCCLP further cautions against increasing the acreage that can be added to permits under IBRs without full-scale public review as would attach to a permit or permit amendment, since the use of IBRs on the scale contained in the existing Illinois state program is arguably inconsistent with the federal Act. The commenter believed that the addition of as much as 20 acres of area to existing permits under the State's incidental boundary revision regulations went beyond the intent of Congress.

Response: The Director previously approved the existing Illinois provisions pertaining to the size and scope of incidental boundary revisions, and no changes to these provisions are proposed in this amendment. As discussed in finding C.7.b, the Director is approving a new provision at subsection (d)(6) that requires public notice and comment for all additions to permit areas and planned subsidence areas that are requested pursuant to Illinois' incidental boundary revision regulations at 62 IAC 1774.13(d).

62 IAC 1778.15 Right of Entry Information

Comment: The proposal to delete the requirement of right-of-entry information for areas overlying underground workings is inconsistent with the federal Act and Secretary of Interior's regulations and the original requirement must be reinstated. The requirement, hardly a ''burdensome'' matter, is a mandate for all areas within the permit area, and the Secretary's regulations require that areas overlying tunnels, shafts and underground operations, be bonded, thus those areas are within the permit area under 30 CFR 701.5. The commenter provided additional argument in support of the belief that areas overlying underground shafts, tunnels and operations should be subject to right-of-entry requirements, should be included within the permit area, and should be bonded (Administrative Record No. IL–1643).

Response: As discussed in finding C.8.a, OSM revised the Federal definition of ''permit area'' and associated terms to exclude areas overlying underground workings (48 FR 14814, April 5, 1983). Also, the preamble to the July 19, 1983, revisions to the Federal bonding rules clarifies that no bond is needed for areas overlying underground workings (48 FR 32947–48). Therefore, the Federal regulation at 30 CFR 778.15(a) does not require a description of right-of-entry documents for areas overlying underground workings (shadow area). The Illinois regulation at 62 IAC 1778.15(a) is substantively identical to the Federal counterpart, and, therefore, is not inconsistent with the Federal requirements.

62 IAC 1785.17(a) Prime Farmlands

Comment: Three commenters objected to the proposed deletion of provisions that required a preliminary prime farmland exemption review and that limited the amount of prime farmland to be exempted in the State.

Response: The Federal regulations do not contain counterpart provisions to the language deleted from the State regulations. As discussed in finding C.10, the revised regulation provisions at 62 IAC 1785.17(a) are substantively identical to the counterpart Federal regulation provisions at 30 CFR 785.17(a), and, therefore, they are not inconsistent with the Federal requirements.

62 IAC 1785.17(d)(1) Consultation With the State Conservationist

Comment: Four commenters objected to the proposed deletion of the phrase ''The State recognizes that the permit cannot be issued without the required consultation with the USDA'' from 62 IAC 1785.17(d)(1).

Response: Illinois withdrew its proposed deletion, and reinstated the phrase at the end of 62 IAC 1785.17(d)(1).

62 IAC 1795.6(b) Eligibility for Assistance

Comment: Eligibility for ''Small Operators Assistance Program'' is based on yearly productivity from an operation covered by a single permit as per the wording of the proposed rule. The proposed 300,000 Tons per year eligibility should be reduced to 100,000 Tons. The reason for this is that 300,000 Tons is too close to the following productivity as per the Department's 1993 Statistical Report: ASARCO Knox County—428,546 Tons, Freeman-United Industry, McDonough County—431,103 Tons, and Consolidated Burning Star #2—324,555 Tons. Surely, not any of these companies need assistance.

Response: The commenter has misinterpreted the proposed rule. As described in 62 IAC 1785.6 (b)(1) through (b)(4), coal produced by other mines and other companies in which the applicant has an interest must be added to the applicant's anticipated production. The revised regulation is substantively identical to the Federal regulation at 30 CFR 795.6(a)(2).

62 IAC 1795.12(b) Applicant Liability

Comment: The elimination of the objective standard for what constitutes ''good faith'' for purposes of waiver of the reimbursement obligation makes it unclear whether the standard will be one of reasonable prudence or ''good heart, empty head.''

Response: The Federal regulation at 30 CFR 795.12(b) does not contain a definition of ''good faith.'' Therefore, the proposed deletion does not render the State regulation less effective than the Federal counterpart. The phrase ''good faith'' can be reasonably applied within its normal meaning, and a definition is not needed.

62 IAC 1800.5(b)(4)/1800.21(b)(1) Irrevocable Letter of Credit

Comment: The proposal to allow irrevocable letters of credit to be posted by institutions chartered outside of Illinois must retain the requirement that there be a bank within the state authorized to pay the letter on presentation, since under the ''full faith and credit'' doctrine, courts in sister states will entertain defenses to penal judgments obtained from a court or agency in another state.

Response: Both 62 IAC 1800.5(b)(4) and 1800.21(b)(1) contain a requirement for a designated confirming bank with an office in Illinois that is authorized to accept, negotiate, and pay the letter upon presentment in Illinois.

62 IAC 1800.20(b) Surety Bonds

Comment: By removing required conditions for surety, you are removing standards by which to determine whether corporate surety is ''good and sufficient'' as required by the Surface Coal Mining Land Conservation and Reclamation Act. 225ILCS 720/6.01(a). This increases the chance that the Illinois taxpayers will be the ones ultimately required to pick up the tab if reclamation is not completed.

Response: The counterpart Federal regulations do not contain the provisions proposed for deletion. Therefore, the proposed removal of 62 IAC 1800.20(b) (2) through (5) does not render the State regulations inconsistent with the Federal regulations at 30 CFR 800.20(b).

62 IAC 1816/1817.13 and 1816/1817.15 Casing and Sealing of Exposed Underground Openings

Comment: The requirement to ''backfill'' drilled holes and exposed underground openings is less protective than casing, sealing and otherwise managing the holes. Depending on the circumstances, the backfilling of a hole with porous material can allow

migration of contaminants. On its face, the requirement is less protective than 30 CFR 816.13, 14 and 15.

Response: Illinois withdrew its proposed revision to these sections.

62 IAC 1816/1817.22 Topsoil and Subsoil

Comment: Three commenters expressed concern regarding the removal of the provisions at 62 IAC 1816(b)(2) and 1817(b)(2) that require topsoil plans for substitutes or supplements for prime farmland be considered a significant revision subject to public review. Their major concern was that Illinois would allow the use of non-prime soil for substitutes or supplements for prime farmland soils.

Response: As discussed in finding C.14.a, the counterpart Federal regulations at 30 CFR 816.22(b) and 817.22(b) do not contain the removed language. However, the Director notes that prime farmland reclamation plans, including topsoil plans, must meet the special environmental protection reclamation standards for prime farmland soils at 62 IAC 1823. This includes the requirement at § 1823.12(a) that reconstructed soils have equal or greater productive capacity than what existed before mining.

62 IAC 1816/1817.41(c)(2) Ground Water Monitoring

Comment: To submit groundwater monitoring data every three months is not often enough to allow remedial action to a problem.

Response: As discussed in finding C.14.b, the Illinois regulations are consistent with the Federal counterpart regulations at 30 CFR 816.41(c)(2) and 817.41(c)(2) that require reports to be submitted every three months or more frequently as prescribed by the regulatory authority.

62 IAC 1816/1817.41(e)(2) Surface Water Monitoring

Comment: Keep requirement that NPDES reports be sent to the Department concurrent with those sent to Illinois EPA.

Response: The Federal regulations do not require that National Pollutant Discharge Elimination System (NPDES) reports be submitted to State regulatory authorities. Therefore, the proposed revisions to this section are not inconsistent with the Federal regulations at 30 CFR 816/817.41(e)(2). As discussed in finding C.14.c, Illinois has retained its requirement that surface water monitoring data be submitted every three months or more frequently if necessary.

62 IAC 1816/1817.46(e)(1) Siltation Structures; Exemptions

Comment: Two commenters expressed concern regarding the new exemption at 62 IAC 1816.46(e)(1) and 1817.46(e)(1) that would allow use of the alternative sediment control measures described in 62 IAC 1816.45(b) and 1817.45(b) in lieu of a siltation structure for control of drainage from disturbed areas. One commenter expressed the belief that ''the use of siltation structures remains the BTCA for the coal mining point source category, and allowing alternative sediment control measures in lieu of siltation structures for areas defined only as 'small' is not consistent with the Secretary's regulations.'' One commenter questioned: ''When is the use of straw bales to filter pit pumpage better than a sediment pond?''

Response: As discussed in finding C.14.d, the Federal regulations at 30 CFR 816.46(b)(2) and 817.46(b)(2) which require all surface drainage from a disturbed area to be passed through a siltation structure were suspended on November 20, 1986 (51 FR 41957–41958). Therefore, State regulatory authorities may determine on a case-by-case basis what is BTCA rather than requiring that drainage be passed through siltation structures in all cases. As discussed in the referenced finding, Illinois is requiring permittees to demonstrate that drainage from the disturbed area will meet effluent limitation and water quality standards without the use of siltation structures and will require that any alternative sediment control measures be shown to be the BTCA.

62 IAC 1816/1817.97 Protectio of Fish, Wildlife, and Related Environmental Values

Comment: Four commenters expressed concern that the elimination of the reference to the Illinois Endangered Species Protection Act (520 ILCS 10/1) would remove state-listed species from protection. Two of the commenters were concerned that elimination of the reference would violate the State Act and ''would be misleading as to the obligations of mining operations.''

Response: Section 505(a) of SMCRA provides that: ''No State law or regulation in effect on the date of enactment of this Act, or which may become effective thereafter, shall be superseded by any provision of this Act or any regulation issued pursuant thereto except insofar as such State law or regulation is inconsistent with the provisions of this Act.'' Therefore, if mining operation activities are covered under the Illinois Endangered Species Protection Act (520 ILCS 10/1), the removal of the reference will not affect an operator's obligations under this Act. Furthermore, the State regulations at 62 IAC 1816.97(b) and 1817.97(b) and the Federal counterpart regulations at 30 CFR 816.97(b) and 817.97(b) still require the operator to report any state- or federally-listed endangered or threatened species within the permit area and require consultation with appropriate State and Federal fish and wildlife agencies before allowing the operator to proceed with mining activity. Therefore, state endangered species are still protected under the Illinois program.

62 IAC 1816/1817.116(a)(2)(B) Success of Revegetation; Extended Responsibility Period

Comment: In the OSM publication of the Surface Mining Act which includes all revisions through December 31, 1993, there is at section 515(b)(20)(B) of the Federal Act a note that this section was added October 24, 1992. However, in that 1993 addition there is no mention of the date September 30, 2004. Hence, the year 2004 should be eliminated from the proposed rule.

Response: The commenter is correct that in section 515(b)(20)(B) of SMCRA the date September 30, 2004, is not mentioned. However, section 510(e) of SMCRA specifies that the authority of section 515(b)(20)(B) shall terminate on September 30, 2004. Therefore, the date should not be eliminated from the proposed regulation.

62 IAC 1816/1817.116(a)(2)(F) (i), (ii), and (iii) Success of Revegetation; Augmentation; High Capability Land

Comment: Two commenters were concerned that the deletion of the provisions concerning augmentation of high capability land areas would lower the State's standards for reclamation of high capability cropland areas.

Response: The deletion of these provisions does not alter the requirement that reclaimed high capability cropland areas meet the success of revegetation standards set forth in 62 IAC 1816/1817.116(a)(3)(C) and (a)(4).

62 IAC 1816/1817.116(a)(2)(F)(i) Success of Revegetation; Augmentation; Pasture and Hayland

Comment: Two commenter expressed concern with the proposed language in this section which stated that the period of responsibility shall not recommence after deep tillage on areas where the

revegtation success standard has been met.

Response: OSM is not approving the proposed language. Deep tillage has not been approved as a normal husbandry practice in Illinois. Therefore, its use would restart the responsibility period as required by 30 CFR 816.116(c)(1).

62 IAC 1816/1817.116(a)(3)(E) Revegetation Success; Ground Cover and Production for Pasture, Hayland, and Grazing land

Comment 1: One commenter disagreed with the proposed deletion of the provision that limited the substitution of corn production for hay production on high capability land to one year.

Response: As discussed in finding C.14.g, the Illinois administrative record contains sufficient proof that high capability land is suitable for crops and that crop/hay rotations are common practices in cropland areas surrounding mines.

Comment 2: One commenter disagreed with the proposed provision that would allow the substitution of one year of crop production for hay production on limited capability land. He was concerned that there would be no available yield data that could be factored into the State's productively formula to project a reliable yield standard for grain crops grown on limited capability lands.

Response: As discussed in finding C.14.g, Illinois indicated in the preamble to its February 3, 1995, amendment (Administrative Record No. IL–1615) that the proposed provision would be applied to those limited capability land areas that were reclaimed to a higher quality (such as prime farmland or high capability standards). As noted in the referenced finding, the Director approved this provision to the extent that Illinois restricts its approval to limited capability lands that are reclaimed to a higher quality.

62 IAC 1816/1817.116(a)(3)(F) Revegetation Success; Non-Contiguous Areas Less Than or Equal to Four Acres

Comment: Two commenters objected to the language in this section which would exempt, under certain conditions, areas up to four acres from any type of testing for revegetation success.

Response: OSM is not approving the proposal. The merit of some type of exemption for small areas is recognized by OSM. However, the Illinois proposal lacks the requirements OSM believes are necessary to implement such a proposal (see finding C.14.h).

62 IAC 1816.116(a)(4)(A)(ii) Success of Revegetation; Field to Represent Non-Contiguous Areas Less Than or Equal to Four Acres

Comment: Six commenters objected to the Illinois proposal in this section which would exempt non-contiguous areas up to four acres in size from any type of revegetation success testing if the Department determines that another larger field is representative of the smaller four acre or less area.

Response: OSM is not approving this proposal. The Federal regulation at 30 CFR 816.116(a)(2) requires a statistically valid sampling technique for assessing the success of vegetation for all areas. Illinois has not demonstrated that its proposal would provide a statistically valid representative test field at a 90 percent confidence interval.

62 IAC 1816/1817.116(a)(5) Success of Revegetation; Wetlands

Comment: ''Aerial coverage'' for measurement of success of wetland revegetation is undefined. The success criteria for revegetation of wetlands should be identified in the post-mining land use plan, and should be sufficient to demonstrate the area is functioning as a wetland, (not merely a final cut impoundment) including the full range of functions and values sought to be replicated or restored for that wetland. The bond should not be released without coordination with the US Army Corps of Engineers, and an areal coverage of 30% is remarkably low, leaving 70% of the area either unvegetated or containing possibly incompatible species. Particularly where the wetland is a bottomland hardwood or other intermittently-inundated land, the vegetative success criteria should be comparable to the cover and revegetation requirements for other land uses.

Response: Use of the term ''aerial coverage'' is consistent with its usage in the U.S. Army Corps of Engineers Wetlands Delineation Manual. Although, ''aerial'' is a misspelling and it has been corrected to ''areal.'' In the past, Illinois determined the success for those fish and wildlife land use reclamation plans that contained wetland areas on a case-by-case basis. Illinois is proposing to replace the case-by-case approach with a consistent wetland reclamation standard. Most final-cut impoundments would not meet the criteria for a wetland, as these areas are considered deepwater habitat. However, the edges of final-cut impoundments where water is shallow can be developed as wetland areas.

Wetland areas intended to mitigate pre-existing wetlands must meet the conditions of the U.S. Army Corps of Engineers' 404 permit. Pursuant to the requirements of section 702(a)(3) of SMCRA, Federal and State program requirements cannot supersede, amend, modify, or repeal requirements under Section 404 of the Clean Water Act, including mitigation plans for those wetlands which existed in the premining landscape and are being replaced in accordance with a Section 404 permit. Therefore, the revegetation standards for wetlands proposed by the State would not pertain to wetlands constructed to mitigate pre-existing wetlands. They would pertain only to those wetlands constructed to supplement and enhance a postmining land use of fish and wildlife habitat. The Federal regulations at 30 CFR 701.5, 780.25, 816.46, and 816.49 (Impoundments); 816.84(b)(1) (Coal Mine Waste Impounding Structures); 816.97 (Protection of Fish and Wildlife); 816.102 (Backfilling and Grading); 816.111 and 816.116 (Revegetation); 816.133 (Postmining Land Use) allow for the construction of wetlands that supplement and enhance fish and wildlife habitat.

Coordination with the U.S. Army Corps of Engineers prior to bond release of wetlands that are not under the jurisdiction of the Corps is not required by SMCRA or the Federal regulations. As discussed in finding C.14.k, Illinois submitted adequate support for its use of a minimum 30 percent areal coverage standard.

62 IAC 1816/1817.116(c) Success of Revegetation; Reference Area

Comment: Six commenters objected to the use of reference areas in lieu of Illinois' Agricultural Lands Productivity Formula Sampling Method for determining the success of revegetation for cropland and hayland. Extensive comments were submitted in support of this objection.

Response: Illinois withdrew its proposed regulations at 62 IAC 1816.116(c) and 1817.116(c) pertaining to use of a reference area for determining the success of revegetation for cropland and hayland.

62 IAC 1816/1817.117(a)(3) Tree and Shrub Vegetation on Erosion Control Structures

Comment: One commenter was concerned that operators will not be required to plant trees and shrubs on erosion control structures, including pond embankments.

Response: As discussed in finding C.14.m, the planting of trees and shrubs

on the embankments of erosion control structures is not a sound engineering practice. A herbaceous ground cover will be required for these areas.

62 IAC 1816/1817.117(b) Tree and Shrub Vegetation, Woody Plants

Comment: One commenter was concerned that the new provision pertaining to a case-by-case approval of planting arrangements for wildlife areas would eliminate the requirement that an operator must plant trees and shrubs on areas to be developed for fish and wildlife habitat or recreation areas.

Response: Illinois' regulation at 62 IAC 1816/1817.117(b) still requires that these areas have a minimum population of 250 trees or shrubs per acre. The new provision allows operators to request approval for optional planting designs rather than requiring uniform planting arrangements for all mined wildlife and recreation areas.

62 IAC 1816/1817.190(a) Affected Acreage Map

Comment: This change would eliminate sending maps and reports on affected acreage to county clerks. We object to deletion of the phrase ''and to the county clerk.'' This deletion would further deny local government its role in protecting natural resources, a role already deeply invaded by the fossil fuel preemption.

Response: Illinois' proposed revision at subsection (b) requires the operator to submit an additional copy of the affected acreage report and maps for each county in which the permit is located and requires the Department to forward those additional copies to the county clerk(s). Therefore, Illinois is now assured that a copy of the affected acreage report and map goes to the county.

62 IAC 1816/1817.190(b) Affected Acreage Map

Comment: What do words, ''Also, statutory citations are being updated in subsection (b)'' as found in the Federal Register mean?

Response: Citations to and titles of statutes have been updated to reflect Illinois' new statutory codification system.

62 IAC 1816. Appendix A Agricultural Lands Productivity Formula Permit Specific Yield Standard; Subsections (a), (b), and (c)

Comment 1: One commenter raised the concern that the proposed change from permit area to pit area will need to be ''fine turned'' and that the issue when a pit lies in more than one county should be addressed.

Response: OSM has determined that the State's proposal to utilize pit area instead of permit area will meet the requirements of 30 CFR 823.15 in providing a representative standard. Existing Illinois regulations require the State to utilize data from the county in which the area being tested is located.

Comment 2: One commenter expressed several concerns with the Illinois proposal to utilize only the lands disturbed within the pit area in the Illinois productivity formula once mining has ceased. These concerns included the proposal not to apply the recalculated standard to areas previously tested.

Response: The requirement under the Federal regulations is to obtain the most representative sample of the mined and reclaimed areas. OSM believes the Illinois proposal meets that requirement. Because the Illinois formula results in annual targets based upon year-specific climatological data and yield data, it would not be appropriate to apply the recalculated standard retroactively.

Comment 3: One commenter raised the issue of landowner comment opportunities in relation to the change from permit area to put area. The concern was that the target yields could change because of the recalculation at the tie of cessation of mining and the landowner would not be offered the opportunity to comment at the time of the change.

Response: OSM required Illinois to clarify how the pit area would be defined under a variety of circumstances. This was done to assure that the pit area was not only truly representative of the mined and reclaimed area, but also to assure the pit area was always a clearly defined area. Illinois provided the information needed to resolve these concerns. In finding C.18, OSM made it clear that Illinois must interpret the rule in a manner which assures the use of representative areas and results in a clear and consistent delineation of the pit area. The possible circumstances for which OSM sought clarification and the associated opportunities for public comment are listed below.

(1) *Single pit within a single permit.* The pit area would be the same as the permit area, and thus the change from permit to pit would not affect the opportunity to comment.

(2) *Multiple pits within a single permit.* Each pit area will be clearly marked on the permit map, and will be subject to public comment as part of the permitting process.

(3) *Single pit within several permits that have been consolidated into a single permit.* Public review will occur at the time of consolidation.

(4) *Multiple pits within several permits that are consolidated into one permit* Each pit area will be clearly marked on the consolidated permit map that will be subject to public review prior to approval.

Thus the opportunity to comment should be available whenever a change in the pit area is made.

Comment 4: One commenter was concerned with the provision at subsection (c) that requires yield targets to be recalculated if a significant revision is proposed after permanent cessation of mining. She wanted to know why Illinois would allow a ''significant revision'' after permanent cessation of mining.

Response: Illinois' regulations at 62 IAC 1774.13(b)(2) require significant revisions to a permit be obtained for changes in reclamation operations when such changes constitute a significance departure from the method contemplated by the original permit. Since reclamation operations are on-going after permanent cessation of active coal mining, significant revisions to reclamation plans may be proposed.

62 IAC 1816. Appendix A Agriclutural Lands Productivity Formula Permit Specifics Yield Standard; Subsections (d) and (f)

Comment: Extensive comments were received from five commenters opposing proposed provisions to be added at subsection (d) that required annual target yield adjustments to be based on the county with the greater permit acreage if a mining pit was present in more than one county and subsection (f) that allowed Illinois to consolidate prime farmland and high capability target yields.

Response: These proposed provisions were withdrawn.

62 IAC 1817.121(c)(3) Subsidence Control

Comment: Subsidence from underground mining requires operators to supply any residential, etc. water lost from underground mining but for how long the operator is obligated for water replacement is not stated.

Response: Although the Illinois regulation does not specifically state that its requirement is for permanent water replacement, the word ''replace'' within the regulation indicates permanency. OSM's definition of ''Replacement of water supply'' at 30 CFR 701.5 clarifies that permanent water replacement is required. ''Replacement of water supply means, with respect to protected water supplies

contaminated, diminished, or interrupted by coal mining operations, provisions of water supply on both a temporary and permanent basis equivalent to premining quantity and quality. Replacement includes provision of an equivalent water delivery system and payment of operation and maintenance costs in excess of customary and reasonable delivery costs for premining water supplies.'' (60 FR 16722, March 31, 1995).

As noted in finding C.15, primacy states, including Illinois, will be notified pursuant to the provisions of 30 CFR 732.17(d) of the additional Federal water supply replacement requirements and related subsidence damage repair requirements that are not currently contained within their programs. This will include notification of a requirement for a definition consistent with the Federal definition at 30 CFR 701.5 pertaining to water replacement.

62 IAC 1840.11(h)(2) Inspections by the Department; Abandoned Site

Comment: One commenter believed that Illinois should provide written notice to the county clerk(s) of the counties affected at the time public notice was provided of an alternate inspection frequency for an abandoned site.

Response: The counterpart Federal regulations at 30 CFR 840.11(h)(2) do not contain specific provision for written notice to the county clerk(s). However, both the Federal regulations at 30 CFR 840.14(c) and the Illinois regulations at 62 IAC 1840.14(c) provide that copies of all records, reports, inspection materials, and other subject information or a description of the information will be made available for public inspection at a Federal, State or local government office in the county where the mining is occurring. Illinois has historically sent this type of information to the county clerk(s).

62 IAC 1840.17(a) Review of Decision Not To Inspect or Enforce

Comment 1: The inclusion of a 30-day period in which to file a request for informal review of a decision not to inspect or enforce is more restrictive of the right of the public to administrative review procedures at the state level than is provided by the Secretary's regulations, and must be disapproved.

Response: To require that requests for a review be filed within a specified time period assures administrative efficiency in a manner that is not inconsistent with SMCRA or the Federal regulations. Using this approach, Illinois can ensure administrative efficiency by setting a firm deadline for appeals, without undue prejudice to the interests of citizens who may be adversely affected by decisions not to inspect or enforce.

Comment 2: In order for this waiver to be fair, an addition to this section should be added which requires that the citizen be informed by certified mail that the right to appeal to the director for informal review must be made within 30 days or that right is waived. Without this requirement, the citizen could lose a right without that citizen knowing that their right was lost.

Response: The 30 day period begins when the citizen is notified of Illinois' decision, which is done by certified mail. Illinois has indicated that this notification will include language informing the recipient of the 30-day time period within which to request, or else waive, the right to informal review. As discussed in finding C.21, the proposed revision is being approved with the understanding that notification of the 30-day time period will be included in the notice of decision not to inspect or enforce and that failure to include the notification will not limit the right for review.

62 IAC 1840.17(c) Review of Decision Not To Inspect or Enforce; Formal Review

Comment: Two commenters were concerned how the reference to formal review under 62 IAC 1847.3 would relate to formal review of a decision not to inspect or enforce since the current provisions of § 1847.3 pertained to permitting actions. They recommended that the subsection be rewritten without reference to specific provisions.

Response: Illinois proposed a revision to its regulations at 62 IAC 1847.3 that provides for administrative review of decisions not to inspect or enforce under 62 IAC 1840.17 (see finding C.21).

62 IAC 1843.23 Enforcement Actions at Abandoned Sites

Comment: This provision does not promulgate a responsive action to the problems of violators who abandon mining sites. It appears geared towards allowing the Department to refrain from doing a useless thing, but does not state the Department's policy in enforcing violations of State and Federal law at abandoned sites.

Response: The proposed regulation is substantively identical to the counterpart Federal regulation at 30 CFR 843.22.

62 IAC 1847.3 Administrative and Judicial Review; Hearings

Comment: The inclusion of formal review of decisions not to inspect or enforce in section 1847.3 is of concern because the section is triggered by notice to the permit applicant rather than notice to the party who requested the inspection and enforcement action. The right to informal and formal review of such decisions, as well as all other actions of the agency, are triggered by notice to the party rather than the applicant.

Response: Section 1847.3 is not necessarily triggered by notice to the permit applicant. The Illinois regulation at 62 IAC 1840.17(b) requires the Director or his or her designee to inform the person, in writing, of the results of an informal review of an authorized representative's decision not to inspect or enforce. OSM has verified several times over the past years, through its oversight activities, that these letters are mailed via certified mail to the person who requested the action. It is the receipt of this decision which triggers the 30-day time limit within which to request formal review under the provisions of section 1847.3, as authorized by 62 IAC 1840.17(c).

62 Ill. Adm. Code 1847.3(i), (j); 1847.4(j), (k); 1847.5(m), (n); 1847.6(k), (l); and 1847.7(j), (k) Hearing Officer's Proposed Decision

Comment 1: Two commenters were concerned that written exceptions to the hearing officer's proposed decision are to be filed with the hearing officer instead of the Director and that written exceptions and responses to exceptions are to be filed within 10 rather than 15 days.

Response: As discussed in finding C.24.a.(2), the Federal regulations specify general adjudicatory provisions that States must include in their administrative review hearing procedures, but allow the States discretion in how to implement these provisions. The Federal regulations contain no comparable provisions for filing of written exceptions to a proposed decision, filing of responses to written exceptions, or time limitations for these filings. However, the proposed revisions are not inconsistent with SMCRA or the Federal regulations.

Comment 2: One commenter was concerned that the Illinois regulatory authority might be absolved of the responsibility for administrative decisions if a hearing officer was allowed to make the decisions.

Response: The Illinois regulations at 62 IAC 1847 provide that the hearing officer's decision is the Department's final administrative decision. Pursuant to 62 IAC 1847, final administrative decisions are subject to judicial review in accordance with the Illinois

Administrative Review Law (735 ILCS 5/3).

62 IAC 1848.5(f) Notice of Hearing

Comment 1: One commenter was in agreement with the proposed provisions that would require certain specifications for legal notices of hearings, but questioned the prohibition in this proposed subsection against inclusion of hearing notices among other legal notices in the paper.

Response: The prohibition against inclusion of these hearing notices in that portion of the paper where legal notices appear is a statutory prohibition which was requested by Knox County citizens when section 2.11(c) of the Surface Coal Mining Land Conservation and Reclamation Act, 225 ILCS 720, was amended in 1993. Neither SMCRA nor the Federal regulations specify the portion of the newspaper wherein the public notice of a hearing must appear.

Comment 2: One commenter believed that § 1848.5(f) should include a provision for notification of the country clerk of the county affected.

Response: Neither SMCRA nor the Federal regulations require that a separate notice of an administrative hearing be sent to the county clerk of the county affected.

Comment 3: One commenter objected to the last sentence of the provision that was proposed in the original amendment: ''Any deviations from the requirements of this subsection attributable to the publishing newspaper shall not be grounds for postponement of continuance of the hearing, nor will such errors necessitate that the notice be republished.''

Response: In the revised amendment dated November 1, 1995, Illinois removed this sentence from § 1848.5(f).

Federal Agency Comments

Pursuant to 30 CFR 732.17(h)(11)(i), the Director solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Illinois program (Administrative Record Nos. IL–1618 and IL–1664). The Natural Resources Conservation Service (NRCS) commented on March 15, 1995 (Administrative Record No. IL–1631), that the State should withdraw its proposal to remove the language ''The state recognizes that the permit cannot be issued without the required consultation with USDA'' from section 1785.17(d)(1). OSM notes that Illinois withdrew this proposed revision, and the indicated language was retained.

On June 7, 1995 (Administrative Record No. IL–1657), and July 20, 1995 (Administrative Record No. IL–1661), the Natural Resources Conservation Service (NRCS) offered comments on the following three sections:

62 IAC 1816/1817.116(a)(3)(E) NRCS commented that the Service did not object to the substitution of one year of crop production for one year of hay production on limited capability lands if the Department determines the practice is proper management. OSM notes that Illinois included language in this section which requires such determination before the substitution can be made.

62 IAC 1816.116(a)(3)(F) NRCS believed the proposed revision was not specific enough as to the types of activities which would qualify under this section, the maximum area of disturbance should be specified, and the term minimal soil disturbance should be defined. NRCS also commented that they concurred with the State's objective in proposing the rule. OSM is not approving this rule because it would exempt areas as large as four acres from any type of revegetation success testing. OSM does not agree that it would be possible to list all of the activities that may occur on these small areas. Should the State of Illinois resubmit language limiting the exemption to a smaller area, the demonstration required by the operator will have to be more thoroughly addressed. NRCS also commented that deep tillage should be required for any areas exempted under this section. OSM believes that the requirement for deep tillage should be made on a case by case basis. The State regulatory Authority would make the decision as part of its determination pertaining to the operator's demonstration.

62 IAC 1816.116(a)(4)(A)(ii). NRCS affirmed its support for the proposal to include small areas with representative larger fields if the terms ''representative,'' ''small,'' and ''isolated'' are better defined. The Service also pointed out the importance of a reliable sampling method. OSM is not approving this rule because Illinois has not demonstrated that the test plot would provide a statistically valid sample at a 90 percent confidence interval.

62 IAC 1816. Appendix A NRCS raised the issue as to whether the proposal to base yield calculations on pit areas rather than permit areas would allow operators to ''shop'' for the best standard in terms of meeting the required yield. OSM had the same concern initially, but determined that, at any one time, the pit area will be a finite area defined by specific boundaries and that is the only area upon which calculations can be based. There can be no shopping. OSM is approving the change to pit area.

Environmental Protection Agency (EPA)

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to obtain the written concurrence of the EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Illinois proposed to make in this amendment pertain to air or water quality standards. Therefore, OSM did not request EPA's concurrence.

Pursuant to 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from EPA (Administrative Record Nos. IL–1618 and IL–1664. EPA responded on February 24, 1995, that ''* * * the definition of hydric soils in the wetland definition can be interpreted, by some readers, to mean being inundated greater than 50 percent of the time. It would be clearer to adopt the definition used by the National Technical Committee on Hydric Soils and the Food Security Act Manual, Third Edition: 'A soil that is saturated, flooded, or ponded long enough during the growing season to develop anaerobic conditions in the upper part.' This would also be consistent with the definition of hydric soils in the 1987 Corps Wetland Delineation Manual.'' (Administrative Record No. IL–1623).

As discussed in finding C.2, OSM found that the proposed definition is not inconsistent with SMCRA or the Federal regulations. Illinois clarified its meaning of hydric soil in the comment section of its November 1, 1995, revised amendment (Administrative Record No. IL–1663): ''The explanation of hydric soil appearing in the wetlands definition is intended only as a supplemental explanation of the term 'hydric soil' in layman's terms and is not intended to be a legal definition of the term. Any determination of hydric soils would be in accordance with the technical guidelines of the 1987 Corps Manual * * * *''

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

Pursuant to 30 CFR 732.17(h)(4), OSM is required to solicit comments on proposed amendments which may have an effect on historic properties from the SHPO and ACHP. OSM solicited comments on the proposed amendment from the SHPO and ACHP (Administrative Record No. IL–1618 and IL–1664). The SHPO responded on

March 3, 1995, that ''In our opinion, this amendment is consistent with section 106 of the National Historic Preservation Act, as amended, and its implementing regulations 36 CFR part 800, Protection of Historic Properties'' (Administrative Record No. IL–1624(A).

V. Director's Decision

Based on the above findings, the Director approves, with certain exceptions and additional requirements, the proposed amendment as submitted by Illinois on February 3, 1995, and as revised on November 1, 1995.

With the requirement that Illinois further revise its regulations, the Director does not approve, as discussed in: finding No. C.14.f.(2), 62 IAC 1816.116(a)(2)(F)(i) and 1817.116(a)(2)(F)(i), concerning augmentation of pasture, hayland, and grazing land; finding No. C.14.h, 62 IAC 1816.116(a)(3)(F) and 1817.116(a)(3)(F), concerning the revegetation success standards for non-contiguous areas less than or equal to four acres; and finding No. C.14.i, 62 IAC 1816.116(a)(4)(A)(ii), concerning approval of the success of revegetation for a representative field being used in determining the success of revegetation on non-contiguous areas less than or equal to four acres.

In accordance with 30 CFR 732.17(f)(1), the Director is also taking this opportunity to clarify in the required amendment section at 30 CFR 913.16 that, within 60 days of the publication of this final rule, Illinois must either submit a proposed written amendment, or a description of an amendment to be proposed that meets the requirements of SMCRA and 30 CFR Chapter VII and a timetable for enactment that is consistent with Illinois' established administrative procedures.

The Federal regulations at 30 CFR Part 913, codifying decisions concerning the Illinois program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

Effect of Director's Decision

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

VI. Procedural Determinations

Executive Order 12866

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

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

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

Paperwork Reduction Act

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

Regulatory Flexibility Act

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

Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 913

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 10, 1996.

Brent Wahlquist,

Regional Director, Mid-Continent Regional Coordinating Center.

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

PART 913—ILLINOIS

1. The authority citation for Part 913 continues to read as follows:

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

2. Section 913.15 is amended by adding paragraph(s) to read as follows:

§ 913.15 Approval of regulatory program amendments.

* * * * *

(s) With the exception of 62 IAC 1816.116(a)(2)(F)(i) and 1817.116(a)(2)(F)(i), concerning augmentation of pasture, hayland, and grazing land; 62 IAC 1816.116(a)(3)(F) and 1817.116(a)(3)(F), concerning the revegetation success standards for non-contiguous areas less than or equal to four acres; and 62 IAC 1816.116(a)(4)(A)(ii), concerning use of a representative field to determine success of revegetation on non-contiguous areas less than or equal to four acres, the amendment submitted by Illinois to OSM by letter dated February 3, 1995, and as revised and supplemented with explanatory information on November 1, 1995, is approved effective May 29, 1996.

3. Section 913.16 is amended by removing and reserving paragraphs (s),

(t), and (u) and by adding paragraphs (w), (x), and (y) to read as follows:

§ 913.16 Required program amendments.

* * * * *

(s)–(u) [Reserved]

* * * * *

(w) By July 29, 1996, Illinois shall submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption of proposed revisions to remove the regulation provisions at 62 IAC 1816.116(a)(2)(F)(i) and 1817.116(a)(2)(f)(i), concerning the authority to approve augmentative practices without restarting the period of extended responsibility for revegetation success and bond liability for pasture, hayland, and grazing land, from Chapter I, Title 62 of the Illinois Administrative Code.

(x) By July 29, 1996, Illinois shall submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption of proposed revisions to remove the regulations at 62 IAC 1816.116(a)(3)(F) and 1817.116(a)(3)(F), concerning the revegetation success standards for non-contiguous areas less than or equal to four acres that would not require statistically valid sampling techniques be used to evaluate success of revegetation, from Chapter I, Title 62 of the Illinois Administrative Code.

(y) By July 29, 1996, Illinois shall submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption of proposed revisions to remove the provision at 62 IAC 1816.116(a)(4)(A)(ii), concerning revegetation success for a larger field being representative of the revegetation success of a non-contiguous reclaimed area less than or equal to four acres, from Chapter I, Title 62 of the Illinois Administrative Code.

[FR Doc. 96–13267 Filed 5–28–96; 8:45 am]

BILLING CODE 4310–05–M

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30 CFR Part 931

[SPATS No. NM–036–FOR]

New Mexico Regulatory Program

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

ACTION: Final rule; approval of amendment with one exception and additional requirements.

SUMMARY: Office of Surface Mining Reclamation and Enforcement (OSM) is approving, with one exception and additional requirements, a proposed amendment to the New Mexico regulatory program (hereinafter referred to as the ''New Mexico program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). New Mexico proposed revisions to and/or additions of rules pertaining to definitions; procedures for designating lands unsuitable for coal mining; permit application requirements concerning compliance information, the reclamation plan, and the subsidence information and control plan; procedures concerning permit application review; criteria for permit approval or denial; procedures concerning improvidently issued permits; permit conditions; requirements concerning ownership and control information; and performance standards for coal exploration, hydrologic balance, permanent and temporary impoundments, coal processing waste, disposal of noncoal waste, protection of fish, wildlife, and related environmental values, revegetation success, subsidence control, and roads. The amendment was intended to revise the New Mexico program to be consistent with the corresponding Federal regulations, incorporate the additional flexibility afforded by the revised Federal regulations, and improve operational efficiency.

EFFECTIVE DATE: May 29, 1996.

FOR FURTHER INFORMATION CONTACT: Guy Padgett, Telephone: (505) 248–5070.

SUPPLEMENTARY INFORMATION:

I. Background on the New Mexico Program

On December 31, 1980, the Secretary of the Interior conditionally approved the New Mexico program. General background information on the New Mexico program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the New Mexico program can be found in the December 31, 1980, Federal Register (45 FR 86459). Subsequent actions concerning New Mexico's program and program amendments can be found at 30 CFR 931.11, 931.15, 931.16, and 931.30.

II. Proposed Amendment

By letter dated January 22, 1996, New Mexico submitted a proposed amendment to its program (administrative record No. NM–766) pursuant to SMCRA (30 U.S.C. 1201 *et seq.*). New Mexico submitted the proposed amendment at its own initiative and in response to the required program amendments at 30 CFR 931.16 (a), (c), (d), (f) through (p), and (n)(2) through (s) (55 FR 48841, November 23, 1990; 56 FR 67520, December 31, 1991; and 58 FR 65907, December 17, 1993).

OSM announced receipt of the proposed amendment in the February 1, 1996, Federal Register (61 FR 3625), provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy (administrative record No. NM–767). Because no one requested a public hearing or meeting, none was held. The public comment period ended on March 4, 1996.

During its review of the amendment, OSM identified concerns relating to the certain provisions of the proposed amendment. OSM notified New Mexico of the concerns on March 13, 1996 (administrative record No. NM–774).

New Mexico responded on March 13, 1996, that it would not submit revisions to the amendment and that OSM should proceed with the publishing of this final rule Federal Register notice (administrative record No. NM–774).

III. Director's Findings

As discussed below, the Director, in accordance with SMCRA and 30 CFR 732.15 and 732.17, finds, with certain exceptions and additional requirements, that the proposed program amendment submitted by New Mexico on January 22, 1996, is no less effective than the corresponding Federal regulations. Accordingly, the Director approves, with one exception, the proposed amendment and adds additional requirements.

1. Nonsubstantive Revisions to New Mexico's Rules

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

Coal Surface Mining Commission (CSMC) Rule 80–1–11–20(d) (30 CFR 773.20(c)), concerning remedial measures for improvidently issued permits, to recodify existing CSMC Rule 80–1–11–20(c) as CSMC Rule 80–1–11–20(d);

CSMC Rule 80–1–20–41(e)(3)(i) (30 CFR 816.41 (c)(3) and (e)(3) and 817.41 (c)(3) and (e)(3)), concerning general performance standard requirements for protection of the hydrologic balance, to correctly reference CSMC 80–1–20–41(e)(2)(i); and

CSMC Rule 80–1–20–82(a)(4) (30 CFR 816.71(h) and 817.71(h)), concerning inspections of coal processing waste banks, to correctly reference ''Part 9'' of New Mexico's rules.

CSMC Rule 80–1–20–89(d)(2) (30 CFR 816.89(b)), concerning disposal of noncoal

wastes, to correctly reference ''Section 3–109D'' of the New Mexico Water Quality Control Commission regulations.

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

2. Substantive Revisions to New Mexico's Rules That Are Substantively Identical to the Corresponding Provisions of the Federal Regulations

New Mexico proposed revisions to or additions of the following rules that are substantive in nature and contain language that is substantively identical to the requirements of the corresponding Federal regulation provisions (listed in parentheses).

CSMC Rule 80–1–1–5 (30 CFR 773.5), concerning the definitions of ''Applicant/violator system or AVS,'' ''Federal violation notice,'' ''Ownership or control link,'' ''State violation notice,'' and Violation notice;''

CSMC Rule 80–1–1–5 (30 CFR 700.5), concerning the definition of ''OSM;''

CSMC Rules 80–1–1–5 (30 CFR 701.5), concerning the definition of ''Road;''

CSMC Rules 80–1–11–20(c) (1) and (2) and (e) (30 CFR 773.20(b)(2) (i) and (ii) and (c)(2)), concerning general procedures for improvidently issued permits;

CSMC 80–1–11–24(a) and [deletion of] (c) (30 CFR 773.21(a)), concerning rescission procedures for improvidently issued permits;

CSMC Rule 80–1–11–31 (a) through (d) (30 CFR 773.22 (a) through (d)), concerning verification of ownership or control application information;

CSMC Rule 80–1–11–32 (a) through (c) (30 CFR 773.23 (a) through (c)), concerning review of ownership or control and violation information;

CSMC Rule 80–1–11–33 (a) through (d) (30 CFR 773.24 (a) through (d)), concerning procedures for challenging ownership or control links shown in AVS; and

CSMC Rule 80–1–11–34 (a) through (d) (30 CFR 773.25 (a) through (d)), concerning standards for challenging ownership or control links and the status of violations.

Because these proposed New Mexico rules are substantively identical to the corresponding provisions of the Federal regulations, the Director finds that they are no less effective than the Federal regulations. The Director approves these proposed rules.

3. CSMC Rule 80–1–1–5, Definition of ''Qualified Laboratory''

At its own initiative, New Mexico proposed a definition of ''Qualified laboratory'' at CSMC Rule 80–1–1–5 that is, with one exception, substantively identical to the Federal definition of ''qualified laboratory'' at 30 CFR 795.3. The exception is that New Mexico's definitions only provides for laboratory services related to the determination of probable hydrolic consequences or statement of results of test borings or core samplings under the new Mexico small operator assistance program (SOAP), where as the Federal definition provides for these and other services specified at 30 CFR 795.9.

New Mexico's CSMC Rule 80–1–32–9, which corresponds to 30 CFR 795.9 in the Federal regulations, has not been revised to include the additional services which can be funded under the Federal SOAP program (59 FR 28168, May 31, 1994). However, a State's implementation of SOAP is not mandated by SMCRA nor the Federal regulations and the provisions for SOAP funding may, to the extent provided for in the Federal program, be elected by the State.

Therefore, the Director finds that New Mexico's definition of ''Qualified laboratory'' at CSMC Rule 80–1–1–5 is no less effective than the Federal definition of ''qualified laboratory'' at 30 CFR 795.3 and approves the proposed definition of ''Qualified laboratories'' at CSMC 80–1–1–5.

4. CSMC Rules 80–1–1–5 and 80–1–7–14(c) (1) through (5), Ownership and Control Information Required in Permit Applications Concerning Violations

OSM required at 30 CFR 931.16(d) that New Mexico revise CSMC Rule 80–1–7–14(c) to add the requirement that a permit application include information on violations received pursuant to SMCRA, its implementing regulations, and to any State or Federal law, rule or regulation enacted or promulgated pursuant to SMCRA (finding No. 4, 58 FR 65907, 65909, December 17, 1993).

New Mexico proposed to revise CSMC Rules 80–1–7–14(c) (1) through (5), concerning compliance information required in permit applications, to include requirements that are, with one exception, substantively identical to the Federal regulations at 30 CFR 778.14(c) (1) through (5).

The exception is that New Mexico requires information concerning violations received pursuant to SMCRA. New Mexico proposed, at CSMC Rule 80–1–1–5, to add a definition of ''SMCRA'' which means, in addition to the Federal act, its implementing regulations at 30 CFR Chapter VII, and any State or Federal law, rule, regulation, or program enacted or promulgated pursuant to the Federal act.

The corresponding Federal regulations at 30 CFR 778.14(c) require information concerning violations received pursuant to SMCRA, its implementing regulations, and to any State or Federal law, rule or regulation enacted or promulgated pursuant to SMCRA. As defined by New Mexico, the use of the term ''SMCRA'' in proposed CSMC Rules 80–1–7–14(c) is equivalent to the use, in the Federal regulations, of the phrase ''SMCRA, its implementing regulations, and any State or Federal law, rule or regulation enacted or promulgated pursuant to SMCRA.''

Based upon the above discussion, the Director finds that proposed CSMC Rules 80–1–7–14(c) (1) through (5) and the term ''SMCRA,'' as proposed at CSMC Rule 80–1–1–5, (1) are consistent with and no less effective than the Federal regulations at 30 CFR Part 778.14(c) (1) through (5), concerning compliance information required in permit applications, and (2) satisfy the required amendment at 30 CFR 931.16(d). The Director approves proposed CSMC Rules 80–1–7–14(c) (1) through (5) and the proposed definition of ''SMCRA'' at CSMC Rule 80–1–1–5, and removes the required amendment at 30 CFR 931.16(d).

5. CSMC Rule 80–1–1–5, Definitions of ''Drinking, domestic, or residential water supply,'' ''Material damage,'' ''Noncommercial building,'' ''Occupied residential dwelling and associated structures,'' and ''Replacement of water supply'' and CSMC Rules 80–1–20–121, 124, 125, and 127, Performance Standards Concerning the Subsidence Information and Control Plan

At 30 CFR 931.16(s), OSM required that New Mexico revise CSMC Rule 80–1–20–124 to require that an operator (1) repair or compensate for subsidence-related material damage to structures and facilities, (2) correct, by restoring the land to the extent technologically and economically feasible, any material damage resulting from subsidence caused to surface lands, (3) require an operator to either repair or compensate the owner in full regardless of the extent of operator liability under State law for any subsidence-related damage occuring after October 24, 1992, to occupied residential dwellings, structures related thereto, and noncommercial buildings, and (4) remove the inconsistency with proposed CSMC Rule 80–1–9–39(c) with regard to limiting to the extent required under State law, an operator's obligation to remedy subsidence-related material damage to structures and facilities (finding No. 19, 58 FR 65907, 65922, December 17, 1993).

In response to these required amendments, New Mexico proposed to delete its existing rules at CSMC Rule 80–1–20–121 and 124 and add rules that incorporate the definitions and

performance standards pertaining to the repair of subsidence-caused damages that were promulgated on March 31, 1995, in the Federal program at 30 CFR 701.5 and 817.121 (60 FR 16749).

a. *CSMC Rule 80–1–1–5, Definitions of ''Drinking, domestic, or residential water supply,'' ''Material damage,'' ''Noncommercial building,'' ''Occupied residential dwelling and associated structures,'' and ''Replacement of water supply.''* New Mexico proposed to revise CSMC Rule 80–1–1–5 by adding definitions for ''Drinking, domestic, or residential water supply,'' ''Material damage,'' ''Noncommercial building,'' ''Occupied residential dwelling and associated structures,'' and ''Replacement of water supply.'' These proposed definitions are substantively identical, with one exception, to the counterpart Federal definitions at 30 CFR 701.5.

The exception concerns a reference to the performance standards pertaining to repair of subsidence-caused damages in the proposed definitions of ''Material damage'' and ''Occupied residential dwelling and structures related thereto.'' The Federal definitions of ''material damage'' and ''occupied residential dwelling and structures related thereto'' reference the Federal regulations at 30 CFR 780.20 and 817.121. The New Mexico rules that correspond to the Federal regulations at 30 CFR 817.121 are proposed CSMC Rules 80–1–9–39 and 80–1–20–121, 124, 125, and 127 (discussed below); however, New Mexico's proposed definitions of ''Material damage'' and ''Occupied residential dwelling and structures related thereto'' reference only New Mexico's CSMC Rules 80–1–9–39 and 80–1–20–124.

The Director finds that, with the exception of the reference to the performance standards pertaining to repair or subsidence-caused damages at CSMC Rule 80–1–20–124 in the proposed definitions of ''Material damage'' and ''Occupied residential dwelling and structures related thereto,'' New Mexico's proposed definitions at CSMC 80–1–1–5 for ''Drinking, domestic, or residential water supply,'' ''Material damage,'' ''Noncommercial building,'' ''Occupied residential dwelling and associated structures,'' and ''Replacement of water supply'' are no less effective than the corresponding Federal definitions at 30 CFR 701.5. The Director approves these proposed definitions at CSMC 80–1–1–5, but is adding a new requirement that New Mexico further revise the definitions of ''Material damage'' and ''Occupied residential dwelling and associated structures'' at CSMC 80–1–1–5 to include references to CSMC Rules 80–1–20–121, 125, and 127.

b. *CSMC Rules 80–1–20–121, 124, 125, and 127, Performance standards concerning the subsidence information and control plan.* New Mexico proposed to add the following performance standards pertaining to subsidence that are, with one exception, substantively identical to the corresponding Federal regulations (in parentheses):

CSMC Rules 80–1–20–121 (a) through (d) (30 CFR 817.121(a) (1)–(3) and 817.121(b)), concerning general requirements for subsidence control;

CSMC Rules 80–1–20–124 (a) through (d) (30 CFR 817.121(c)(1), 817.41(j), and 817.121 (c)(2) and (c)(3)), concerning surface owner protection and restoration, replacement, repair, or compensation of subsidence-caused damages;

CSMC Rules 80–1–20–125 (a) through (e) (30 CFR 817.121 (c)(4)(i) through (c)(4)(v)), concerning rebuttable presumption of causation by subsidence; and

CSMC Rule 80–1–20–127 (30 CFR 817.121(c)(5)), concerning the requirement to adjust the bond amount for subsidence damage.

The exception concerns New Mexico's proposed requirement at CSMC 80–1–20–127 to adjust the bond amount when subsidence-related material damage occurs to land, structures or facilities protected under CSMC 80–1–20–124(a) through (d). The Federal regulation at 30 CFR 817.121(c)(5) requires adjustment of the bond amount when subsidence-related material damage to land, structures or facilities, *or when contamination, diminution, or interruption to a water supply* occurs (emphasis added). Although New Mexico's proposed CSMC 80–1–20–127 includes a reference to proposed CSMC 80–1–20–124(b) concerning replacement of water supplies, because the term ''material damage'' is not defined with respect to water supplies and it is not clear that the term ''facilities'' would include a water supply, New Mexico's proposed CSMC 80–1–20–127 does not clearly require adjustment of the bond amount when subsidence-related ''contamination, diminution, or interruption to a water supply'' occurs.

Based on the above discussion, the Director finds that, with the exception of the lack of a clear requirement at proposed CSMC 80–1–20–127 for adjustment of the bond amount when subsidence-related ''contamination, diminution, or interruption to a water supply'' occurs, proposed CSMC Rules 80–1–20–121, 124, 125, and 127 are no less effective than the corresponding Federal regulations at 30 CFR 817.121 (a) through (c) and satisfy the required amendment at 30 CFR 931.16(a). The Director approves proposed CSMC Rules 80–1–20–121, 124, 125, and 127 and removes the required amendment at 30 CFR 931.16(s). However, the Director is adding a new requirement that New Mexico further revise proposed CSMC Rules 80–1–20–127 to clearly require adjustment of the bond amount when subsidence-related ''contamination, diminution, or interruption to a water supply'' occurs.

6. CSMC Rules 80–1–4–15(b)(1), Procedures for Initial Processing, Record-Keeping, and Notification Requirements Concerning Petitions to Designate Lands Unsuitable for Mining

OSM required at 30 CFR 931.16(c) that New Mexico revise CSMC Rule 80–1–4–15(b)(1) to require publication in the New Mexico State register of a public notice of receipt of a petition to designate lands unsuitable for mining (finding No. 4, 56 FR 67520, 67522, December 31, 1991).

New Mexico proposed to revise CSMC Rule 80–1–4–15(b)(1) by adding the requirement that the regulatory authority notify the general public of the receipt of such a petition in the New Mexico register of public notices. This proposed requirement is substantively identical to the requirement in the Federal regulation at 30 CFR 764.15(b)(1) and satisfies the requirement that New Mexico amend its program at 30 CFR 931.16(c).

Therefore, the Director finds that proposed CSMC Rule 80–1–4–15(b)(1) is no less effective than the Federal regulation at 30 CFR 764.15(b)(1), approves New Mexico's proposed CSMC Rule 80–1–4–15(b)(1), and removes the required amendment at 30 CFR 931.16(c).

7. CSMC Rules 80–1–9–25 (a) and (c) and 80–1–20–49(e) (1) through (11), Requirements for Ponds, Impoundments, and Banks, Dams, and Embankments that Meet or Exceed the Class B or C Criteria of Technical Release No. 60 (210–VI–TR60, October 1985)

At its own initiative, New Mexico proposed to revise its program to incorporate the requirements for permit applications and performance standards pertaining to design, construction, and inspection of ponds and impoundments, and banks, dams, and embankments that meet or exceed the Class B or C criteria of Technical Release No. 60 (210–VI–TR60, October 1985), i.e., the hazardous classification criteria published by the U.S. Department of Interior, National Resource Conservation Service (NRCS). These requirements were incorporated into the Federal program on October 20,

1994 (see 59 FR 53029). Because New Mexico intended to revise its program to be no less effective than the Federal program with respect to the hazardous classification criteria published by the NRCS, OSM has identified those existing provisions in the New Mexico program which were not proposed to be revised but which New Mexico must revise in order for the New Mexico program to be no less effective than the Federal program.

a. *CSMC Rule 80–1–9–25(a) (2) and (3), and 80–1–9–25(c), Contents of permit applications.* New Mexico proposed to revise CSMC Rules 80–1–9–25(a) (2) and (3) and 80–1–9–25(c), concerning the contents of permit applications, to incorporate requirements pertaining to ponds and impoundments, and banks, dams, and embankments that meet or exceed the Class B or C criteria of Technical Release No. 60 (210–VI–TR60, October 1985). The proposed requirements are substantively identical to the requirements in the corresponding Federal regulations at 30 CFR 780.25 (a)(2), (a)(3), and (c)(3). Therefore, the Director finds that New Mexico's program at CSMC Rule 80–1–9–25, with the exception of an existing rule that was not revised, is no less effective than the Federal program at 30 CFR 780.25 with respect to incorporation of the NRCS hazardous classification criteria.

The exception concerns New Mexico's existing CSMC 80–1–9–25(e)(5), which New Mexico did not propose to revise to incorporate requirements pertaining to the NRCS hazardous classification criteria. The corresponding Federal regulation at 30 CFR 780.25(f) requires that, if the structure meets the Class B or C criteria for dams in TR–60 or meets the size or other criteria of 30 CFR 77.216(a), each plan required under 30 CFR 780.25(b), (c), and (e) must include a stability analysis of the structure and a description of each engineering design assumption and calculation with a discussion of each alternative considered in selecting the specific design parameters and construction methods.

Therefore, the Director finds that existing CSMC 80–1–9–25(e)(5) is less effective than the revised Federal regulations at 30 CFR 780.25(f) with respect to requirements pertaining to those structures that meet the Class B or C criteria for dams in TR–60.

Based on the discussion above, the Director approves proposed CSMC Rules 80–1–9–25(a) (2) and (3) and 80–1–9–25(c), but is adding a new requirement that New Mexico further revise existing CSMC 80–1–9–25(e)(5) to incorporate the requirements pertaining to those structures that meet the Class B or C criteria for dams in TR–60.

b. *CSMC Rules 80–1–20–49(e) (1) through (11), Performance standards.* New Mexico proposed to revise the introductory paragraph at CSMC Rule 80–1–20–49(e) to clarify that its requirements apply to all temporary or permanent impoundments at both surface and underground mining operations. In addition, New Mexico proposed to recodify CSMC Rules 80–1–20–49(e) (1) through (11) and to incorporate requirements concerning impoundments that meet or exceed the Class B or C criteria of Technical Release No. 60 (210–VI–TR60, October 1985).

The requirements of New Mexico's CSMC Rule 80–1–20–49(e) (1) through (11), along with existing requirements at CSMC Rules 80–1–20–49 (b), (c), (d), (f), and (g) are, with two exceptions discussed below, substantively identical to the requirements in the corresponding Federal regulations at 30 CFR 816.49(a) and 817.49(a).

The first exception concerns New Mexico's existing CSMC Rules 80–1–20–49(d), which pertains to construction certification, 80–1–20–49(f)(2), which pertains to required design precipitation events, and 80–1–20–49(g) (4) and (5), which pertain to inspection and construction certification. New Mexico did not propose to revise these rules to incorporate requirements pertaining to the NRCS hazardous classification criteria. The corresponding Federal regulations at 30 CFR 816.49(a)(9)(ii) (A) and (C), 816.49(a)(11)(iv), and 816.49(12) and 30 CFR 817.49(a)(9)(ii) (A) and (C), 817.49(a)(11)(iv), and 817.49(12) include requirements pertaining to structures that meet or exceed the Class B or C criteria for dams in TR–60.

Therefore, the Director finds that proposed CSMC Rules 80–1–20–49(e) (1) through (11) are no less effective than the Federal regulations at 30 CFR 816.49(a) and 817.49(a). However, the Director also finds that existing CSMC Rules 80–1–20–49(d), 80–1–20–49(f)(2), and 80–1-20–49(g) (4) and (5) are, with respect to requirements pertaining to those structures that meet or exceed the Class B or C criteria for dams in TR–60, less effective than the revised Federal regulations at 30 CFR 816.49(a)(9)(ii) (A) and (C), 816.49(a)(11)(iv), and 816.49(12) and 30 CFR 817.49(a)(9)(ii) (A) and (C), 817.49(a)(11)(iv), and 817.49(12).

The second exception in New Mexico's proposed CSMC 80–1–20–49(e)(11) which requires barriers to control seepage. Proposed CSMC 80–1–20–49(e)(11) has no Federal counterpart. However, this requirement is not inconsistent with the requirements of 30 CFR 816.49(a)(6), concerning foundation stability, and provides for additional protection.

Based on the discussion above, the Director approves proposed CSMC Rules 80–1–20–49(e) (1) through (11), but is adding a new requirement that New Mexico further revise existing CSMS Rules 80–1–20–49(d), 80–1–20–49(f)(2), and 80–1–20–(g) (4) and (5) to incorporate the requirements pertaining to those structures that meet or exceed and do not meet or exceed the Class B or C criteria for dams in TR–60.

8. CSMC Rule 80–1–9–39 (a), (b), and (c), Permit Application Requirements Concerning a Subsidence Information and Control Plan for Underground Mining Operations

OSM required at 30 CFR 931.16 (f) and (g) that New Mexico revise, respectively, (1) its program to require that a permit application include a description of measures that an operator would use to mitigate or remedy subsidence-related material damage to the land and to occupied residential dwellings, structures related thereto, and noncommercial buildings where the damage resulted from underground mining operations conducted after October 23, 1992; and (2) CSMC Rule 80–1–9–39(d) to remove from its program the exception allowed at paragraph (d)(2) from the requirements of CSMC Rule 80–1–9–39(d), concerning adoption of measures to prevent subsidence causing material damage to the extent technologically and economically feasible (findings Nos. 8. b and c, 58 FR 65907, 65912 and 65913, December 17, 1993).

New Mexico proposed to delete existing CSMC Rules 80–1–9–39(a) (1) through (5), (b) (1) through (3), and (c) (1) through (4), and add CSMC Rules 80–1–9–39 (a) (1) through (6), (b), and (c) (1) through (9), concerning permit application requirements for subsidence information and control plans.

New Mexico's proposed CSMC Rules 80–1–9–39(a) (1) through (6), (b), and (c) (1) through (9), are, with one exception, substantively identical to the corresponding Federal regulations at 30 CFR 780.24(a) (1) through (3) and (b) (1) through (9), and satisfy the required amendments at 30 CFR 931.16 (f) and (g). The exception concerns New Mexico's requirement at proposed CSMC Rule 80–1–9–39(a)(3), concerning the pre-subsidence survey, for a photo, prior to mining, of the exterior of each non-commercial building or occupied

residential dwelling and associated structures. The counterpart Federal regulation at 30 CFR 784.20(a)(3) does not require photographs as part of the survey. However, proposed CSMC Rule 80–1–9–39(a)(3) is not inconsistent with the Federal regulations and provides for additional documentation of the condition of existing structures that may be materially damaged or for which the reasonably foreseeable use maybe diminished by subsidence.

Based on the above discussion, the Director finds that New Mexico's proposed CSMC Rules 80–1–9–39(a) (1) through (6), (b), and (c) (1) through (9), concerning permit application requirements for a subsidence information and control plan, are no less effective than the Federal regulations at 30 CFR 780.24(a) (1) through (3) and (b) (1) through (9). The Director approves proposed CSMC Rules 80–1–9–39(a) (1) through (6), (b), and (c) (1) through (9), and removes the required amendments at 30 CFR 931.16 (f) and (g).

9. CSMC Rule 80–1–11–17(c), Basis for Permit Denial

OSM required at 30 CFR 931.16(h) that New Mexico revise CSMC Rule 80–1–11–17(c) to require, as a basis of permit denial, that New Mexico (1) consider delinquent civil penalties issued pursuant to all the derivative State and Federal programs encompassed by the Federal phrase ''section 518 of the Act,'' and (2) prohibit issuance of a permit if there exist uncorrected or unabated violations received by an applicant or other controlling entity pursuant to SMCRA, its implementing regulations, or any State or Federal law, rule or regulation enacted or promulgated pursuant to SMCRA (finding No. 9.b, 58 FR 65907, 65913, December 17, 1993).

New Mexico proposed to revise CSMC Rule 80–1–11–17(c), concerning the basis for permit denial, to include requirements that are substantively identical to those in the Federal regulation at 30 CFR 773.15(b)(1) and, in doing so, has satisfied the required amendment at 30 CFR 931.16(h).

Because New Mexico's proposed rule is substantively identical to the Federal regulation, the Director finds that proposed CSMC Rule 80–1–11–17(c) is no less effective than the Federal regulation at 30 CFR 773.15(b)(1). The Director approves proposed CSMC 80–1–11–17(c) and removes the required amendment at 30 CFR 931.16(h).

10. CSMC Rules 80–1–11–17(d) and 80–1–11–19(i), Review of Permit Applications and Criteria for Permit Approval or Denial

OSM required at 30 CFR 931.16(i) that New Mexico revise CSMC Rules 80–1–11–17(d) and 80–1–11–19(i) to require that the Director of the New Mexico program, when making a determination of whether a pattern of willful violations exists, consider violations received by an applicant, operator, or controlling entity pursuant to SMCRA, its implementing regulations, or any State or Federal law, rule or regulation enacted or promulgated pursuant to SMCRA (finding No. 9.c, 58 FR 65907, 65914, December 7, 1993).

New Mexico proposed to revise CSMC Rule 80–1–11–17(d) and 80–1–11–19(i), concerning, respectively, New Mexico's (1) review of permit applications for a demonstrated pattern of willful violations, and (2) criteria for permit approval and denial pertaining to a demonstrated pattern of willful violations, to include the requirement that the Director of the New Mexico program consider violations received by an applicant, operator, or controlling entity pursuant to ''SMCRA.'' New Mexico proposed a definition of the term ''SMCRA'' at CSMC Rule 80–1–1–5 to mean, in addition to the Federal act, its implementing regulations at 30 CFR Chapter VII, and any State or Federal law, rule, regulation, or program enacted or promulgated pursuant to it (see finding No. 4.c for a discussion of the Director's approval of the definition of ''SMCRA'' proposed at CSMC Rule 80–1–1–5).

New Mexico's use of the term ''SMCRA'' in proposed CSMC Rules 80–1–11–17(d) and 80–1–11–19(i) is equivalent to the use, in the Federal regulations at 30 CFR 773.15(b)(3), of the phrase ''SMCRA, its implementing regulations, and any State or Federal law, rule or regulation enacted or promulgated pursuant to SMCRA'' and satisfies the required amendment at 30 CFR 931.16(i).

Based upon the above discussion, the Director finds that proposed CSMC Rules 80–1–11–17(d) and 80–1–11–19(i) are consistent with and no less effective than the counterpart Federal regulations at 30 CFR 773.15(b)(3), approves proposed CSMC Rules 80–1–11–17(d) and 80–1–11–19(i), and removes the required amendment at 30 CFR 931.16(i).

11. CSMC Rules 80–1–11–20 (b)(1) and (b)(3), General Procedures Pertaining to Improvidently Issued Permits

OSM required at 30 CFR 931.16(j) that New Mexico revise CSMC Rules 80–1–11–20 (b)(1) and (b)(3) to reference CSMC Rule 80–1–11–20(b)(1)(iii) instead of CSMC Rule 80–1–7–14 (finding No. 10.a, 58 FR 65907, 65914, December 17, 1993).

New Mexico proposed to revise CSMC Rules 80–1–11–20 (b)(1), (b)(1)(ii), and (b)(3), concerning review criteria for improvidently issued permits, to include requirements that are, with one exception, substantively identical to the Federal regulations at 30 CFR 773.20(b)(1) (i) and (iii). In doing so, New Mexico deleted the language that necessitated the reference to CSMC Rule 80–1–11–20(b)(1)(iii) and, thereby, satisfied the required amendment at 30 CFR 931.16(j).

The exception is that New Mexico proposed to delete, from CSMC Rule 80–1–11–20(b)(1)(ii), a reference to the applicable violations review criteria in the preamble of the Federal regulations published at 54 CFR 18438, 18440–18441. This reference identifies the applicable review criteria the Director of the New Mexico program is to use when determining what specific unabated violations, delinquent penalties and fees, and ownership and control relationship apply under this rule.

The Federal regulations at 30 CFR 773.20(b)(1)(i) require that a regulatory authority shall find that a surface coal mining and reclamation permit was improvidently issued if, under the violations review criteria of the regulatory program at the time the permit was issued, the regulatory authority should not have issued the permit because of an unabated violation or a delinquent penalty or fee; or the permit was issued on the presumption that a notice of violation was in the process of being corrected to the satisfaction of the agency with jurisdiction over the violation, but a cessation order subsequently was issued.

Because New Mexico proposed to delete from CSMC Rule 80–1–11–20(b)(1)(ii) the reference to the applicable violations review criteria, New Mexico's program no longer identifies the review criteria that the Director of the New Mexico program would use to determine what specific unabated violations, delinquent penalties and fees, and ownership and control relationship applied at the time a permit was issued. To be no less effective than the Federal regulations at 30 CFR 773.20(b)(1)(i), New Mexico

must review CSMC Rule 80–1–11–20(b)(1) to identify the applicable violations review criteria.

Based on the above discussion, the Director finds that (1) New Mexico has satisfied the required amendment at 30 CFR 931.16(j), and (2) New Mexico's proposed CSMC Rules 80–1–11–20(b)(1), (b)(1)(ii), and (b)(3), with the exception of the proposed deletion the applicable violations review criteria at CSMC Rule 80–1–11–20(b)(1)(ii), are no less effective than the Federal regulations at 30 CFR 773.20(b)(1) (i) and (iii). The Director approves proposed CSMC Rules 80–1–11–20 (b)(1), (b)(1)(ii), and (b)(3) and removes the required amendment at 30 CFR 931.16(j). However, the Director is adding a new requirement that New Mexico further revise CSMC Rule 80–1–11–20(b)(1) to identify the applicable violations review criteria that the Director of the New Mexico program would use to determine what specific unabated violations, delinquent penalties and fees, and ownership and control relationship applied at the time a permit was issued.

12. CSMC Rule 80–1–11–29(d) Conditions of Permits

OSM required at 30 CFR 931.16(k) that New Mexico revise CSMC Rule 80–1–11–29(d) to require the permittee to update the ownership and control information when a Federal cessation order has been issued in accordance with 30 CFR 843.11, or, if there has been no change in the required information, to so notify the Director (finding No. 11, 58 FR 65907, 65915, December 17, 1993).

New Mexico proposed to revise CSMC Rule 80–1–11–29(d) to require that a permittee submit information concerning, among other things, ''a Federal cessation order issued in accordance with 30 CFR 843.11.'' Existing CSMC Rule 80–1–11–29(d)(3) requires that the permittee notify New Mexico in writing if there has been no change in previously submitted information.

Therefore, the Director finds that proposed CSMC Rule 80–1–11–29(d) is no less effective than the Federal regulation at 30 CFR 773.17(i) and satisfies the required amendment at 30 CFR 931.16(k). The Director approves CSMC Rule 80–1–11–29(d) and removes the required amendment at 30 CFR 931.16(k).

13. CSMC Rule 80–1–19–15(c) Performance Standards for Coal Exploration

OSM required at 30 CFR 931.16(l) that New Mexico revise CSMC Rule 80–1–19–15(c) to require that ''other transportation facilities'' used for coal exploration activities meet the requirements of CSMC Rules 80–1–20–150 (b) through (g) and 80–1–20–181 (a) and (b) (finding No. 12, 58 FR 65907, 65916, December 17, 1993).

New Mexico proposed to revise CSMC Rules 80–1–19–15 (c)(2), (c)(3), and (c)(3)(iii), concerning performance standards applicable to coal exploration, to apply these rules to other transportation facilities as well as to new and existing roads and to require that new and significantly altered existing roads or other transportation facilities comply with the provisions of CSMC Rules 80–1–20–150 (b) through (f) and 80–1–20–180 and 181. In addition, New Mexico proposed to further revise CSMC Rule 80–1–19–15(c)(4) to clarify that (1) any road or facility that will be retained permanently must comply with the applicable provisions of CSMC Rules 80–1–20–150, 151, 20–180, and 20–182 and (2) if a road or facility will not be retained it must be immediately reclaimed.

The Federal regulations at 30 CFR 815.15(b) require that all roads or other transportation facilities used for coal exploration shall comply with the applicable provisions of 30 CFR 816.150 (b) through (f), 816.180, and 816.181.

The Director finds that proposed CSMC Rules 80–1–19–15 (c)(2), (c)(3), (c)(iii), and (c)(4) are no less effective than the Federal regulations at 30 CFR 815.15(b) and satisfy the required amendment at 30 CFR 931.16(l). The Director approves proposed CSMC Rules 80–1–19–15 (c)(2), (c)(3), (c)(iii), and (c)(4) and removes the required amendment at 30 CFR 931.16(1).

14. CSMC Rule 80–1–20–93(a)(1) Performance Standard Pertaining to the Design and Construction of Dams and Embankments Constructed of or Intended to Impound Coal Processing Waste

At its own initiative, New Mexico proposed to revise CSMC 80–1–20–93(a)(1) to delete the requirement that the design freeboard must be at least 3 feet and to require, for the design of each dam and embankment constructed of or intended to impound coal processing waste, that the maximum water elevation shall be that determined by the freeboard hydrograph criteria contained in the NRCS hazardous classification criteria referenced in CSMC Rule 80–1–20–49.

The corresponding Federal regulations concerning the design of each dam and embankment constructed of coal processing waste or intended to impound such waste are at 30 CFR 816.84(b)(1) and 817.64(b)(1). These Federal regulations reference the requirements at 30 CFR 816.49(a) and 817.49(a) for determination of the maximum water elevation. As discussed in finding No. 7 above, OSM revised the Federal program at 30 CFR 816.49(a) and 817.49(a) to include new requirements for impoundments that meet or exceed the NRCS hazardous classification criteria. Specifically, the Federal regulations at 30 CFR 816.49(a)(5) and 817.49(a)(5) include the requirement that freeboard design for impoundments that meet the Class B or C criteria for dams in NRCS Technical Release No. 60 (TR–60; 210–VI–TR60, Oct. 1985), shall comply with the freeboard hydrograph criteria in the ''Minimum Emergency Spillway Hydrologic Criteria'' table in TR–60. In this amendment, also discussed in finding No. 7.b above, New Mexico proposed to revise CSMC Rule 80–1–20–49(e) to include NRCS hazardous classification criteria that are no less effective than those in the Federal regulations. Specifically, New Mexico proposed to revise CSMC Rules 80–1–20–49(e)(4) to incorporated requirements concerning freeboard design for impoundments meeting the NRCS hazardous classification criteria.

Because proposed CSMC 80–1–20–93(a)(1) requires, by reference to CSMC 80–1–20–49, that the maximum water elevation be that determined by the freeboard hydrograph criteria in the ''Minimum Emergency Spillway Hydrologic Criteria'' table, proposed CSMC 80–1–20–93(a)(1) is no less effective than the Federal regulations at 30 CFR 816.84(b)(1) and 817.64(b)(1). The Director approves proposed CSMC 80–1–20–93(a)(1); however, OSM recommends, for clarity, the New Mexico further revise proposed CSMC 80–1–20–93(a)(1) to reference the requirements at CSMC 80–1–20–49(e)(4) rather than CSMC 80–1–20–49.

15. CSMC Rules 80–1–20–97 (b) and (c), Protection of Fish, Wildlife, and Related Environmental Values

OSM required at 30 CFR 931.16(a) that New Mexico revise its program to require protection of threatened and endangered species from underground mining activities (finding No. 4, 55 FR 48837, 48839, November 23, 1990).

New Mexico proposed to revise CSMC Rules 80–1–20–97 (b) and (c) to prohibit operators from conducting ''surface coal mining operations or reclamation'' that are likely to jeopardize the continued existence of endangered or threatened species and their habitats, including bald and golden eagles, their nests and

eggs. New Mexico also proposed to extend the prohibition to threatened and endangered species listed by the ''New Mexico Energy, Minerals and Natural Resources and Game and Fish Department'' in addition to those listed by the Secretary of the U.S. Department of the Interior.

The corresponding Federal regulations at 30 CFR 816.97 (b) and (c) and 817.97 (b) and (c) prohibit operators from conducting, respectively, ''surface mining activities'' or ''underground mining activities'' that are likely to jeopardize the continued existence of endangered or threatened species listed by the Secretary of the Interior and their habitats, including bald and golden eagles, their nests and eggs.

At existing CSMC Rule 80–1–1–5, New Mexico defines (1) ''Reclamation'' to mean

> those actions taken to restore mined land as required by the Act and these rules and regulations to a postmining land use approved by the Director

and (2) ''Surface coal mining operations'' to mean

> (a) activities conducted on the surface lands in connection with a surface coal mine or, subject to the requirements of Section 69–25A–20 NMSA 1978 of the Act, surface operations and surface impacts incident to an underground coal mine, the products of which enter commerce or the operations of which directly or indirectly affect interstate commerce.

Therefore, New Mexico's use, at proposed CSMC Rules 80–1–20–97 (b) and (c), of the phrase ''surface coal mining operations or reclamation'' includes ''surface operations and surface impacts incident to an underground coal mine'' and satisfies the required amendment at 30 CFR 931.16(a).

The corresponding Federal regulations at 30 CFR 816.97(b) and 817.97(b) also require protection of species listed by the Secretary, but do not prohibit the protection of other species. Therefore, New Mexico's proposed inclusion of additional species at CSMC Rules 80–1–20–97 (b) and (c), while not required, is not inconsistent with the Federal requirements.

Based on the above discussion, the Director finds that proposed CSMC Rules 80–1–20–97 (b) and (c) are consistent with and no less effective than the Federal regulations at 30 CFR 816.97 (b) and (c) and 817.97 (b) and (c), approves proposed CSMC Rules 80–1–20–97 (b) and (c), and removes the required amendment at 30 CFR 931.16(a).

16. CSMC Rule 80–1–20–116(b)(1), Period of Extended Responsibility

OSM required at 30 CFR 931.16(n)(2) that New Mexico revise CSMC Rule 80–1–20–116(b)(1) to require that the period of extended responsibility begin after the last year of augmented seeding, fertilizing, irrigation, or other work (finding No. 16.b, 58 FR 65907, 65919, December 17, 1993).

New Mexico proposed to revise CSMC Rule 80–1–20–116(b) (1) to (1) delete the allowance for supplemental fertilization and interseeding in order to establish species diversity to occur without disrupting the liability period and (2) require that the extended liability period begin after the last year of augmented seeding, fertilizing, irrigation, or other work, excluding husbandry practices that are approved by the Director in accordance with CSMC Rule 80–1–20–116(b)(6).

The Federal regulations at 30 CFR 816.116(c)(1) provide that the period of extended responsibility for successful revegetation shall begin after the last year of augmented seeding, fertilizing, irrigation, or other work, excluding husbandry practices that are approved by the regulatory authority in accordance with 30 CFR with 30 CFR 816.116(c)(4).

The Director finds that the proposed revisions at CSMC Rule 80–1–20–116(b)(1), concerning the beginning of the bond liability period, (1) are substantively identical to and, therefore, no less effective than the Federal regulations at 30 CFR 816.116(c) (1), and (2) satisfy the required amendment at 30 CFR 931.16(n)(2). (Please note that the existing provision at CSMC Rule 80–1–20–116(b)(1), concerning revegetation success standards for ground cover and productivity, which allows for standards other than those developed by use of a reference area to be approved by the Director of the New Mexico program, is subject to an outstanding required amendment at 30 CFR 931.16(n)(1).)

Based on the above discussion, the Director approves the proposed revisions at CSMC Rule 80–1–20–116(b)(1), concerning the beginning of the bond liability period, and removes the required amendment at 30 CFR 931.16(n)(2).

17. CSMC 80–1–20–116(b) (1) Through (5), Revegetation Success Standards

At its own initiative, New Mexico proposed to revise CSMC 80–1–20–116(b)(1) (i) and (ii), (b)(2), and (b)(3) by recodifying these rules as CSMC 80–1–20–116 (b)(2) through (b)(5) and proposing nonsubstantive editorial revisions at CSMC 80–1–20–116(b) (2) and (3). In addition, New Mexico proposed to revise CSMC Rule 80–1–20–116(b) (5) to (1) delete the allowance for 80 percent statistical confidence to demonstrate success of shrubland when compared to reference areas, and (2) allow shrubland stocking, in addition to ground cover and production, to be considered successful when they are at least 90 percent of the standards developed for historical records under CSMC Rule 8–1–20–116(a).

The Federal regulations at 30 CFR 816.116(a)(2) and 817.116(a)(2) require, among other things, that ground cover, production, or stocking shall be considered equal to the approved success standard when they are not less than 90 percent of the success standard and that the sampling techniques for measuring success shall use a 90-percent statistical confidence interval (i.e., one-sided test with a 0.10 alpha error).

Therefore, the Director finds that, because New Mexico's proposed CSMC Rule 80–1–20–116(b)(5) now requires success of ground cover and productivity of all revegetation to be measured with 90 percent statistical confidence in order to be considered successful, proposed CSMC Rule 80–1–20–116(b)(5) is no less effective than the Federal regulations at 30 CFR 816.116(a)(2) and 817.116(a)(2). The Director approves the (1) recodification and nonsubstantive editorial revisions at CSMC 80–1–20–116 (b)(2) through (b)(4), and (2) proposed revisions at CSMC Rule 80–1–20–116(b)(5).

18. CSMC 80–1–20–116(b)(6), Normal Husbandry Practices

At its own initiative, New Mexico proposed a new CSMC Rule 80–1–20–116(b)(6) that allows the Director of the New Mexico program to approve selective husbandry practices without extending the period of responsibility for revegetation success or bond liability, and identifies husbandry practices as those activities that can be expected to continue as part of the post mining land use, and are employed within the region for unmined lands having land uses similar to the approved postmining land use of the disturbed area, to control disease, pest and vermin and appropriate pruning, reseeding, and transplanting activities. Proposed CSMC Rule 80–1–20–116(b)(6) also provides that husbandry practices may be allowed if they will not reduce the probability of permanent revegetative success if they are discontinued after the liability period expires and states that any practice the Director determines to be augmented

seeding, fertilization or irrigation shall not be considered a husbandry practice.

The Federal regulations at 30 CFR 816.116(c)(4) provide that the regulatory authority may approve selective husbandry practices, excluding augmented seeding, fertilization, or irrigation, provided it obtains prior approval from the Director of OSM, in accordance with 30 CFR 732.17, that the practices are normal husbandry practices, without extending the period of responsibility for revegetation success and bond liability, if such practices can be expected to continue as part of the postmining land use or if discontinuance of the practices after the liability period expires will not reduce the probability of permanent revegetation success. Approved practices shall be normal husbandry practices within the region for unmined lands having land uses similar to the approved postmining land use of the disturbed area, including such practices as disease, pest, and vermin control; and any pruning, reseeding, and transplanting specifically necessitated by such actions.

New Mexico's proposed CSMC Rule 80–1–20–116(b)(6) mimics the language in the Federal regulations, but does not actually identify husbandry practices. It only states that the Director of the New Mexico program may approve selective husbandry practices that would not extend the period of responsibility for revegetation success or bond liability and describes the nature of husbandry practices. The Federal regulations at 30 CFR 816.116(c)(4) require that the regulatory authority obtain prior approval, that the selected practices are normal husbandry practices, from OSM in accordance with 30 CFR 732.17 (i.e., the state program approval process).

Based on the above discussion, the Director finds that proposed CSMC Rule 80–1–20–116(b)(6) is less effective than the Federal regulations at 30 CFR 816.116(c)(4). With the exception of the allowance for the Director of the New Mexico program to approve husbandry practices that have not received approval from OSM in accordance with 30 CFR 732.17, the Director approves proposed CSMC Rule 80–1–20–116(b)(6).

However, the Director is also adding a new requirement that New Mexico revise CSMC Rule 80–1–20–116(b)(6) to either (1) identify selected husbandry practices and submit them with documentation verifying that the proposed practices would be considered normal in the areas being mined or (2) state that selected husbandry practices approved by the Director may not be implemented prior to approval from OSM in accordance with the State program amendment process at 30 CFR 772.17.

19. CSMC Rules 80–1–20–117, 117(c)(1), 117(c)(3), 117(c)(4), 117(d)(2), and 117(d)(3)(i), Performance Standards for the Revegetation of Trees and Shrubs

In response to required program amendments at 30 CFR 931.16 (p), (q), and (4), New Mexico proposed revisions at CSMC Rules 80–1–20–117, 117(c)(1), 117(c)(3), 117(c)(4), 117(d)(2), and 117(d)(3)(i), concerning performance standards for the revegetation of trees and shrubs. At its own initiative, New Mexico also proposed revisions at CSMC Rule 80–1–20–117(d)(3)(i), concerning statistical sampling techniques (finding Nos. 17.a, 17.c.i, and 17.c.ii, 58 FR 65907, 65920, and 65921, December 17, 1993).

Based on the discussion in paragraphs 19.a through 19.d below, the Director approves proposed CSMC Rules 80–1–20–117, 117(c)(1), 117(c)(3), 117(c)(4), 117(d)(2), and 117(d)(3)(i), and removes the required amendment at 30 CFR 931.16 (p), (q), and (r).

a. *CSMC Rule 80–1–20–117, Performance standards for tree and shrub stocking and utility of the trees and shrubs for the approved postmining land use.* OSM required at 30 CFR 931.16(p) that New Mexico revise CSMC Rule 80–1–20–117(a) and (b) to (1) provide revegetation success standards for lands developed as fish or wildlife habitat, recreation areas, or shelterbelts, and (2) require that the trees and shrubs used in determining stocking success and adequacy of plant arrangement shall have utility for the approved postmining land use.

In response to the required amendment at 30 CFR 931.16(p), New Mexico proposed to revise CSMC Rule 80–1–20–117 to (1) apply its tree and shrub stocking requirements to reclaimed land developed for use as fish and wildlife habitat, recreation, shelterbelts, or forestry and (2) require that trees and shrubs used in determining the success of stocking and the adequacy of plant arrangement shall have utility for the approved postmining land use.

The Director finds that proposed CSMC Rule 80–1–20–117 satisfies the required amendment at 30 CFR 931.16(p) and is no less effective than the Federal regulations at 30 CFR 816.116(b)(3) and 817.116(b)(3).

b. *CMSC 80–1–20–117(c)(1), (3), and (4), Performance standards for stocking of trees and shrubs where commercial forest land is the approved postmining land use.* OSM required at 30 CFR 931.16(q) that New Mexico revise CSMC Rule 80–1–20–117(c) to (1) clarify whether the stocking rate for commercial forest land will be determined by the State Forester on a permit-specific or program-wide basis, (2) reference the correct rules for determining the number of trees, shrubs, and ground-cover plants on commercial forest land, and (3) reference CSMC Rule 80–1–20–117(d)(2) for the appropriate bond release success standards for stocking and ground cover.

In response to the required amendment at 30 CFR 931.16(q)(1), New Mexico proposed to revise CSMC 80–1–20–117(c)(1) to require that the minimum stocking of trees or shrubs will be determined by the State Forester *on a permit-specific basis* (emphasis added). In response to the required amendment at 30 CFR 931.16(q)(2), New Mexico proposed to revise CSMC Rule 80–1–20–117(c)(3), concerning success standards for areas where commercial forest land is the approved postmining land use, to (1) reference CSMC Rules 80–1–20–116(b)(5)(iv) and 20–117(b) for the approved sampling methods, and (2) delete a provision specific to tree and shrub stocking for the beginning of the extended liability period. In response to the required amendment at 30 CFR 931.16(q)(3), New Mexico proposed to revise CSMC 80–1–20–117(c)(4) to reference CSMC Rules 80–1–20–116 and 80–1–20–117 for the requirements pertaining to the demonstration required, upon request for final bond release, to show success of tree and shrub stocking and ground cover.

The Director finds that New Mexico's proposed CSMC Rules 80–1–20–117(c) (1), (3), and (4) satisfy the requirements of 30 CFR 931.16(q) (1), (2), and (3), and are no less effective than the Federal regulations at 30 CFR 816.116(b)(3) and 817.116(b)(3).

c. *CSMC Rules 80–1–20–117(d)(2) and (d)(3)(i), Performance standards for tree and shrub stocking concerning sampling techniques, revegetation success standards, and the extended period of responsibility for revegetation success.* OSM required at 30 CFR 931.16(r) that New Mexico revise CSMC Rule 80–1–20–117 (d) to (1) provide at CSMC Rule 80–1–20–117 (d)(2) and (d)(3)(i) the correct references to rules pertaining to revegetation success standards and the extended period of responsibility for revegetation success, and (2) require at CSMC Rule 80–1–20–117(d)(3)(i) that the sampling techniques for measuring revegegation success shall use a 90-percent statistical confidence interval.

In response to the required amendment at 30 CFR 931.16(r)(1), New Mexico proposed to revise CSMC Rules

80–1–20–117(d)(2), concerning success standards for areas where woody plants are used for wildlife management, recreation, shelter belts, or forest uses other than commercial forest land, to (1) reference CSMC Rules 80–1–20–116(b)(5)(iv) and 80–1–20–117(d)(1) for the revegetation success standards for stocking of trees, half-shrubs, shrubs, and ground cover, and (2) delete a provision specific to tree and shrub stocking for the beginning of the extended liability period.

In response to the required amendments at 30 CFR 931.16(r) (1) and (2), New Mexico proposed to revise CSMC Rule 80–1–20–117(d)(3)(i) to require that, upon expiration of the 5 or 10 year responsibility period and at the time of request for bond release, vegetated woody plants must be equal to or greater than 90 percent of the stocking of live woody plants of the same life form ascertained pursuant to CSMC Rule 80–1–20–117(b) with 90 percent statistical confidence.

The Director finds that New Mexico's proposed revisions of (1) CSMC Rules 80–1–20–117 (d)(2) and (d)(3)(i), concerning referenced rules for revegetation success standards, and (2) CSMC Rule 80–1–20–117(d)(3)(i), concerning the requirement that the sampling techniques for measuring revegetation success shall use a 90-percent statistical confidence interval, satisfy the required amendments at 30 CFR 931.16(r) (1) and (2) and are no less effective than the Federal regulations at 30 CFR 816.116 (a)(2) and (b)(3) and 817.116 (a)(2) and (b)(3).

d. *CSMC Rule 80–1–20–117(d)(3)(i), Performance standards concerning the statistical techniques for measuring success of tree and shrub stocking.* At its own initiative, New Mexico proposed a revision at CSMC 80–1–20–117(d)(3)(i) to require that statistical techniques for measuring success use appropriate parametric or nonparametric one-tail test with a 90-percent confidence interval and a 10-percent alpha error.

The Federal regulations at 30 CFR 816.116(a)(2) and 817.116(a)(2) require, among other things, that ground cover, production, or stocking shall be considered equal to the approved success standard when they are not less than 90 percent of the success standard and that the sampling techniques for measuring success shall use a 90-percent statistical confidence interval (i.e., one-sided test with a 0.10 alpha error).

With one exception, New Mexico's proposed CSMC Rule 80–1–20–117(d)(3)(i), concerning statistical sampling techniques, is substantively identical to these requirements in the Federal regulations at 30 CFR 816.116(a)(2) and 817.116(a)(2). The exception is that New Mexico cites as appropriate statistical tests either parametric or nonparametric tests and indicates that both would be tests that are one-tailed with a 90-percent confidence interval and a 10-percent alpha error. Nonparametrically distributed populations exist when the parameters being measured are not normally distributed throughout the area being sampled, e.g., in the arid west when the vegetation cover approaches zero and where shrubs are planted and occur with irregularity throughout the reclaimed area. A test for a nonparametrically distributed population can be found to be 90% confident with a one-tailed test with a .1% alpha error, just as can a test for parametrically distributed populations.

Therefore, based on the above discussion, the Director finds that proposed CSMC Rule 80–1–20–117(d)(3)(i), concerning statistical sampling techniques, is no less effective than the Federal regulations at 30 CFR 816.116(a)(2) and 817.116(a)(2).

20. CSMC Rule 80–1–20–150(c), Prohibition of Vehicular Fords or Low Water Crossings by Ancillary Roads

At its own initiative, New Mexico proposed to delete CSMC Rule 80–1–20–150(c) which prohibits vehicular use of fords or low water crossings by ancillary roads at any time there is a visible surface flow.

The Federal regulations at 30 CFR 816.151(c)(2) and 817.151(c)(2) prohibit fords of perennial and intermittent streams by primary roads. However, there is no similar prohibition in the general requirements for all roads in the Federal regulations at 30 CFR 816.150(b) (2) and (3) and 817.150(b) (2) and (3), which correspond to New Mexico's CSMC Rule 80–1–20–150.

Therefore, the Director finds that New Mexico's proposed deletion of CSMC Rule 80–1–20–150(c), concerning the prohibition pertaining to fords by ancillary roads, does not cause CSMC Rule 80–1–20–150 to be inconsistent with nor less effective than the general requirements for all roads in the Federal regulations at 30 CFR 816.150(b) (2) and (3) and 817.150(b) s(2) and (3). The Director approves the proposed deletion of CSMC Rule 80–1–20–150(c).

IV. Summary and Disposition of Comments

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

1. Public Comments

OSM invited public comments on the proposed amendment, but none were received.

2. Federal Agency Comments

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

The U.S. Army Corps of Engineers responded on February 27, 1996, that the proposed revisions were satisfactory (administrative record No. NM–769).

The U.S. Bureau of Land Management (BLM) responded on March 4, 1996, with the following comments (administrative record No. NM–771).

BLM questioned the appropriateness of New Mexico's proposed definitions at CSMC 80–1–1–5 for (1) ''Occupied residential dwelling and associated structures,''commenting that by providing for fenced in areas to count as part of a dwelling, it would allow large tracts to be excluded from mining consideration, (2) ''Ownership or control link,'' commenting that, by using the phrase ''owns and controls,'' the reasoning if circular, and (3) ''Replacement of water supply,'' commenting that it is not a pure definition because procedure and definition are mixed together. Because, as discussed in finding Nos. 2 and 5.a, these definitions proposed by New Mexico are, with one exception concerning a reference to other New Mexico rules in ''Occupied residential dwelling and associated structures,'' substantively identical to the same Federal definitions at 30 CFR 701.5 and 773.5, the Director is not requiring that New Mexico further revise its rules in response to these comments. However, nothing in New Mexico's proposed definition of ''Occupied residential dwelling and associated structures,'' nor in the same Federal definition, excludes areas from mining. The term is defined in order that compensation may be provided if damage to such a structure occurs after October 24, 1992, that is, under certain conditions, a result of subsidence due to underground mining operations.

BLM commented that proposed CSMC Rules 80–1–9–25 (a)(2) and (a)(3), concerning permit application requirements for ponds and impoundments, are incomplete statements. New Mexico's proposed amendment contained only the language that was proposed for revision and did not include language in the approved New Mexico program that was not being revised. Therefore, the commenter did

not see the subparagraphs that exist in New Mexico which complete the statements at proposed CSMC Rules 80–1–9–25 (a)(2) and (a)(3). Because complete statements exist in the New Mexico program, the Director is not requiring that New Mexico further revise its rules in response to this comment.

BLM commented that proposed CSMC Rule 80–1–9–25(c)(3), concerning permit application requirements for subsidence information and control plans, should require that photos be taken of all sides of occupied building, and buildings of considerable value, and that a foundation inspection should be done on such buildings as part of the survey of conditions. Proposed CSMC Rule 80–1–9–39(c)(3) does require a photo, taken prior to mining, of the exterior of all non-commercial buildings or occupied residential dwellings and associated structures that are within the area encompassed by the applicable angle of draw. Proposed CSMC Rule 80–1–9–39(c)(3) is substantially identical to the counterpart Federal regulation at 30 CFR 784.20(a)(3), with the exception that it requires a photo of the buildings prior to mining as part of a presubsidence survey. Therefore, because New Mexico's proposed requirement for a photo already provides for additional information not specified in the Federal program, the Director is not requiring that New Mexico further revise proposed CSMC Rule 80–1–9–39(c)(3) in response to this comment. However, nothing in the proposed rule would prevent the applicant from documenting the condition of the buildings to the extent recommended by the commenter.

BLM commented that proposed CSMC Rules 80–1–11–33 and 34, concerning procedures and standards for challenging ownership and control links, are detailed procedures and standards and should be covered in an internal document. As discussed in finding No. 2, these proposed rules are substantively identical to the requirements in the Federal regulations at 30 CFR 773.24 (a) through (d) and 773.25 (a) through (d). With these proposed rules, New Mexico's approved program is no less effective than the Federal program. Therefore, the Director is not requiring that New Mexico further revise its program in response to this comment.

BLM commented that at (proposed performance standards for ponds and impoundments) (1) CSMC Rule 80–1–20–49(e)(4), the size of the storm event that the impoundment is expected to weather without overtopping should be specified, (2) CSMC Rule 80–1–20–49(e)(8), protection against sudden drawdown does not make sense because sudden drawdown is a subsurface phenomenon which would not occur as a result of sheet erosion, and (3) CSMC Rule 80–1–20–49(e)(10), it is unclear whether the rule referred to submerged highwalls in a pit left flooded after reclamation.

These New Mexico proposed rules are substantively identical to the respective counterpart Federal regulations at 30 CFR 816.19(a)(5) and 817.49(a)(5), 816.49(a)(7) and 817.49(a)(7), and 816.49(a)(10) and 817.49(a)(10). In response to the comment concerning proposed CSMC Rule 80–1–20–49(e)(4), the Director notes that the design storm event is specified within the referenced ''Minimum Emergency Spillway Hydrologic Criteria'' table in TR–60. In response to the comment concerning proposed CSMC Rule 80–1–20–49(e)(8), the rule requires protection (e.g., by rip rap, fabric, or vegetation) of the pond or impoundment inslope against sudden drawdown, which could occur as a result of pumping or other rapid release of water. In addition, the rule requires outslope protection that could occur as a result of surface sheet erosion. In response to the comment concerning proposed CSMC Rule 80–1–20–49(e)(10), the Director notes that the rule does refer to a permanent impoundment which is created by a portion of a pit approved to be left in the reclaimed environment in support of the approved postmining land use. Because New Mexico's proposed rules are substantively identical to the counterpart Federal regulations, the Director is not requiring that New Mexico further revise its rules in response to these comments.

3. Environmental Protection Agency (EPA) Concurrence and Comments

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

None of the revisions that New Mexico proposed to make in its amendment pertain to air or water quality standards. Therefore, OSM did not request EPA's concurrence.

Pursuant to 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from EPA (administrative record No. NM–768. It responded on February 27, 1996, that it had no comments (administrative record No. NM–770).

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

Pursuant to 30 CFR 732.17(h)(4), OSM solicited comments on the proposed amendment from the SHPO and ACHP (administrative record No. NM–768). Neither SHPO nor ACHP responded to OSM's request.

V. Director's Decision

Based on the above findings, the Director approves, with one exception and certain additional requirements, New Mexico's proposed amendment as submitted on January 22, 1996.

The Director approves, as discussed in finding No. 1, nonsubstantive editorial revisions at: CSMC Rule 80–1–11–22(d), concerning remedial measures for improvidently issued permits; CSMC Rule 80–1–20–41(e)(3)(i), concerning general performance standard requirements for protection of the hydrologic balance; CSMC Rule 80–1–20–82(a)(4), concerning inspections of coal processing waste banks; and CSMC Rule 80–1–20–89(d)(2), concerning disposal of noncoal wastes.

The Director approves, as discussed in finding No. 2, concerning rules that are substantively identical to the corresponding Federal regulations at: CSMC Rule 80–1–1–5, the definitions of ''Applicant/violator system or AVS,'' ''Federal violation notice,'' ''Ownership or control link,'' ''State violation notice,'' ''Violation notice,'' ''OSM,'' and ''Road;'' CSMC Rules 80–1–11–20(c) (1) and (2) and (e), concerning general procedures for improvidently issued permits; CSMC 80–1–11–24(a) and [deletion of] (c), concerning rescission procedures for improvidently issued permits; CSMC Rule 80–1–11–31 (a) through (d), concerning verification of ownership or control application information; CSMC Rule 80–1–11–32 (a) through (c), concerning review of ownership or control and violation information; CSMC Rule 80–1–11–33 (a) through (d), concerning procedures for challenging ownership or control links shown in AVS; and CSMC Rule 80–1–11–34 (a) through (d), concerning standards for challenging ownership or control links and the status of violations;

The Director approves, as discussed in: finding No. 3, CSMC Rule 80–1–1–5, concerning the definition of ''Qualified laboratory;'' finding No. 5.a, CSMC Rule 80–1–1–5, concerning definitions for ''Drinking, domestic, or residential water supply,'' ''Noncommercial building,'' and ''Replacement of water supply;'' finding No. 14, CSMC Rule 80–1–20–93(a)(1),

concerning performance standard pertaining to the design and construction of dams and embankments constructed of or intended to impound coal processing waste; and finding No. 20, deletion of CSMC Rule 80–1–20–150(c), concerning the prohibition pertaining to vehicular use of fords or low water crossings by ancillary roads at any time there is a visible surface flow.

The Director removes existing required amendments and approves, as discussed in: finding No. 4, CSMC Rule 80–1–1–5, concerning the definition of ''SMCRA'' and CSMC Rules 80–1–7–14(c) (1) through (5), concerning compliance information required in permit applications; finding No. 6, CSMC Rule 80–1–4–15(b)(1), concerning procedures for initial processing, record-keeping, and notification requirements concerning petitions to designate lands unsuitable for mining; finding No. 8, CSMC Rules 80–1–9–39(a) (1) through (6), (b), and (c) (1) through (9), concerning permit application requirements for subsidence information and control plans; finding No. 9, CSMC Rule 80–1–11–17(c), concerning the basis for permit denial; finding No. 10, CSMC Rules 80–1–11–17(d) and 80–1–11–19(i), concerning, respectively, review of permit applications for a demonstrated pattern of willful violations, and criteria for permit approval and denial pertaining to a demonstrated pattern of willful violations; finding No. 12, CSMC Rule 80–1–29(d), concerning conditions of permits; finding No. 13, CSMC Rules 80–1–19–15 (c)(2), (c)(3), (c)(3)(iii), and (c)(4), concerning performance standards applicable to coal exploration; finding No. 15, CSMC Rules 80–1–20–97 (b) and (c), concerning protection of fish, wildlife, and related environmental values; finding No. 16, CSMC Rule 80–1–20–116(b)(1), concerning the period of extended liability for demonstration of revegetation success; finding No. 17, CSMC Rule 80–1–20–116(b)(1) through (b)(5), concerning revegetation success standards; and finding No. 19, CSMC Rules 80–1–20–117, 117(c)(1), 117(c)(3), 117(c)(4), 117(d)(2), and 117(d)(3)(i), concerning performance standards for revegetation success pertaining to trees and shrubs.

With the requirement that New Mexico further revise its rules, the Director approves, as discussed in: finding No. 5.a, CSMC Rule 80–1–1–5, concerning definitions for ''Material damage'' and ''Occupied residential dwelling and structures related thereto;'' and finding No. 7, CSMC Rules 80–1–9–25 (a) and (c) and 80–1–20–49(e) (1) through (11), concerning requirements for ponds, impoundments, and banks, dams, and embankments that meet or exceed the Class B or C criteria of Technical Release No. 60 (210–VI–TR60, October 1985).

With the requirement that New Mexico further revise its rules, the Director removes existing required amendments and approves, as discussed in: finding No. 5.b, CSMC Rules 80–1–20–121 (a) through (d), concerning general requirements for subsidence control, CSMC Rules 80–1–20–124 (a) through (d), concerning surface owner protection and restoration, replacement, repair, or compensation of subsidence-caused damages, CSMC Rules 80–1–20–125 (a) through (e), concerning rebuttable presumption of causation by subsidence, and CSMC Rules 80–1–20–127, concerning the requirement to adjust the bond amount for subsidence damage; finding No. 11, CSMC Rules 80–1–11–20 (b)(1), (b)(1)(ii), and (b)(3), concerning review criteria for improvidently issued permits; and finding No. 18, CSMC Rule 80–1–20–116(b)(6), concerning normal husbandry practices that may be used during the extending liability period for demonstrating revegetation success, with the exception of the allowance for the Director of the New Mexico program to approve husbandry practices that have not received approval from OSM.

The Federal regulations at 30 CFR Part 931, codifying decisions concerning the New Mexico's program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

Effect of Director's Decision

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

IV. Procedural Determinations

1. Executive Order 12866

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

2. Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of Tribe or State AMLR plans and revisions thereof since each such plan is drafted and promulgated by a specific Tribe or State, not by OSM. Decisions on proposed Tribe or State AMLR plans and revisions thereof submitted by a Tribe or State are based on a determination of whether the submittal meets the requirements of Title IV of SMCRA (30 U.S.C. 1231–1243) and the applicable Federal regulations at 30 CFR Parts 884 and 888.

3. National Environmental Policy Act

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

4. Paperwork Reduction Act

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

5. Regulatory Flexibility Act

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

Department relied upon the data and assumptions in the analysis for the corresponding Federal regulations.

6. Unfunded Mandates Reform Act

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 931

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 7, 1996.

Richard J. Seibel,

Regional Director, Western Regional Coordinating Center.

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

PART 931—NEW MEXICO

1. The authority citation for Part 931 continues to read as follows:

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

2. Section 931.15 is amended by adding paragraph (t) to read as follows:

§ 931.15 Approval of amendments to State regulatory program.

* * * * *

(t) The director approves, with one exception at CSMC 80–1–20–116(b)(6) concerning the authorization for the Director of the New Mexico program to approve normal husbandry practices that have not been approved by OSM, the proposed revisions submitted by New Mexico on January 22, 1996.

3. Section 931.16 is amended by removing and reserving paragraphs (a), (c), (d), (f), (g), (h), (i), (j), (k), (l), (p), (q), (r), and (s); revising (n); and adding paragraphs (w),(x),(y), (z), and (aa) to read as follows:

§ 931.16 Required program amendments.

* * * * *

(n) By February 15, 1994, New Mexico shall submit to OSM proposed revisions to CSMC Rule 80–1–20–116(b)(1), or otherwise amend its program, to require that all revegetation success standards and measuring techniques be approved by the Director of OSM as well as the Director of MMD.

* * * * *

(w) By November 25, 1996, New Mexico shall submit revisions at CSMC Rule 80–1–1–5, for the definitions of ''Material damage'' and ''Occupied residential dwelling and associated structures'' to include references in these definitions to CSMC Rules 80–1–20–121, 125, and 127.

(x) By November 25, 1996, New Mexico shall submit revisions at CSMC Rule 80–1–9–29(e)(5) and CSMC Rules 80–1–20–49(d), (f)(2), and (g)(4) and (5), to incorporate the requirements pertaining to those structures that meet or exceed the Class B or C criteria for dams in TR–60.

(y) By November 25, 1996, New Mexico shall submit revisions at CSMC Rule 80–1–11–20(b)(1) to violations review criteria that the Director of the New Mexico program would use to determine what specific unabated violations, delinquent penalties and fees, and ownership and control relationship applied at the time a permit was issued.

(z) By November 25, 1996, New Mexico shall submit revisions at CSMC Rule 80–1–20–116(b)(6) to either

(1) Identify selected husbandry practices and submit them with documentation verifying that the proposed practices would be considered normal in the areas being mined or

(2) State that selected husbandry practices approved by the Director may not be implemented prior to approval from OSM in accordance with the State program amendment process at 30 CFR 772.17.

(aa) By November 25, 1996, New Mexico shall submit revisions at CSMC Rule 80–1–20–127 to clearly require adjustment of the bond amount when subsidence-related contamination, diminution, or interruption to a water supply occurs.

[FR Doc. 96–13265 Filed 5–28–96; 8:45 am]

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30 CFR Part 946

[VA–105–FOR]

Virginia Regulatory Program

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

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving a proposed amendment to the Virginia permanent regulatory program (hereinafter referred to as the Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment consists of five explanatory statements written to clarify and assist the implementation of, and compliance with, recent changes to §§ 480–03–19.816/817.102(e) of the Virginia program relative to the disposal of coal processing waste and underground development waste in mined-out areas. The amendment is intended to address a required program amendment at 30 CFR 946.16(a).

EFFECTIVE DATE: May 29, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Robert A. Penn, Director, Big Stone Gap Field Office, Office of Surface Mining Reclamation and Enforcement, 1941 Neeley Road, Suite 201, Compartment 116, Big Stone Gap, Virginia 24219, Telephone: (703) 523–4303.

SUPPLEMENTARY INFORMATION:

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

I. Background on the Virginia Program

SMCRA was passed in 1977 to address environmental and safety problems associated with coal mining. Under SMCRA, OSM works with States to ensure that coal mines are operated in a manner that protects citizens and the environment during mining, that the land is restored to beneficial use following mining, and that the effects of past mining at abandoned coal mines are mitigated.

Many coal-producing States, including Virginia, have sought and obtained approval from the Secretary of the Interior to carry out SMCRA's requirements within their borders. In becoming the primary enforces of SMCRA, these ''primacy'' States accept a shared responsibility with OSM to achieve the goals of the Act. Such States join with OSM in a shared commitment to the protection of citizens from abusive mining practices, to be responsive to their concerns, and to allow them full access to information needed to evaluate the effects of mining on their health, safety, general welfare, and property. This commitment also recognizes the need for clear, fair, and consistently applied policies that are not unnecessarily burdensome to the coal industry—producers of an important sources of our Nation's energy.

Under SMCRA, OSM sets minimum regulatory and reclamation standards. Each primacy State ensures that coal mines are operated and reclaimed in accordance with the standards in its approved State program. The States serve as the front-line authorities for implementation and enforcement of SMCRA, while OSM maintains a State performance evaluation role and provides funding and technical assistance to States to carry out their approved programs. OSM also is responsible for taking direct

enforcement action in a primacy State, if needed, to protect the public in cases of imminent harm or, following appropriate notice to the State, when a State acts in an arbitrary and capricious manner in not taking needed enforcement actions required under its approved regulatory program.

Currently, there are 24 primacy states that administer and enforce regulatory programs under SMCRA. These states may amend their programs, with OSM approval, at any time so long as they remain no less effective than Federal regulatory requirements. In addition, whenever SMCRA or implementing Federal regulations are revised, OSM is required to notify the States of the changes so that they can revise their programs accordingly to remain no less effective than the Federal requirements.

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

II. Submission of the Amendment

By letter dated October 31, 1994 (Administrative Record No. VA–839), Virginia proposed to amend section 480–03–19.816/817.102(e) to clarify the Virginia regulations that are applicable when coal processing waste and underground development waste is used as backfill material for mined-out areas. The amendment was submitted to settle interpretational differences between Virginia and OSM relative to how the coal mine waste regulations apply to waste materials placed in backfills.

Virginia's submittal of the amendment to section 480–03–19.816/817.102(e) was accompanied by a detailed explanation of the intended implementation and scope of the proposed amendment. OSM approved the amendment on August 8, 1995 (60 FR 40271) to the extent that the amendments are implemented as explained by Virginia in its October 31, 1994, submittal letter. In addition, OSM also required (at 30 CFR 946.16(a)) that Virginia further clarify the implementation of the changes by amending the Virginia program as follows:

(1) Define the term ''suitable;''

(2) Add a requirement to the Virginia rules to explicitly require the determination of the location of seeps, springs, or other discharges in the designing of a backfill;

(3) Add to 480–03–19.773.17 a specific requirement that a permit condition be imposed requiring a quarterly analysis of coal mine waste as it is placed in a refuse pile or in an area being backfilled.

(4) Define the term ''small'' to mean that there are no channeled flows, that during storm events there is only sheet flow, and that no variance would be approved if the drainage area above the pile on any point exceeds 500 feet, measured along the slope; (5) Add a requirement that whenever coal refuse is placed on preexisting benches for the purpose of returning the benches to approximate original contour (AOC), the performance standards for the placement of excess spoil on preexisting benches will be followed.

By letter dated October 13, 1995 (Administrative Record No. VA–865), Virginia submitted its response to the required amendments at 30 CFR 946.16(a). The amendment consists of five statements that are attached to a letter to be sent to coal operators, consultants, Virginia Division of Mined Land Reclamation (DMLR) personnel, and other interested parties. The five statements are intended to clarify the intended implementation and scope of the recently approved amendments to section 480–03–19.816/817.102(e).

The proposed amendment was published in the November 27, 1995, Federal Register (60 FR 58320), and in the same notice, OSM opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The comment period closed on December 27, 1995. There were no requests for a public hearing, so no hearing was held.

III. Director's Findings

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

I. Clarification of the Term ''Suitable''

The State submitted the following statement:

> The Department of Mines, Minerals, and Energy (DMME) has not promulgated a regulatory definition for the term ''suitable'' as used at 480–03–19.816/817.102(e) since the ordinary usage (Webster-satisfactory for a use or purpose) is intended. DMME will consider material suitable provided it is satisfactory for the purpose of meeting the Virginia program performance standards for each site specific circumstance. For an example, the physical cohesive property of a given waste material under specific site conditions will be considered suitable provided the required (1.3) static safety factor can be achieved and landslides prevented [see 480–03–19.816/817.102(a) and (f)]. Waste material is considered suitable provided the host site conditions, the material's chemical and physical characteristics, and the disposal techniques collectively demonstrate compliance with the Virginia program performance standards, including sections 480–03–19–816/817.41, 480–03–19.816/817.74, 480–03–19.816/817.81, 480–03–19.816/817.95, 480–03–19.816/817.97, 480–03–19.816/817.111–116, and 480–03–19.816/817.133.

The Director finds that the DMLS's statement adequately clarifies how the State interprets and will implement the term ''suitable'' in the Virginia program. That is, materials will be considered suitable, if the DMME determines that the use of those materials will not result in the violation of the Virginia approved performance standards. Therefore, the Director finds that the required amendment at 30 CFR 946.16(a)(1) is satisfied and can be removed.

2. Seeps, Springs, or Other Discharges in the Backfill

The State submitted the following statement:

> The Division of Mined Land Reclamation (DMLR) finds it necessary for the applicant to determine and identify in the application the location of seeps, springs, or other discharges in any area proposed for backfilling with coal mine waste. Such information is crucial to the applicant's site selection and backfill design as well as to DMLR's environmental impact analysis. DMLR has initiated the process to revise its regulations to be more specific with regard to seeps and springs in such backfills. In the meantime, DMLR interprets 480–03–19.780.21 (f) and (h) and 480–03–19.784.14 (e) and (g) as authority for this requirement.

The Federal regulations at 30 CFR 780.21(f) and 784.14(e) concerning probable hydrologic consequences (PHC) determination provide the findings shall be made on whether adverse impacts may occur to the hydrologic balance, and whether acid-forming or toxic-forming materials are present that could result in contamination of surface or ground waters. In addition, 30 CFR 780.21(h) and 784.14(g) provide that an application shall contain a hydrologic reclamation plan that includes the measures to be taken to avoid acid or toxic drainage.

The DMLR has clarified that a permit application should include the location of seeps, springs, or other discharges is crucial to the applicant's site selection and backfill design as well as to the DMLR's environmental impact analysis. The DMLR also acknowledged that it has the authority under § 480–03–

19.780.21 (f) and (h) and 784.14 (e) and (g) to require such information. In addition, the DMLR will revise its regulations to more clearly require information regarding springs and seeps.

The Director finds that the DMLR's statement adequately explains the State program concerning the identification of the location of seeps, springs, and other discharges in any area proposed for backfilling with coal mine waste, and that the Virginia program has the authority to require such information. Therefore, the Director finds that the required amendment at 30 CFR 946.16(a)(2) is satisfied and can be removed.

3. Permit Condition/Quarterly Analysis-Clarification

The State submitted the following statement:

The Virginia regulations at 480–03–19.773.17(b) provide authority for DMLR to impose permit conditions in addition to those mandated by this section. When the physical or chemical characteristics of coal mine waste used as backfill material are subject to change, DMLR will specify a condition in the permit approval document requiring the appropriate sampling and analysis necessary to ensure continued compliance with the performance standards. (Examples of circumstances in which DMLR requires periodic analysis of coal mine refuse, and/or backfill include, but is not limited to: refuse produced by preparation plant serving several operations; refuse produced over a large areal extent at a single operation; refuse produced by several operations; and refuse of varying quality produced at several locations within one operation.)

The Director finds that the DMLR's statement clearly acknowledges that the regulatory authority will impose a permit condition requiring sampling of the coal mine waste material whenever the physical or chemical characteristics of that material are subject to changes. In addition, the DMLR has provided some specific examples that clarify typical circumstances under which the DMLR will apply permit conditions to require analysis of coal mine waste that is placed in the backfill to ensure continued compliance with the performance standards. The DMLR also has stated that it interprets § 480–03–19.780/784.22(c) as authority to require periodic testing as necessary to ensure compliance with the hydrologic protection and other performance standards.

As noted above, the Director had required Virginia to amend its program by adding a provision requiring quarterly analysis of coal mine waste material as it is placed in backfills or refuse piles. The basis for this required amendment was Virginia's statement that, as a matter of practice, it already imposed permit conditions pursuant to 480–03–19.773.17 requiring a quarterly analysis of coal mine waste. Because the Director was concerned that this permit condition requirement would not be enforceable, he required Virginia to add the requirement to its program. *See* 60 FR 40271, 40274, August 8, 1995. In its submittal of October 13, 1995 (Administrative Record No. VA–865), Virginia stated that it had chosen a more flexible permit condition requirement, based on the type of coal mine waste material involved in each particular instance. The Director did not conclude in the August 8, 1995, Federal Register notice, nor does he conclude now, that quarterly analysis of coal mine waste material is required in all instances by SMCRA or its implementing regulations. Rather, the Director's primary concern was that Virginia have the ability to enforce the requirement of an added permit condition. Moreover, the Director now agrees with Virginia that the State regulatory authority should have the flexibility to impose permit conditions requiring ''appropriate'' sampling and analysis to ensure continued compliance with all applicable performance standards, particularly where the chemical or physical characteristics of the coal mine waste material are subject to change. ''Appropriate'' analysis may, in some instances, mean testing the material more, or less frequently than on a quarterly basis. Because Virginia has adequately incorporated into the Virginia program its permit condition requirements with respect to coal mine waste, the Director is satisfied that these requirements are now enforceable. Therefore, the Director finds that 30 CFR 946.16(a)(3) is satisfied, and can be removed.

4. ''Small Area''—Clarification

The State submitted the following statement:

At 480–03–19.816/817.102(e), the Virginia regulations provide that a variance to the requirement at 480–03–19.816/817.83(a)(2) may be approved by DMLR provided ''the applicant demonstrates that the area above the refuse pile is *small* and that appropriate measures will be taken to direct or convey runoff across the surface area of the pile in a controlled manner.

DMLR intends to consider areas *small* provided the drainage area is 500 feet or less as measured along the slope. However, DMLR will grant such a variance only when there are no channeled flows, and if during storm events, there is only sheet flow.

The Director finds that the DMLR's statement adequately explains the definition of ''small'' relative to uncontrolled drainage above a backfill in accordance with the required amendments at 30 CFR 946.16(a)(4). 39 CFR946.16(a)(4) is, therefore, removed.

5. Preexisting Benches—Clarification

DMLR will approve an application to place coal refuse on preexisting benches for the purpose of returning the benches to the approximate original contour provided the performance standard for the placement of excess spoil on preexisting benches will be followed. The preexisting bench standard are found at 480–03–19.816/817.74.

The Director finds the DMLR's statement adequately clarifies the applicability of the performance standards for the placement of excess spoil on pre-existing benches in accordance with the required amendment at 30 CFR 946.16(a)(5). 30 CFR 946.16(a)(5) is, therefore, removed.

IV. Summary and Disposition of Comments

Federal Agency Comments

Pursuant to section 503(b) of SMCRA and 30 CFR 732.17(h)(11)(i), comments were solicited from various interested Federal agencies. The U.S. Fish and Wildlife Service responded (Administrative Record No. VA–868) but offered no comments on this amendment. The U.S. Department of Labor, Mine Safety and Health Administration responded (Administrative Record No. VA–867) that the amendments are deemed appropriate since there appears to be no conflict with MSHA regulations. The U.S. Department of Agriculture, Natural Resources Conservation Service responded (Administrative Record No. VA–866) and stated that the clarifications should be accepted.

Public Comments

A public comment period and opportunity to request a public hearing was announced in the November 27, 1995, Federal Register (60 FR 58320). The comment period closed on December 27, 1995. No comments were received and no one requested an opportunity to testify at the scheduled public hearing so no hearing was held.

Environmental Protection Agency (EPA)

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the EPA with the respect to any provisions of a State program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*)

or the Clean Air Act (42 U.S.C. 7401 *et seq.*). The Director has determined that this amendment contains no provisions in these categories and that EPA's concurrence is not required.

Pursuant to 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from EPA. EPA responded on February 1, 1996 (Administrative Record No. VA–869) and stated that the amendment is consistent with regulations under the Clean Water Act and offered no additional comments.

V. Director's Decision

Based on the findings above, the Director is approving Virginia's amendment concerning coal refuse disposal as submitted by Virginia on October 13, 1995.

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

VI. Procedural Determinations

Executive Order 12866

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

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12778 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

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

Paperwork Reduction Act

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

Regulatory Flexibility Act

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

Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 946

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 14, 1996.

Michael K. Robinson,

Acting Regional Director, Appalachian Regional Coordinating Center.

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

PART 946—VIRGINIA

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

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

2. In § 946.15, paragraph (jj) is added to read as follows:

§ 946.15 Approval of regulatory program amendments.

* * * * *

(jj) The following amendment to the Virginia program at 480–03–19.816/817.102(e) concerning coal refuse disposal as submitted to OSM on October 13, 1995, is approved effective May 29, 1996:

§ 946.16 [Amended]

3. In § 946.16, paragraph (a) is removed and reserved.

[FR Doc. 96–13268 Filed 5–28–96; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 224

RIN 1510–AA49

Federal Process Agents of Surety Companies

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Final rule.

SUMMARY: This action amends the regulation governing surety companies doing business with the United States. Specifically, it eliminates the requirement that surety companies doing business with the United States report their Federal process agent appointments to the Department of the Treasury, Financial Management Service (FMS). FMS no longer needs or collects this information. This amendment makes the regulation consistent with current practice.

EFFECTIVE DATE: June 28, 1996.

FOR FURTHER INFORMATION CONTACT: Dorothy E. Martin, (202) 874–6850 (Manager, Surety Bond Branch).

SUPPLEMENTARY INFORMATION: This regulation eliminates the requirement that surety companies report their Federal Process Agent appointments to the Financial Management Service. This action does not eliminate the requirement for surety companies to designate a person to serve as a Federal Process Agent and register that person with the clerk of the district court for the district in which a surety bond is to be given.

The final rule includes several editorial changes and a realignment of the sections as a result of eliminating § 224.5, ''Filing process agent appointment information with the Treasury.''

The revision to 31 CFR Part 224 appeared on November 9, 1995, at 60 FR 56551 and was open for comment through December 11, 1995. During the comment period, only one comment was received from a trade association. They indicated support for the revision.

This regulation is not a significant regulatory action as defined in Executive Order 12866. Accordingly, a regulatory assessment is not required. It is hereby certified that this revision will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. This change clarifies a regulation and reduces the reporting requirements for surety companies doing business with the United States. Therefore, there is no significant economic impact.

List of Subjects in 31 CFR Part 224

Insurance, Surety bonds.

Accordingly, part 224 of title 31 is amended as follows:

PART 224—FEDERAL PROCESS AGENTS OF SURETY COMPANIES

1. The authority citation continues to read as follows:

Authority: 31 U.S.C. 9306

2. Section 224.1 is revised to read as follows:

§ 224.1 Statutory provision.

The rules and regulations in this part are prescribed for carrying into effect 31 U.S.C. 9306.

§ 224.5—[Removed]

3. Section 224.5 is removed, and § 224.6 is redesignated as § 224.5.

§ 224.7—[Redesignated as § 224.6]

4. Section 224.7 is redesignated as § 224.6, and revised to read as follows:

§ 224.6 United States district courts; location of divisional offices.

A list of the divisional offices of the court in each judicial district where powers of attorney should be filed may be obtained from the Surety Bond Branch, Financial Management Service, Department of the Treasury, 3700 East-West Highway, Room 6F04, Hyattsville, MD 20782.

Dated: May 14, 1996.

Russell D. Morris,

Commissioner.

[FR Doc. 96–13412 Filed 5–28–96; 8:45 am]

BILLING CODE 4810–35–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

RIN 2115–AA97

[CGD 05–96–030]

Safety Zone Regulations: Delaware Bay, Delaware River, Salem River, NJ

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule.

SUMMARY: The Coast Guard is establishing a safety zone on the Delaware Bay and Delaware River from Marcus Hook, Pennsylvania, to the Delaware Breakwater. This safety zone is needed to protect vessels, the port community and the environment from potential safety and environmental hazards associated with the loading and outbound transit of the T/V EMSGAS.

EFFECTIVE DATES: This rule is effective from 12:01 a.m. May 20, 1996, and terminates at 11:59 p.m. June 2, 1996. The Captain of the Port, Philadelphia, may, at an earlier date, advise mariners by Broadcast Notice to Mariners that the safety zone will not be enforced.

FOR FURTHER INFORMATION CONTACT: LTJG S.J. Kelly, Project officer at the Captain of the Port, Philadelphia, (215) 271–4909.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation and good cause exists for making it effective in less than 30 days after the Federal Register publication. The Coast Guard was informed by the owner/operator of the T/V EMSGAS on May 16, 1996 of the intended transit of the T/V EMSGAS along the Delaware River. Publishing a NPRM and delaying its effective date would be contrary to the public interest, since immediate action is needed to respond to protect the environment and vessel traffic against potential hazards associated with the transit of the T/V EMSGAS while it is loaded with liquified petroleum gas.

Discussion of the Regulation

This safety zone includes a specified area around the vessel during cargo operations and while underway outbound. It will be in effect during the T/V EMSGAS's transit of the Delaware River and Delaware Bay and during cargo operations at the Sun Refining and Marketing Refinery terminal on the Delaware River, at Marcus Hook, Pennsylvania. The circumstances requiring this regulation are the potential hazards associated with the transportation of liquified petroleum gas by a large tankship in heavily trafficked areas of the Delaware River and Delaware Bay as well as in the Ports of Philadelphia. The transit consists of T/V EMSGAS's outbound transit on the Delaware River and the Delaware Bay between the vessel's berth at the Sun Refining and Marketing Refinery terminal on the Delaware River, at Marcus Hook, Pennsylvania, and the Delaware Breakwater. Coast Guard Captain of the Port Philadelphia may impose transit restriction on vessels operating within the safety zone while the T/V EMSGAS is loaded with LPG that exceeds 2% of the vessel's cargo carrying capacity.

Regulatory Evaluation

This regulation is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(30 of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that under section 2.B.2.e (34). of Commandant Instruction M16475.1B (as revised by 59 FR 38654; Jul 29, 1994), this rule is categorically excluded from further environmental documentation.

Collection of Information

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

Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that it does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

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

PART 165—[AMENDED]

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

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

2. A new § 165.T05030 is added to read as follows:

§ 165.T05030 Safety Zone: Marcus Hook, PA and the Delaware Breakwater.

(a) *Location*.—A safety zone is established for:

(1) All waters within an area which extends 500 yards on either side and 1000 yards ahead and astern of the T/V EMSGAS while the vessel is in the loaded condition and underway in the area bonded by the Delaware Breakwater and the Sun Refining and Marketing Refinery terminal at Marcus Hook, Pennsylvania.

(2) All waters within a 200 yard radius of the T/V EMSGAS while it is moored at the Sun Refining and Marketing Refinery terminal in the loaded condition.

(b) *Effective date*.—This section is effective from 12:01 a.m., May 20, 1996 and terminates at 11:59 p.m., June 2, 1996. If the conditions requiring a safety zone terminate at an earlier date, the Captain of the Port, Philadelphia, may advise mariners by Broadcast Notice to Mariners that the safety zone will not be enforced.

(c) *Regulations*.—The following regulations shall apply within the safety zone.

(1) No vessel may enter the safety zone unless its operator obtains permission of the Captain of the Port or his designated representative.

(2) As a condition of entry, the COTP or his designated representative may order that each vessel:

(i) Maintain a continuous radio guard on channels 13 and 16 VHF-FM while underway;

(ii) Not overtake the T/V EMSGAS unless the overtaking is to be completed before any bends in the channel, and the pilots, masters and operators of both vessels clearly agree on all action including speeds, time and location of overtaking.

(iii) Operate at a minimum no wake speed sufficient to maintain steerage while T/V EMSGAS is moored at the Sun Refining and Marketing Refinery terminal, at Marcus Hook, Pennsylvania;

(iv) Proceed as directed by the Captain of the Port or by his designated representative.

(d) *Designated COTP representative*.—(1) The designated representative of the Captain of the Port is any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port, Philadelphia, Pennsylvania to act on his behalf. The designated representative enforcing the safety zone may be contacted on VHF channels 13 & 16.

(2) The Captain of the Port of Philadelphia and the Command Duty Officer at the Marine Safety Office, Philadelphia, may be contacted at telephone number (215) 271–4940.

Dated: May 20, 1996.

John E. Veentjer,

Captain, U.S. Coast Guard, Captain of the Port, Philadelphia, PA.

[FR Doc. 96–13418 Filed 5–28–96; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300416A/R2243; FRL–5371–8]

Prosulfuron; Extension of Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Rule.

SUMMARY: This rule establishes tolerances for residues of the herbicide prosulfuron, 1-(4-methoxy-6-methyl-triazin-2-yl)-3-[2- (3,3,3-trifluoropropyl)-phenylsulfonyl]-urea in or on the raw agricultural commodities corn (forage, fodder, grain and fresh [including sweet kernels plus cobs with husks removed]), milk, and meat, fat and meat by-products, of cattle, goats, hogs, horses, and sheep. The regulation was requested by Ciba-Geigy Corporation and establishes the maximum permissible level for residues of the herbicide in or on corn.

EFFECTIVE DATE: This regulation becomes effective May 29, 1996. These tolerances will expire on December 31, 1999.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [OPP–300416A/R2243], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections shall be labeled ''Tolerance Petition Fees'' and forwarded to EPA Headquarters Accounting Office Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW, Washington, DC 20460. In person, bring copy of objections and hearing request to: Rm 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: oppdocket@epamil.gov.

Copies of objections and hearing requests must be submitted as an ACSII file avoiding the use of special characters and any firm of encryption. Copies of objections and hearing requests will also be accepted on disks in Word Perfect 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic hearing requests in electronic form must be identified by the docket number [OPP–300416A/R2243]. No Confidential Business Information (CBI) should be submitted through e-mail Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail, Robert J. Taylor, Product Manager (PM 25), Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW, Washington, DC 20460. Office location and telephone number: Rm. 241, CM #2, 1921 Jefferson-Davis Hwy., Arlington, VA 22202, (703) 305-6027; e-mail: taylor.robert@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule (FRL–5349–7), in the Federal Register of March 6, 1996 (61 FR 8903) which proposed to extend the tolerances for residues of the herbicide prosulfuron, 1-(4-methoxy-6-methyl-triazin-2-yl)-3-[2-(3,3,3-trifluoropropyl)-phenylsulfonyl]-urea in or on the raw agricultural commodities corn (forage, fodder, grain and fresh [including sweet kernels plus cobs with husks removed]) at 0.01 part per million (ppm), milk at 0.01 part per million (ppm), and meat, fat and meat by-products, of cattle, goats, hogs, horses, and sheep at 0.05 part per million (ppm), to December 31, 1999. These tolerances with an expiration date were required by EPA to allow the petitioner, Ciba-Geigy Corp. to submit additional data concerning the method trial and corn metabolism and ruminant metabolism data. The petitioner has

submitted the method trial and the method has been validated by an independent laboratory. Additional time is being required to complete review of this method trial and allow additional time to complete and submit the required metabolism data.

No comments were received in response to the proposed rule.

Based on the information cited above and in the document establishing the time-limiting tolerance for prosulfuron (60 FR 24788, May 10, 1995), the Agency has determined that when used in accordance with good agricultural practice, this ingredient is useful and the tolerances will protect the public health. Therefore, EPA is establishing the tolerances as described below.

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

A record has been established for this rulemaking under docket number [OPP–300416A/R2243] (including objections and hearing requests submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p,m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. Written objections and hearing requests, identified by the document control number [OPP–300416A/R2243], may be submitted to the Hearing Clerk (1900), Environmental Protection Agency, Rm 3708, 401 M St., SW., Washington, DC 20460.

A copy of electronic objections and hearing requests filed with the Hearing Clerk can be sent directly to EPA at:

opp-Docket@epamail.epa.gov

A copy of electronic objections and hearing requests filed with the Hearing Clerk must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. The official record for this rulemaking, as well as the public version, as describes above will be kept in paper form. Accordingly, EPA will transfer any objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all objections and hearing requests submitted directly in writing. The official rulemaking record is a paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to review by the Office Of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a ''significant regulatory action'' as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 millionor more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligation of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order. Pursuant to the terms of the Executive Order, EPA has determined that this rule is not ''significant'' and is therefore not subject to OMB review.

This action does not impose any enforceable duty, or contain any ''unfunded mandates'' as described in Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), entitled Enhancing the Intergovernmental Partnership, or special consideration as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

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

List of Subjects in 40 CFR Part 180

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

Dated: May 16, 1996.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

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

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

2. By revising § 180.481 to read as follows:

§ 180.481 Prosulfuron; tolerances for residues.

Tolerances that expire on the date indicated in the following table are established for residues of the herbicide prosulfuron 1-(4-methoxy-6-methyl-triazin-2-yl)-3-[2-(3,3,3-trifluoropropyl)-phenylsulfonyl]-urea in or on the following raw agricultural commodities:

Commodity	Parts per million	Expiration date
Corn, forage	0.01	December 31, 1999

Commodity	Parts per million	Expiration date
Corn, fodder	0.01	Do.
Corn, grain and fresh [including sweet kernels plus cobs with husks removed])	0.01	Do.
Milk	0.01	Do.
cattle, meat	0.05	Do.
cattle, fat	0.05	Do.
cattle, kidney	0.05	Do.
cattle, liver,	0.05	Do.
cattle, meat by-produts	0.05	Do.
Goats, meat	0.05	Do.
Goats, fat	0.05	Do.
Goats, kidney	0.05	Do.
Goats, liver	0.05	Do.
Goats, meat by-products	0.05	Do.
Hogs, meat	0.05	Do.
Hogs, fat	0.05	Do.
Hogs, kidney	0.05	Do.
Hogs, liver	0.05	Do.
Hogs, meat byproducts	0.05	Do.
Horses, meat	0.05	Do.
Horses, fat	0.05	Do.
Horses, kidney	0.05	Do.
Horses, liver	0.05	Do.
Horses, meat by-products	0.05	Do.
Sheep, meat	0.05	Do.
Sheep, fat	0.05	Do.
Sheep, kidney	0.05	Do.
Sheep, liver	0.05	Do.
Sheep, meat by-products	0.05	Do.

[FR Doc. 96–13444 Filed 5–28–96; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 180

[PP 5F4469/R2225; FRL–5357–5]

RIN 2070–AB78

Prosulfuron; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is establishing time-limited tolerances for residues of the herbicide prosulfuron, 1-(4-methoxy-6-methyl-triazin-2-yl)-3-[2-(3,3,3-trifluoropropyl)-phenylsulfonyl]-urea in or on the raw agricultural commodities cereal grains group (except rice and wild rice), grain; cereal grains group (except rice and wild rice), forage; cereal grains group (except rice and wild rice), fodder, cereal grains group (except rice and wild rice), straw; and cereal grains group (except rice and wild rice), hay. The Agency has not completed the regulatory assessment of the science findings; therefore, these tolerances are being established with an expiration date. These tolerances were requested by the Ciba-Geigy Corporation.

EFFECTIVE DATE: This regulation becomes effective May 29, 1996. These tolerances will expire on December 31, 1999 .

ADDRESSES: Written objections and hearing requests, identified by the document control number, [PP 5F4469/R2225], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the docket number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

An electronic copy of objections and hearing requests filed with the Hearing Clerk may be submitted to OPP by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov.

Copies of electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All copies of electronic objections and hearing requests must be identified by the docket number [PP 5F4469/R2225] . No Confidential Business Information (CBI) should be submitted through e-mail. Copies of electronic objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Robert J. Taylor, Product Manager (PM) 25, Registration Division (7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 245, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, 703–305–6800, e-mail: taylor.robert@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the Federal Register of April 17, 1996 (61 FR 16742) (FRL–5357–5), EPA issued a proposed rule proposing to establish time-limited tolerances for residues of the herbicide prosulfuron on cereal grains group (except rice and wild rice), grain at 0.01 ppm; cereal grains group (except rice and wild rice), forage at 0.10 ppm; cereal grains group (except rice and wild rice), fodder at 0.01 ppm; cereal grains group (except rice and wild rice), straw at 0.02 ppm; and cereal grains group (except rice and wild rice), hay at 0.20 ppm. In the proposed rule EPA said that it was revising § 180.481; however, EPA did not intend that

§ 180.481 be completely rewritten, but rather that the section be amended to add entries for ''cereal grains (except rice/wild rice) group,'' and the ''cereal grains, forage, fodder, straw and hay (except rice/wild rice) group''. Therefore, in this final rule, EPA is amending § 180.481 by adding tolerances for the cereal grains (except rice/wild rice) group,'' and the ''cereal grains, forage, fodder, straw and hay (except rice/wild rice) group.''

There were two favorable comments received in response to the proposed rule.

The data submitted with the proposed rule and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency has determined that when used in accordance with good agricultural practice, prosulfuron is useful and the tolerances will protect the public health. Therefore, the tolerances are established as set forth below.

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

A record has been established for this rulemaking under the docket number [PP 5F4469/R2225] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Electronic comments can be sent directly to EPA at:
opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rule-making record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12866.

This action does not impose any enforceable duty, or contain any ''unfunded mandates'' as described in Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), entitled Enhancing the Intergovernmental Partnership, or special consideration as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

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

List of Subjects in 40 CFR Part 180

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

Dated: May 20, 1996.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

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

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

2. In § 180.481 by revising the introductory text, and amending the table by adding alphabetically entries to read as set forth below:

§ 180.481 Prosulfuron; tolerances for residues.

Tolerances that expire as indicated in the table below are established for residues of the herbicide prosulfuron 1-(4-methoxy-6-methyl-triazin-2-yl)-3-[2-(3,3,3-trifluoropropyl)-phenylsulfonyl]-urea in or on the following raw agricultural commodities:

Commodity	Parts per million	Expiration date
* *	* *	*
Cereal grains group (except rice and wild rice), grain.	0.01	December 31, 1999
Cereal grains group (except rice and wild rice), forage.	0.10	Do
Cereal grains group (except rice and wild rice), fodder.	0.01	Do
Cereal grains group (except rice and wild rice), straw.	0.02	Do
Cereal grains group (except rice and wild rice), hay.	0.20	Do
* *	* *	*

[FR Doc. 96–13443 Filed 5–28–96; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

Motor Vehicle Safety Standards; Occupant Crash Protection

CFR Correction

In Title 49 of the Code of Federal Regulations, parts 400 to 999, revised as of October 1, 1995, on page 514, in the second column, in § 571.208, paragraph S7.1.1.5 and Figure 5 were inadvertently omitted and should read as follows:

§ 571.208 Standard No. 208, Occupant Crash Protection.

* * * * *

S7.1.1.5 *Passenger cars, and trucks, buses, and multipurpose passenger vehicles with a GVWR of 10,000 pounds or less manufactured on or after September 1, 1995 shall meet the requirements of S7.1.1.5(a), S7.1.1.5(b) and S7.1.1.5(c).*

(a) Each designated seating position, except the driver's position, and except any right front seating position that is equipped with an automatic belt, that is in any motor vehicle, except walk-in van-type vehicles and vehicles manufactured to be sold exclusively to the U.S. Postal Service, and that is forward-facing or can be adjusted to be forward-facing, shall have a seat belt assembly whose lap belt portion is lockable so that the seat belt assembly can be used to tightly secure a child restraint system. The means provided to lock the lap belt or lap belt portion of the seat belt assembly shall not consist of any device that must be attached by the vehicle user to the seat belt webbing, retractor, or any other part of the vehicle. Additionally, the means provided to lock the lap belt or lap belt portion of the seat belt assembly shall not require any inverting, twisting or otherwise deforming of the belt webbing.

(b) If the means provided pursuant to S7.1.1.5(a) to lock the lap belt or lap belt portion of any seat belt assembly makes it necessary for the vehicle user to take some action to activate the locking feature, the vehicle owner's manual shall include a description in words and/or diagrams describing how to activate the locking feature so that the seat belt assembly can tightly secure a child restraint system and how to deactivate the locking feature to remove the child restraint system.

(c) Except for seat belt assemblies that have no retractor or that are equipped with an automatic locking retractor, compliance with S7.1.1.5(a) is demonstrated by the following procedure:

(1) With the seat in any adjustment position, buckle the seat belt assembly. Complete any procedures recommended in the vehicle owner's manual, pursuant to S7.1.1.5(b), to activate any locking feature for the seat belt assembly.

(2) Locate a reference point A on the safety belt buckle. Locate a reference point B on the attachment hardware or retractor assembly at the other end of the lap belt or lap belt portion of the seat belt assembly. Adjust the lap belt or lap belt portion of the seat belt assembly pursuant to S7.1.1.5(c)(1) as necessary so that the webbing between points A and B is at the maximum length allowed by the belt system. Measure and record the distance between points A and B along the longitudinal centerline of the webbing for the lap belt or lap belt portion of the seat belt assembly.

(3) Readjust the belt system so that the webbing between points A and B is at any length that is 5 inches or more shorter than the maximum length of the webbing.

(4) Apply a pre-load of 10 pounds, using the webbing tension pull device described in Figure 5 of this standard, to the lap belt or lap belt portion of the seat belt assembly in a vertical plane parallel to the longitudinal axis of the vehicle and passing through the seating reference point of the designated seating position whose belt system is being tested. Apply the pre-load in a horizontal direction toward the front of the vehicle with a force application angle of not less than 5 degrees nor more than 15 degrees above the horizontal. Measure and record the length of belt between points A and B along the longitudinal centerline of the webbing for the lap belt or lap belt portion of the seat belt assembly while the pre-load is being applied.

(5) Apply a load of 50 pounds, using the webbing tension pull device described in Figure 5 of this standard, to the lap belt or lap belt portion of the seat belt assembly in a vertical plane parallel to the longitudinal axis of the vehicle and passing through the seating reference point of the designated seating position whose belt system is being tested. The load is applied in a horizontal direction toward the front of the vehicle with a force application angle of not less than 5 degrees nor more than 15 degrees above the horizontal at an onset rate of not more than 50 pounds per second. Attain the 50 pound load in not more than 5 seconds. If webbing sensitive emergency locking retroactive are installed as part of the lap belt assembly or lap belt portion of the seat belt assembly, apply the load at a rate less than the threshold value for lock-up specified by the manufacturer. Maintain the 50 pound load for at least 5 seconds before the measurements specified in S7.1.1.5(c)(6) are obtained and recorded.

(6) Measure and record the length of belt between points A and B along the longitudinal centerline of the webbing for the lap belt or lap belt portion of the seat belt assembly.

(7) The difference between the measurements recorded under S7.1.1.5(c) (6) and (4) shall not exceed 2 inches.

(8) The difference between the measurements recorded under S7.1.1.5(c) (6) and (2) shall be 3 inches or more.

* * * * *

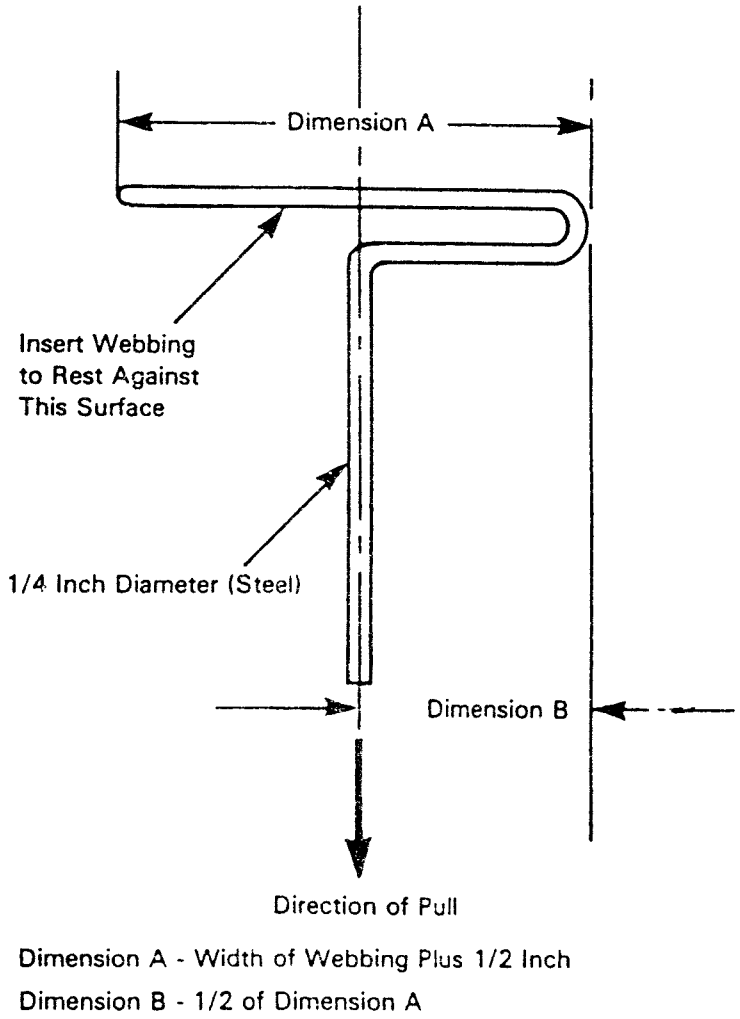

Figure 5. - Webbing Tension Pull Device

BILLING CODE 1505–01–C

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Part 1039

[STB Ex Parte No. 548] [1]

Exemption From Regulation—Boxcar Traffic

AGENCY: Surface Transportation Board, DOT.

ACTION: Final rule.

SUMMARY: The Surface Transportation Board (the Board) is eliminating an obsolete provision of a regulation pertaining to rates on nonferrous recyclable commodities by broadening the exemption for traffic moving in boxcars.

EFFECTIVE DATE: June 28, 1996.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927–7513. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803 (ICCTA) abolished the Interstate Commerce Commission (ICC) and established the Board. Section 204 of the ICCTA provides that ''[t]he Board shall promptly rescind all regulations established by the [ICC] that are based on provisions of law repealed and not substantively reenacted by this Act.'' In *Removal of Obsolete Recyclables Regulations,* 1 S.T.B. 7 (1996) (*Obsolete Regulations*), the Board removed, *inter alia,* obsolete recyclable regulations at 49 CFR 1134 and 49 CFR 1145, pertaining to discrimination against recyclables and rates on recyclables, because Congress repealed former 49 U.S.C. 10710 and 10731, the statutory bases for these regulations. We stated that we would separately consider the disposition of 49 CFR 1039.14(b)(5), which excludes rates on nonferrous recyclable commodities from the exemption of boxcar traffic from rate regulation.

Consequently, on March 26, 1996, we served a notice of proposed rulemaking (NPR) in this proceeding, published at

[1] The notice of proposed rulemaking issued on March 26, 1996 was designated as STB Ex Parte No. 346 (Sub-No. 8). In a notice served on May 2, 1996, the docket number was changed to STB Ex Parte No. 548.

61 FR 13146, proposing to remove 49 CFR 1039.14(b)(5) and to redesignate paragraphs (6) and (7). The only comment in response to the NPR was filed by AAR. Noting the substantial intermodal and intramodal competition for nonferrous recyclables, as evidenced by the decline in rail market share and the fact that, from 1981 through 1994, revenue per ton mile for nonferrous recyclables fell 49 percent in constant (inflation-adjusted) dollars, AAR supports the proposal and asks that it be adopted expeditiously.

We will grant the broader exemption by removing the exclusion for nonferrous recyclables from the boxcar exemption. The ICC has already found that an exemption from rate regulation for transportation by boxcars was warranted.

Now that the special statutory provisions for recyclables traffic are gone, there is no basis for excluding it from the exemption. The current record, moreover, warrants granting an exemption.

We find that a broadened exemption will meet the standards of new section 10502. Regulation is generally not necessary to carry out the transportation policy of new 49 U.S.C. 10101. *See* 49 U.S.C. 10101 (1), (2), (3), (5), and (9). Furthermore, given the competitive nature of transportation of nonferrous recyclables, regulation is not necessary to protect shippers from abuse of market power.

The Board certifies that this rule will not have a significant economic effect on a substantial number of small entities. This rule will reduce regulation; it imposes no new reporting or other requirements directly or indirectly on small entities. While there may be an impact on some small entities because recyclables no longer will be excepted from the boxcar exemption, it appears that such an impact will not be significant nor will it likely affect a significant number of small entities.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

List of Subjects in 49 CFR Part 1039

Agricultural commodities, Intermodal transportation, Manufactured commodities, Railroads.

Decided: May 15, 1996.

By the Board, Chairman Morgan, Vice Chairman Simmons, and Commissioner Owen.

Vernon A. Williams,

Secretary.

For the reasons set forth in the preamble and under the authority of 49 U.S.C. 721(a), title 49, chapter X of the Code of Federal Regulations is amended as set forth below:

PART 1039—EXEMPTIONS

1. The authority citation for part 1039 continues to read as follows:

Authority: 5 U.S.C. 553 and 49 U.S.C. 721 and 10502.

§ 1039.14 [Amended]

2. Section 1039.14 is amended by removing paragraph (b)(5) and redesignating paragraphs (b)(6) and (b)(7) as paragraphs (b)(5) and (b)(6).

[FR Doc. 96–13278 Filed 5–28–96; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 651

[I.D. 052196A]

Northeast Multispecies Fishery; Amendment 7; Resubmission of the Measure for the Nonregulated Species Permit Category

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

ACTION: Notice of availability; request for comments.

SUMMARY: NMFS announces that the New England Fishery Management Council (Council) has resubmitted a previously disapproved proposal contained in Amendment 7 to the Northeast Multispecies Fishery Management Plan (FMP) concerning the Possession Limit category permit. The Council revised the permit and submitted it for Secretarial review. The intended effect of this measure is to allow fishing for nonregulated multispecies (silver hake, red hake, and ocean pout) in fisheries having minimal bycatch of regulated multispecies.

DATES: Comments must be received on or before June 24, 1996.

ADDRESSES: Send comments to Dr. Andrew A. Rosenberg, Regional Director, NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930–3799. Mark the outside of the envelope ''Comments on Possession Limit Permit Category.''

Copies of the original Amendment 7 and related documents are available from the New England Fishery Management Council, 5 Broadway (U.S. Rte. 1), Saugus, MA, 01906–1097.

FOR FURTHER INFORMATION CONTACT: Peter W. Christopher, Fishery Management Specialist, 508–281–9288.

SUPPLEMENTARY INFORMATION: Amendment 7 was prepared by the Council and submitted to the Secretary of Commerce (Secretary) for review under section 304(b) of the Magnuson Fishery Conservation and Management Act (Magnuson Act). The Magnuson Act requires the Secretary to approve, disapprove, or partially disapprove FMPs or amendments, based upon a determination of consistency with national standards and other applicable laws. On February 14, 1996, the Secretary announced disapproval of three measures contained in Amendment 7: The additional allowance of days-at-sea (DAS) for trawl vessels enrolled in the Individual DAS category that use exclusively 8–inch (20.32 cm) mesh, the 300–lb (136.1 kg) possession allowance of regulated species for vessels that use 8–inch (20.32 cm) mesh in an exempted fishery, and the establishment of a limited access category for vessels that fished in the Possession Limit open access category under Amendment 5. The remainder of Amendment 7 was published as a proposed rule on March 5, 1996 (61 FR 8540), and the first two of the three disapproved measures were resubmitted by the Council. The measure that would have allowed a 300–lb (136.1 kg) regulated species possession limit for vessels fishing with 8–inch (20.32 cm) mesh in an exempted fishery was again disapproved and the measure that would give additional multispecies DAS to all limited access multispecies vessels fishing exclusively with large mesh was published as a proposed rule on April 18, 1996 (61 FR 16892). Amendment 7, with the exception of the three measures, was approved on May 16, 1996. The resubmitted measure that would give additional DAS to all groundfish vessels fishing under the Large Mesh Individual DAS category was approved on May 17, 1996, and has been added to the final rule to implement Amendment 7.

Pursuant to section 304(b)(3)(A) of the Magnuson Act, the Council has resubmitted the third disapproved measure. This proposed measure is designed to allow fishing for nonregulated multispecies by vessels that do not qualify for a limited access permit.

Regulations proposed by the Council to implement the resubmitted measure for Amendment 7 to the FMP are scheduled to be published within 15 days.

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

Dated: May 22, 1996.

Richard W. Surdi,

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

[FR Doc. 96–13341 Filed 5–23–96; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 61, No. 104
Wednesday, May 29, 1996

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

9 CFR Parts 92, 93, 94, 95, 96, and 98

[Docket No. 94–106–3]

RIN O579–AA71

Importation of Animals and Animal Products; Public Hearings

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of public hearings.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service is hosting three additional public hearings on the proposed rule on the importation of animals and animal products that was published in the Federal Register on April 18, 1996. One hearing has already been held in Riverdale, MD. The hearings will provide an additional opportunity for the public to comment on the proposal, which would establish criteria for foreign ''regions'' based on risk class levels. The criteria would be used to establish importation requirements for particular animals and animal products from different regions outside the United States.

DATES: The public hearings will be held in Atlanta, GA, on June 17 and, if there are more registered speakers than can be heard in one day, on June 18; in Kansas City, MO, on June 26 and, if there are more registered speakers than can be heard in one day, on June 27; and in Denver, CO, on July 1, and, if there are more registered speakers than can be heard in one day, on July 2. Each public hearing will begin at 9 a.m. and is scheduled to end at 5 p.m each day.

ADDRESSES: The public hearings will be held at the following locations:

1. Atlanta, GA: Peachtree Summit Federal Center, Conference Rooms A and B, 401 W. Peachtree Street, N.E., Atlanta, GA. Picture identification is required. A pay parking garage is adjacent to the building.
2. Kansas City, MO: Richard Boling Federal Building, Room 111, 601 East 12th Street, Kansas City, MO. Enter from 12th or 13th Street. Picture identification is required. Pay parking is available across the street from the building.
3. Denver, CO: Denver Federal Center, Building 25, Lecture Halls A and B, 6th and Kipling, Denver, CO. Enter through door E2. Picture identification is required. Pay parking is available on the east side of the building.

FOR FURTHER INFORMATION CONTACT: Dr. Gary Colgrove, Chief Staff Veterinarian, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231, (301) 734–8590.

SUPPLEMENTARY INFORMATION:

Background

Three additional public hearings will be held on the proposed rule on the importation of animals and animal products, published by the Animal and Plant Health Inspection Service (APHIS) in the Federal Register on April 18, 1996 (61 FR 16977–17105, Docket No. 94–106–1). One hearing has already been held in Riverdale, MD. The additional public hearings will be held in Atlanta, GA, on June 17 and, if there are more registered speakers than can be heard in one day, on June 18; in Kansas City, MO on June 26 and, if there are more registered speakers than can be heard in one day, on June 27; and in Denver, CO on July 1, and, if there are more registered speakers than can be heard in one day, on July 2.

A representative of APHIS will preside at the public hearings. Any interested party may appear and be heard in person, or through an attorney or other representative. We are interested in obtaining the views of the public on all aspects of the proposed rule. Each hearing will begin with a brief informational presentation explaining the background, content and organization of the proposed rule.

Persons who wish to speak at the hearings will be asked to provide their names and affiliations. Parties wishing to make oral presentations may register in advance by either: (1) Calling the Regulatory Analysis and Development voice mail at (301) 734–4346 and leaving a message stating their name, telephone number, and organization, the location of the hearing at which they wish to speak, and the approximate time necessary for their presentation; or (2) providing the above information by electronic mail to dkaczmarski@aphis.usda.gov. Parties responding by e-mail may wish to use the electronic response registration form available at the APHIS Regionalization Proposal Web Page. A list of persons registered to speak at each hearing will also be posted to the Web page shortly before the hearing. The Web page URL is http://www.aphis.usda.gov/PPD/region. Registration will also be held for each hearing at that hearing site between 8 a.m. and 8:45 a.m on the day of the hearing. Speakers will be scheduled in the order their registration is received. Advance registrations for the hearings must be transmitted to APHIS no later than the following:

1. Atlanta, GA: 5 p.m., d.s.t., June 12, 1996;
2. Kansas City, MO: 5 p.m., d.s.t., June 21, 1996; and
3. Denver, CO: 5 p.m., d.s.t., June 29, 1996.

The hearings will begin at 9 a.m. of the first day of each hearing. The session on the second day of each hearing will be held only if speakers who have registered for the first day have not yet had a chance to speak. The hearings are scheduled to end at 5 p.m. each day that they are held, but may conclude at any time if all persons desiring to speak have been heard. The hearing officer may limit the time for each presentation so that all interested persons have an opportunity to participate. Attendees who wish to speak but who did not register will be provided time to speak only after all registered speakers have been heard.

We ask that anyone who reads a written statement provide two copies to the presiding officer at the hearing. A transcript will be made of the public hearings and the transcript will be placed in the rulemaking record and will be available for public inspection.

The purpose of the public hearings is to give all interested parties an opportunity to present data, views, and information to the Department concerning this proposed rule. Questions about the content of the proposal may be part of a commenter's oral presentation. However, neither the presiding officer nor any other representative of the Department will respond to the comments at the

hearings, except to clarify or explain the proposed rule.

Done in Washington, DC, this 22nd day of May 1996.

Donald Husnik,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 96–13407 Filed 5–28–96; 8:45 am]

BILLING CODE 3410–34–P

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 96–025–1]

Change in Disease Status of Spain Because of African Swine Fever

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to declare Spain free of African swine fever. Declaring Spain free of African swine fever appears to be appropriate because there have been no confirmed outbreaks of African swine fever in Spain since September 1994. This proposed rule would relieve restrictions on the importation of pork and pork products into the United States from Spain. However, because Spain shares common land borders with countries affected by certain swine diseases and because Spain, as a member state of the European Union, has certain trade practices that are less restrictive than are acceptable to the United States, the importation into the United States of pork and pork products from Spain would continue to be subject to certain restrictions.

DATES: Consideration will be given only to comments received on or before July 29, 1996.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 96–025–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 96–025–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. John Cougill, Staff Veterinarian, Products Program, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 40, Riverdale, MD 20737–1231, (301) 734–8688; or e-mail: jcougill@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 94 (referred to below as the regulations) govern the importation into the United States of specified animals and animal products in order to prevent the introduction into the United States of various animal diseases, including rinderpest, foot-and-mouth disease, bovine spongiform encephalopathy, swine vesicular disease, hog cholera, and African swine fever (ASF). These are dangerous and destructive communicable diseases of ruminants and swine.

Section 94.8 of the regulations provides that ASF exists or is reasonably believed to exist in all the countries of Africa, Brazil, Cuba, Haiti, Italy, Malta, Portugal, and Spain. We will consider declaring a country to be free of ASF if there have been no reported cases of the disease in that country for at least the previous 1-year period. The last case of ASF in Spain occurred in September 1994. The Government of Spain has requested that the U.S. Department of Agriculture (USDA) recognize Spain to be free of ASF.

The Animal and Plant Health Inspection Service (APHIS) has reviewed the documentation submitted by the Government of Spain in support of its request. A team of APHIS officials traveled to Spain in July 1994 to conduct an on-site evaluation of Spain's animal health program with regard to African horse sickness. The evaluation consisted of a review of Spain's veterinary services, laboratory and diagnostic procedures, vaccination practices, and administration of laws and regulations intended to prevent the introduction of communicable animal diseases into Spain. We believe that the July 1994 on site evaluation was sufficient to provide APHIS with a complete picture of Spain's animal health program with regard to ASF, as well. Therefore, we have used the findings of the July 1994 on-site evaluation as part of the basis for this proposed rule. (Details concerning the July 1994 on-site evaluation are available upon written request from the person listed under **FOR FURTHER INFORMATION CONTACT.**)

Based on the information discussed above, we are proposing to amend § 94.8 of the regulations by removing Spain from the list of countries where ASF exists or is reasonably believed to exist. This action would relieve certain restrictions on the importation of pork and pork products into the United States from Spain, including restrictions on the importation of live swine and fresh pork and pork products. This action would also eliminate requirements on the curing time for Spanish hams and other pork products offered for importation into the United States from Spain.

However, the importation of pork and pork products into the United States from Spain would continue to be subject to certain restrictions because Spain appears in the list of countries in § 94.11 that have been declared free of rinderpest and foot-and-mouth disease (FMD), but from which the importation of pork and pork products is restricted, and Spain appears in the list of countries in § 94.13 that have been declared free of swine vesicular disease (SVD), but from which the importation of pork and pork products is restricted. The countries listed in §§ 94.11 and 94.13 are subject to these restrictions because they: (1) Supplement their national pork supply by importing fresh, chilled, or frozen pork from countries where rinderpest, FMD, or SVD, respectively, is considered to exist; (2) have a common border with countries where rinderpest, FMD, or SVD, respectively, is considered to exist; or (3) have certain trade practices that are less restrictive than are acceptable to the United States. Spain shares common land borders with France, a country affected by SVD, and Portugal, a country affected by rinderpest, FMD, and SVD. Additionally, as a member state of the European Union (EU), Spain trades without restrictions with other member states of the EU that are affected by rinderpest, FMD, and/or SVD. These trade practices could allow live swine, pork, or pork products produced in Spain to be commingled with live swine, pork, or pork products from a country affected by rinderpest, FMD, and/or SVD, resulting in an undue risk of the introduction of these diseases into the United States. As such, pork and pork products, as well as any ship's stores, airplane meals, and baggage containing such pork, offered for importation into the United States from Spain would be subject to the restrictions specified in §§ 94.11 and 94.13 of the regulations and to the applicable requirements contained in the regulations of the USDA's Food Safety and Inspection Service (FSIS) at 9 CFR chapter III. Sections 94.11 and 94.13 generally require that pork and pork products be: (1) Prepared in an

inspected establishment that is eligible to have its products imported into the United States under the Federal Meat Inspection Act; and (2) accompanied by an additional certification from a full-time salaried veterinary official of the national government of the exporting country, stating that the pork or pork product has not been commingled with or exposed to meat or other animal products originating in, imported from, or transported through a country in which rinderpest, FMD, or SVD, respectively, is considered to exist.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

In accordance with 5 U.S.C. 603, we have performed an Initial Regulatory Flexibility Analysis, which is set out below, regarding the impact of this proposed rule on small entities. However, we do not currently have all the data necessary for a comprehensive analysis of the effects of this proposed rule on small entities. Therefore, we are inviting comments on potential effects. In particular, we are interested in determining the number and kind of small entities that may incur benefits or costs from the implementation of this proposed rule.

In accordance with 21 U.S.C. 111–113, 114a, 115, 117, 120, 123, and 134a, the Secretary of Agriculture has the authority to promulgate regulations and take measures to prevent the introduction into the United States, and the interstate dissemination within the United States, of communicable diseases of livestock and poultry.

This proposed rule would amend the regulations in part 94 by removing Spain from the list of countries where ASF exists or is reasonably believed to exist. This action would relieve certain restrictions on the importation of live swine, pork, and pork products into the United States from Spain. However, because of Spain's proximity to France and Portugal (countries affected by serious swine diseases) and Spain's trading practices as a member state of the European Union, other requirements would continue to restrict the importation of pork and pork products from Spain.

In 1992, the majority (approximately 96.3 percent) of all hog and pig farmers in the United States qualified as small entities. However, the impact of relieving restrictions on live swine imports from Spain on these producers is expected to be minimal because the swine industry of Spain is relatively small compared to the market in the United States. In 1994, swine production in Spain was estimated to be 26.7 million head, compared to swine production in the United States of over 100 million head. Also, in 1994, Spain exported a little more than 0.5 million live swine, or less than 2 percent of its total swine production, and all of those animals were directed to countries in Europe.

Total imports of live swine into the United States are very small relative to domestic production. In 1993, only 1.75 million head were imported into the United States. Due to transportation costs and other factors, nearly all of the live swine imported into the United States (more than 99.8 percent in 1993) are from Canada. Most of the live swine that are imported from Western Europe into the United States are imported in very small numbers, to be used for genetic improvements of domestic stock. We expect that the importation of swine embryos and semen will not increase as a result of the proposed change. Movement of swine embryos and semen is limited because the technology is not as advanced as it is for other species.

Like domestic swine producers, the majority of pork producers (97 percent of 1367 meat packing establishments and 98 percent of 1264 other processing plants, according to 1992 data) qualify as small entities. We expect the effect of the proposed amendment on these entities would be minimal because, while Spain produces a considerable amount of pork (2.107 million metric tons in 1994), its total pork production amounts to only about 26 percent of the total pork production of the United States. Additionally, most of Spain's pork production is consumed within Spain, as its population consumes pork at a rate greater than 1.6 times that of the U.S. population.

In 1994, Spain exported approximately 83,000 metric tons of pork, but more than 97 percent of these exports were to European countries. While Spanish exports of pork are growing and its imports of pork are declining, Spain has historically been a net importer of pork. From 1991 to 1993, Spain imported well over twice as much pork as it exported. Even if Spain were able to redirect all of its exports of pork to the United States, it would constitute a small portion of the domestic market, as U.S. pork production was 8 million metric tons in 1994.

Since 1985, the United States has expanded its pork exports by more than four times to reach 240,858 metric tons in 1994. Simultaneously, the United States has decreased its pork imports, as exemplified by a decrease of approximately 34 percent in 1994, and the trend is continuing. In an average year, up to 90 percent of pork imported into the United States comes from Canada and Denmark.

Domestic pork producers most likely to be affected by the amendments in this proposal are a small number of domestic producers of specific specialty pork products. If the proposed rule is adopted, we anticipate increased imports into the United States from Spain of dry-cured, ready-to-eat ham; dry-cured, salted, boneless loin; and dry-cured sausages, particularly Serrano ham. Most of these products are similar to Parma and prosciutto hams and other cured pork products being produced domestically and produced in other countries for importation into the United States, but Serrano ham is a specialty product with unique water content, color, aroma, and flavor.

Spain currently produces approximately 350,000 metric tons of all types of cured ham per year. It is estimated that in 1994 more than 975,000 metric tons of all types of cured ham were produced in the United States. While Spanish production of all types of cured ham represents approximately 27.9 percent of U.S. cured ham production, Spain's domestic consumption of cured pork is considerably higher than consumption in the United States. About 40 percent of Spain's total pork consumption consists of cured pork. In 1994, Spain exported only 4,135 metric tons of cured ham, which amounts to significantly less than 1 percent of total U.S. production of cured pork. These exports were directed primarily to France, Argentina, Portugal, and Germany.

From all indications, only a few of the largest 18 cured pork producers in Spain, which account for 50 percent of Spanish production of cured pork, have an interest in or a capability for penetrating the U.S. market over the foreseeable future. Further, we estimate that the maximum amount of cured pork products that Spain could expect to export to the United States would not likely exceed 500 metric tons annually, and this ceiling would not likely be reached for a period of about five years because the imports arriving in the United States from Spain would still be required to meet Food Safety and Inspection Service standards before entering the country.

We estimate that there are approximately 15 companies in the United States producing significant amounts of specialty processed pork

products that would compete with the potential imports from Spain. A small portion of these producers are very large, and these specialty products constitute only a small fraction of their overall business. Therefore, we expect the impact of the proposed change on these large companies would be minimal. However, the small producers may be impacted by additional imports. Yet, without specific information on (1) the quantity of additional imports generated by the rule change, (2) the quantity of domestic production, and (3) the degree to which Spanish imports will displace other imports rather than domestic production, the impact on small domestic producers cannot be predicted.

An alternative to this proposed rule is to make no changes in the regulations. We rejected this alternative because Spain has had no reported cases of ASF since September 1994, and, therefore, we have no scientific reason to continue considering Spain to be a country where ASF exists.

This proposed rule contains no information collection or recordkeeping requirements.

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This proposed rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 94 would be amended as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), VELOGENIC VISCEROTROPIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for part 94 would continue to read as follows:

Authority: 7 U.S.C. 147a, 150ee, 161, 162, and 450; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, 134f, 136, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331, and 4332; 7 CFR 2.22, 2.80, and 371.2(d).

§ 94.8 [Amended]

2. In § 94.8, the introductory text would be amended by removing the words ‘‘, and Spain’’ and by adding the word ‘‘and’’ immediately preceding the word ‘‘Portugal’’.

Done in Washington, DC, this 22nd day of May 1996.

Donald Husnik,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 96–13406 Filed 5–28–96; 8:45 am]

BILLING CODE 3410–34–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 150

RIN 3150–AC57

Reasserting NRC’s Authority for Approving Onsite Low-Level Waste Disposal in Agreement States; Withdrawal

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule: Withdrawal.

SUMMARY: The Nuclear Regulatory Commission (NRC) is withdrawing a notice of proposed rulemaking that would have reasserted the NRC’s jurisdiction in Agreement States over the disposal of licensed material generated and disposed of at nuclear reactor sites. The proposed rule would also have clarified the jurisdiction over disposal of noncritical waste quantities of special nuclear material at reactors and fuel cycle facilities.

FOR FURTHER INFORMATION CONTACT: Joseph J. Mate, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6202.

SUPPLEMENTARY INFORMATION:

Background

On August 22, 1988 (53 FR 31880), the Commission published a notice of proposed rulemaking in the Federal Register entitled ‘‘Reasserting NRC’s Authority for Approving Onsite Low-Level Waste Disposal in Agreement States.’’ This rule would have reasserted the NRC’s jurisdiction in the Agreement States over the disposal of low-level radioactive waste generated and disposed of at reactor sites. The proposed rule would also have clarified the jurisdiction over the disposal of noncritical waste quantities of special nuclear material at fuel cycle facilities. The NRC would have authorized this disposal under 10 CFR 20.302, but 10 CFR part 20, ‘‘Standards for Protection Against Radiation,’’ was revised in May 1991 (56 FR 23360). The applicable regulation is now 10 CFR 20.2002.

The purpose of the proposed rule was to provide for a more centralized and consistent regulatory review of all onsite waste management activities and to avoid duplication of regulatory effort by the NRC and the Agreement States. The uniform review process that would result from the proposed rule was intended to provide greater assurance that onsite disposal of radioactive material will not present a health hazard and that the disposal of this waste in this manner will not unnecessarily complicate or delay decommissioning.

As a result of publishing the proposed rule in the Federal Register, the NRC received 49 comment letters. Twelve commenters (24 percent) favored the proposal, 37 commenters (76 percent) opposed the proposal. Comments were submitted by private citizens, Agreement and Non-Agreement States, nuclear utilities, nuclear utilities’ representatives, and various conservation and public interest groups. The vast majority of the comments favoring the proposal were from nuclear utilities and their representatives. Comments opposed to the proposal came from private citizens, Agreement and Non-Agreement States, and conservation and public interest groups. Nineteen of the commenters questioned the need for the proposed rule, six commenters wanted the States’ participation in the approval process to be specified, and a few States questioned the NRC’s authority to promulgate the rule. The remaining commenters were concerned with better definitions of the protected and exclusion areas, the type of waste to be covered by the rule, existing onsite disposal, and the impact on regional low-level waste disposal facilities. Some States commented that the Agreement States were more familiar with local conditions and that their requirements were more strict than the NRC’s. Of the 10 Agreement States that commented, 9 States were opposed to the amendments. The remaining Agreement State that commented supported the rule but reserved the right to participate in the approval process with full review privileges and expected their concerns to be addressed.

As a result of the public comments received and the relatively low hazards

associated with onsite disposal of low-level waste radioactive material, the NRC reevaluated the merits of the proposed rule. In the 7 years since this rulemaking was originally proposed, there have been a number of approvals granted by Agreement States for onsite disposal of low-level waste material under the equivalent of 10 CFR 20.2002 (successor to 20.302). The NRC staff is not aware of any problems with the Agreement States' approvals of any onsite burials of low-level waste material.

Based on the comments received, the relatively low hazards associated with onsite disposal of this type of radioactive material, and current experience with disposals, the NRC has reevaluated the issues and concluded that it is not necessary to reassert its regulatory jurisdiction over onsite disposal at reactor sites in the Agreement States.

Therefore, the proposed rule is not required and is being withdrawn. Withdrawal of the proposed rule does not affect the current NRC jurisdiction over disposal of special nuclear material by reactor or fuel cycle licensees. With the withdrawal of the proposed rule, the Agreement States will maintain jurisdiction over the disposal of low-level radioactive waste on nuclear reactor sites.

Dated at Rockville, Md, this 22nd day of May, 1996.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

[FR Doc. 96–13384 Filed 5–28–96; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–CE–99–AD]

RIN 2120–AA64

Airworthiness Directives; The Don Luscombe Aviation History Foundation Model 8 Series Airplanes.

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to The Don Luscombe Aviation History Foundation (referred to as Luscombe from hereon) Model 8 series airplanes. The proposed action would require installing new inspection holes, modifying the wing tip fairings, and inspecting the wing spars for intergranular corrosion. Reports of intergranular corrosion occurring in the wings prompted the proposed action. The actions specified by the proposed AD are intended to prevent wing spar failure resulting from intergranular corrosion, which, if not detected and corrected, could result in structural failure of the wings and loss of control of the airplane.

DATES: Comments must be received on or before July 31, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–CE–99–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from The Don Luscombe Aviation History Foundation, P.O. Box 63581, Phoenix, Arizona 85082; telephone (602) 917–0969 and facsimile (602) 917–4719. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Ms. Lirio L. Liu, Aerospace Engineer, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Blvd., Lakewood, California, 90712; telephone (310) 627–5229; facsimile (310) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 95–CE–99–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–CE–99–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The FAA has received reports of corrosion occurring on both the metal covered wing spars and the fabric-covered wing spars of the Luscombe Model 8 series airplanes. The service history of these airplanes indicates there is a problem of limited access holes to the interior of the metal covered wings to look for any corrosion, which inhibits inspecting the area around the wing spar extrusions. The fabric covered wings on the Luscomb Model 8 airplanes have adequate access holes for inspecting purposes. Routine maintenance inspections have reported intergranular corrosion in the front and rear spar extrusion in the wings of these airplanes.

The Don Luscombe Aviation History Foundation has issued Service Recommendation No. 2, dated December 15, 1993, Revised November 21, 1995, which specifies installing new inspection holes, modifying the wing tip fairings, and inspecting the wing spars for intergranular corrosion.

After examining the circumstances and reviewing all available information related to the incidents described above, the FAA has determined that AD action should be taken to detect intergranular corrosion in the wing spars, which, if not detected and corrected, could result in structural failure of the wings and loss of control of the airplane.

Since an unsafe condition has been identified that is likely to exist or develop in other Luscombe Model 8 series airplanes of the same type design, the proposed AD would require installing a total of four additional wing inspection holes in the metal covered wings to assist in conducting a more thorough examination of the wing spars, modifying the wing tip fairing so that it is removable, and providing easier access to the interior of the wings. A one

time inspection for intergranular corrosion is proposed for both metal covered and fabric covered wings on the Luscomb Model 8 airplanes in the areas of the front and rear spar extrusions of the wing installations.

The FAA estimates that 2,029 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 7 hours per airplane to accomplish the proposed action, and that the average labor rate is approximately $60 an hour. The Luscombe Installation kit #8007 cost approximately $125 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $1,105,805. This figure includes the cost of the installation, modification, and inspection. This figure applies to Model 8 airplanes that have metal covered wings. For airplanes that have fabric covered wings, the cost will only be for the one-time inspection, which is estimated to take approximately 1 hour per airplane.

Luscombe has informed the FAA that these Installation Kits have been distributed to equip approximately 150 airplanes. Assuming that these distributed kits are incorporated on the affected airplanes, the cost of the proposed AD would be reduced by $18,750 from $1,105,805 to $1,087,055.

The compliance time of this AD is presented in calendar time instead of hours time-in-service (TIS). The FAA has determined that a calendar time compliance is the most desirable method because the unsafe condition described by this AD is caused by corrosion. Corrosion initiates as a result of airplane operation, but can continue to develop regardless of whether the airplane is in service or in storage. Therefore, to ensure that the above-referenced condition is detected and corrected on all airplanes within a reasonable period of time without inadvertently grounding any airplanes, a compliance schedule based upon calendar time instead of hours TIS is required.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

The Don Luscombe Aviation History Foundation (formerly The Luscombe Aircraft Company): Docket No. 95–CE–99–AD.

Applicability: Model 8 series airplanes (all serial numbers), 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 request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it. Compliance: Required within the next 12 calendar months after the effective date of this AD, unless already accomplished.

To prevent wing spar failure resulting from intergranular corrosion, which, if not detected and corrected, could result in structural failure of the wings and loss of control of the airplane, accomplish the following:

(a) For Luscombe Model 8 series airplanes with metal covered wings,

(1) Install two additional wing inspection holes (left wing and right wing) using the Don Luscombe Aviation History Foundation (DLAHF) Kit #8007, Wing Access and Inspection Kit, in accordance with the Compliance Procedures section, paragraphs ''1B Metal Covered Wings.'', (a), (a1.) through (a9.), and (b.) of the Luscombe Service Bulletin (SB) #2, dated December 15, 1993, REVISED November 21, 1995, and

(2) Modify the wing tip fairing using the DLAHF Kit #8007, Wing Access and Inspection Kit, in accordance with the Compliance Procedures section, paragraphs ''1B Metal Covered Wings.'', (c), and (c1.) through (c5.) of the Luscombe SB #2, dated December 15, 1993, REVISED November 21, 1995.

(b) For all affected Luscombe Model 8 series airplanes, inspect one time for intergranular corrosion in the areas of the front and rear spar extrusions of the wing installations in accordance with the Compliance Procedures: section, paragraph ''1A. Fabric Covered Wings.'' or paragraph ''2. Inspect'' of the Luscombe SB #2, dated December 15, 1993, REVISED November 21, 1995, whichever paragraph is applicable to the wing construction of the airplane.

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

(d) An alternative method of compliance or adjustment of the initial compliance time that provides an equivalent level of safety may be approved by the Manager, Los Angeles Aircraft Certification Office, 3960 Paramount Blvd., Lakewood, California, 90712. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles Aircraft Certification Office.

(e) All persons affected by this directive may obtain copies of the document referred to herein upon request to The Don Luscombe Aviation History Foundation, P. O. Box 63581, Phoenix, Arizona 85082; telephone (602) 917–0969 and fax (602) 917–4719; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on May 21, 1996.

Bobby Sextion,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–13390 Filed 5–28–96; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 71

[Airspace Docket No. 96–AGL–1]

Proposed amendment to Class E Airspace; Rochester, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Class E airspace at Rochester, MN. Additional controlled airspace is required for the Copter GPS 325 degrees approach procedure to St. Mary's Hospital Heliport. Controlled Airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed for aircraft executing the approach..

DATES: Comment must be received on or before June 30, 1996.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 96–AGL–1, 23000 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Operations Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: John A. Clayborn, Air Traffic Division, Operations Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7459.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested partiers are invited to participate in this proposed rulemaking by submitting such written data, views, or agruments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statment is made: ''Comments to Airspace Docket No. 96–AGL–1.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in this docket.

Availability of NPRM's

Any person may obtain a copy of the Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend Class E airspace at Rochester, MN. This proposal would provide adequate Class E airspace for IFR operators executing the Copter GPS 325 degrees approach procedure to St. Mary's Hospital Heliport. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contained aircraft executing the approach. The area would be depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the area or otherwise comply with IFR procedures. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E. airspace designation listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 6005 Class E airspace areas extending from 700 feet or more above the surface of the earth.

* * * * *

AGL MN E5 Rochester, MN [Revised]

Rochester International Airport, MN
(lat. 43°54′32″N, long. 92°29′53″W)
St. Mary's Hospital Heliport, MN
(lat. 44°01′11″N, long 92°28′59″W)
Rocester VOR/DME
(lat. 43°46′58″N, long. 92°35′49″W)

That airspace extending upward for 700 feet above the surface within a 6.7-mile radius of the Rochester International Airport and within 3.2 miles each side of the Rochester VOR/DME 028 radial extending from the 6.7-mile radius to 7.9 miles southwest of the airport, within 5.3 miles southwest and 4 miles northeast of the Rochester northwest localizer course extending from the 6.7-mile radius to 20 miles northwest of the airport, within 5.3

miles northeast and 4 miles southwest of the Rochester southeast localizer course extending from the 6.7-mile radius to 17.3 miles southeast of the airport and within a 6.4 mile radius of the St. Mary's Hospital Heliport.

* * * * *

Issued in Des Plaines, Illinois on May 14, 1996.

Jeffrey L. Griffith,

Acting Manger, Air Traffic Division.

[FR Doc. 96–13423 Filed 5–28–96; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 96–AGL–3]

Revision of Class E Airspace; Delta County Airport, Escanaba, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revise the Class E2 airspace to accommodate the addition of an Automatic Weather Observation System (AWOS–3) at Delta County Airport, Escanaba, MI, to operate turbo-jet charter service on a 24 hour basis.

DATES: Comments must be received on or before June 30, 1996.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 96–AGL–3, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Operations Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: John A. Clayborn, Air Traffic Division, Operations Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 96–AGL–3.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of the Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the Class E2 airspace to accommodate the addition of an Automatic Weather Observation System (AWOS–3) at Delta County Airport, Escanaba, MI, to operate turbo-jet charter service on a 24 hour basis. The area would be depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the area or otherwise comply with IFR procedures. Class E2 airspace designations for surface areas are published in paragraph 6002 of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E2 airspace designation listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 6002 The Class E airspace areas designated as a surface area for an airport.

* * * * *

AGL MI E2 Escanaba, MI [Revised]

Escanaba, Delta County Airport, MI
(lat. 45°43′18″N., long. 87°05′40″W.)
Escanaba VORTAC
(lat. 45°43′21″N., long. 87°05′23″W.)

Within a 4.2-mile radius of the Escanaba VORTAC, and within 2.6 miles each side of the Escanaba VORTAC 007 radial, extending from the 4.2-mile radius to 7.4 miles northeast, and within 2.6 miles each side of

the Escanaba VORTAC 101 radial, extending from the 4.2-mile radius to 7.4 miles east, and within 2.6 miles each side of the Escanaba VORTAC 266 radial extending from the 4.2-mile radius to 7 miles west of the VORTAC.

* * * * *

Issued in Des Plaines, Illinois on May 6, 1996.

Maureen Woods,

Acting Manager, Air Traffic Division.

[FR Doc. 96–13421 Filed 5–28–96; 8:45 am]

BILLING CODE 4910–13–M

Coast Guard

33 CFR Part 67

[CGD 95–052]

RIN 2115–AF15

Testing of Obstruction Lights and Fog Signals on Offshore Facilities

AGENCY: Coast Guard, DOT.

ACTION: Notice of termination and withdrawal.

SUMMARY: This rulemaking project was initiated as part of the President's Regulatory Reinvention Initiative (PRRI). It was intended to improve the quality of tests performed on obstruction lights and fog signals, while reducing the administrative burden on the public, and minimizing costs borne by the Coast Guard. Comments to the rulemaking raised several substantial issues which require further study. Therefore, the Coast Guard is terminating further rulemaking under docket number 95–052.

FOR FURTHER INFORMATION CONTACT: LTJG Chad Asplund, Project Manager, Short Range Aids to navigation Division, U.S. Coast Guard Headquarters, (202) 267–1386.

SUPPLEMENTARY INFORMATION: On January 10, 1996, the Coast Guard published a notice requesting comments in the Federal Register (61 FR 708). The notice asked (1) whether the flash characteristics of obstruction lights should be changed from a quick-flashing rhythm to a Morse ''U''; (2) whether the candlepower requirements on obstruction lighting should be adapted to the new transmissivity tables developed by the Coast Guard; and (3) whether lights and fog signals should be tested independent laboratories rather than by the Coast Guard.

On March 27, 1996, the Coast Guard published a notice of proposed rulemaking (NPRM) in the Federal Register (61 FR 13472). The Coast Guard proposed a new rule on only one of the three issues investigated in the notice, specifically, that lights and fog signals would be tested by independent laboratories rather than by the Coast Guard.

The NPRM's approach was in keeping with the goals of the PRRI to make government work better and cost less by finding ways to reduce financial and regulatory burdens on industry while improving governmental efficiency. It proposed to achieve this by (1) consolidating permit applications in headquarters rather than requiring an application to each Coast Guard district; and (2) having independent laboratories test all devices and submit the results to the Coast Guard rather than requiring Coast Guard involvement in the testing of lights or fog signals. In spite of the Coast Guard's intent to reduce burdens, comments indicated that the NPRM, as proposed, was too general to accomplish either the project's goals or the goals of PRRI.

Specifically, comments questioned how independent laboratories would be designated or certified by the Coast Guard, and what standards would be used by the independent laboratories in evaluating lights and fog signals. Comments also expressed concern over the timetable for implementation, with several pointing out that retrofitting all existing structures would impose a high cost on the regulated community without providing any proven reduction in risk.

The Coast Guard has determined that the concerns raised by the comments to this docket require further examination of this area before any rulemaking is undertaken. The Coast Guard seeks to promulgate rules that will improve maritime safety while accomplishing PRRI goals. Because the current rulemaking may do neither, the Coast Guard is terminating further rulemaking under docket number 95–052 but will continue to investigate the feasibility of implementing these concepts in the future.

Dated: May 17, 1996.

Rudy K. Peschel,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 96–13419 Filed 5–28–96; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 141 and 142

[WH–FRL–5511–6]

Drinking Water; National Primary Drinking Water Regulations; Enhanced Surface Water Treatment Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Announcement of extension of public comment period.

SUMMARY: In this notice, EPA is announcing an extension of the public comment period for the National Primary Drinking Water Regulations (NPDWR) for the Enhanced Surface Water Treatment Regulations (ESWTR) (59 FR 38832, July 29, 1994). The NPDWR consists of a set of regulatory options related to treatment techniques for microbiological pathogens. The NPDWR also includes proposed monitoring, reporting, and public notification requirements for these compounds. The comment period is being extended from May 30, 1996 until August 30, 1996.

DATES: Comments should be postmarked or delivered by hand on or before August 30, 1996. Comments received after this date may not be considered.

ADDRESSES: Send written comments to the ESWTR Docket Clerk, Water Docket (MC–4101); U.S. Environmental Protection Agency; 401 M Street, SW., Washington, DC 20460, or hand deliver to the Water Docket, Room 2616, Waterside Mall, 401 M Street, SW., Washington, DC.

The proposed rule with supporting documents and all comments received are available for review at the Water Docket at the address above. For access to Docket materials, call (202) 260–3027 between 9 am and 3:30 pm for an appointment.

FOR FURTHER INFORMATION CONTACT: General information may be obtained from the Safe Drinking Water Hotline, telephone (800) 426–4791; Stig Regli, Office of Ground Water and Drinking Water (4603), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, telephone (202) 260–7379; or Paul Berger, Office of Ground Water and Drinking Water (4603), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, telephone (202) 260–3039.

SUPPLEMENTARY INFORMATION: On July 29, 1994 EPA proposed two drinking water regulations: the Disinfectant/Disinfection Byproducts (D/DBP) and

Enhanced Surface Water Treatment (ESWTR) rules. These proposals were the product of a negotiated rulemaking. The negotiators included State and local health and regulatory agency staff and elected officials, consumer groups, environmental groups, and representatives of public water systems.

The group agreed to propose a disinfectant/disinfection byproduct rule to extend coverage to all community and non-transient, non-community water systems that use disinfectants, reduce the current total trihalomethane (TTHM) maximum contaminant level (MCL), regulate additional disinfection byproducts, set limits for the use of disinfectants, and reduce the level of compounds that may react with disinfectants to form byproducts. The group further agreed that revisions to the current Surface Water Treatment Rule might be required at the same time to ensure that microbial risk is not increased as byproduct rules go into effect, and to provide explicit control of *Cryptosporidium*. As a result, the Enhanced Surface Water Treatment Rule was proposed with a number of options for microbial control, including the option to simply retain the requirements of the current Surface Water Treatment Rule. Data being collected through a separate Information Collection Rule (May 14, 1996, 61 FR 24354) and a research program will be used to identify the appropriate option.

The comment period for submission of formal written comments in response to the D/DBPR rule closed on December 29, 1994. The comment period for formal written comments in response to the ESWTR rule was listed in the proposed rule as closing on May 30, 1996. The reason a longer time was allowed for comments on the ESWTR was to allow time for the public to consider data being collected under the Information Collection Rule and the research program prior to that date. Due to delays in the initiation of data collection, the May 30, 1996 date no longer allows commenters time to consider the results of any of those data.

The Agency believes it would be useful to allow the public additional time in which to review the final Information Collection Rule and provide comments on its implications for the ESWTR. The Agency would also like to obtain comments on the ESWTR which are independent of the collection of subsequent data so that analysis of those comments may begin on a timely basis. An extension until August 30, 1996 in essence gives commenters 90 days to file those comments. Once at least eight months of data collected under the Information Collection Rule have been collected and analyzed, the Agency will issue a Notice of Availability providing its analysis of the data and its recommendation for the appropriate regulatory option for the ESWTR. At that time, the Agency will reopen the public comment period for the ESWTR so that commenters can consider the data and EPA's analysis.

Please submit any references cited in your comments. EPA would appreciate an original and three copies of your comments and enclosures (including references). Commenters who want EPA to acknowledge receipt of their comments should include a self-addressed, stamped envelope. No facsimiles (faxes) will be accepted because EPA cannot ensure that they will be submitted to the Water Docket. To ensure that EPA can read, understand and therefore properly respond to comments, the Agency would prefer that commenters type or print comments in ink, and cite, where possible, the paragraph(s) in the proposed regulation (eg., 141.76(b)) to which each comment refers. Commenters should use a separate paragraph for each method or issue discussed.

Dated: May 21, 1996.

Robert Perciasepe,

Assistant Administrator.

[FR Doc. 96–13435 Filed 5–28–96; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 180

[OPP–300415A; FRL–5370–1]

RIN 2070–AC18

Proposed Revocation of Tolerances; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of comment period.

SUMMARY: EPA is extending until July 30, 1996, the comment period for a proposed rule that was published in the Federal Register of March 1, 1996 that proposed the revocation of 41 section 408 tolerances established under the Federal Food, Drug and Cosmetic Act (FFDCA) for 22 chemicals. The original comment period on the proposal ends on May 30, 1996, but because of the unavailability of certain documents in the docket and the Dicofol Task Force's intentions to submit additional data, the comment period is being extended.

DATES: Written comments, identified by the docket number [OPP–300415A], must be received on or before July 30, 1996.

ADDRESSES: By mail, submit written comments to: Public Response Section, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the Virginia address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number, [OPP–300415A]. No CBI should be submitted through e-mail. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Niloufar Nazmi, Special Review and Reregistration Division (7508W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. WF32C5, Crystal Station #1, 2800 Crystal Drive, Arlington, VA 22202, (703)–308–8028; e-mail: nazmi.niloufar@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the Federal Register of March 1, 1996, (61 FR 8173), EPA issued a proposed rule proposing the revocation of 9 tolerances, and announcing its decision whether 41 section 408 tolerances for 22 pesticides should be revoked under EPA's policy concerning the coordination of its authorities under sections 408 and 409 of the FFDCA.

A record has been established for this rulemaking under docket number [OPP–300360A] (including any comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Electronic comments can be sent directly to EPA at:
opp-Docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Food additives, Pesticides and pests, Processed foods, Reporting and recordkeeping requirements.

Dated: May 15, 1996.

Daniel M. Barolo,
Director, Office of Pesticide Programs.

[FR Doc. 96–13284 Filed 5–28–96; 8:45 am]
BILLING CODE 6560–50–F

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40 CFR Part 180

[PP 6E04666/P660; FRL–5371–6]

RIN 2070–AC18

Methyl Esters of Tall-Oil Fatty Acids; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that methyl esters of tall-oil fatty acids be exempted from the requirement of a tolerance when used as an inert ingredient (adjuvant) in pesticide formulations. This proposed regulation was requested by Union Camp Corporation pursuant to the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: Comments, identified by the docket number [PP 6E04666/P660], must be received on or before June 28, 1996.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person deliver comments to: Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice. The public docket is available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number, [PP 6E04666/P660]. No CBI should be submitted through e-mail. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Bipin Gandhi, Registration Support Branch, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: 2800 Crystal Drive, North Tower, Arlington, VA, (703) 308–8380, e-mail: gandhi.bipin@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Union Camp Corporation, P.O.Box 2668, Savannah, GA. 31402, has submitted pesticide petition (PP) 6E04666 to EPA requesting that the Administrator, pursuant to section 408(e) of the FFDCA, 21 U.S.C. 346a(e), propose to amend 40 CFR 180.1001(c) by establishing an exemption from the requirement of a tolerance for methyl esters of tall-oil fatty acids when used as an inert ingredient (adjuvant) in pesticide formulations applied to growing crops or to raw agricultural commodities after harvest.

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

The data submitted in the petition and other relevant material have been evaluated. As part of the EPA policy statement on inert ingredients published in the Federal Register of April 22, 1987 (52 FR 13305), the Agency set forth a list of studies which would generally be used to evaluate the risks posed by the presence of an inert ingredient in a pesticide formulation. However, where it can be determined without that data that the inert ingredient will present minimal or no risk, the Agency generally does not require some or all of the listed studies to rule on the proposed tolerance or exemption from the requirement of a tolerance for an inert ingredient. The Agency has decided that no data, in addition to that described below, for methyl esters of tall-oil fatty acids will need to be submitted. The rationale for this decision is described below:

(1) Tall-oil fatty acids are exempted from the requirement of a tolerance under 40 CFR 180.1001(c) as ''Tall-oil; fatty acids not less than 58 percent, rosin acids not more than 44 percent, unsaponifiables not more than 8 percent.''

(2) Methyl esters of tall-oil fatty acids are prepared from tall-oil fatty acids. These methyl esters degrade to tall-oil fatty acids and therefore, are considered no more toxic than the corresponding tall-oil fatty acids.

(3) Methyl esters (distilled) of tall-oil fatty acids contain 1 to 5 percent rosin acids and 2 percent unsaponifiables and are therefore expected to be less toxic compared to the maximum permitted levels of 44 percent rosin acids and 8 percent unsaponifiables respectively for tall-oil fatty acids specified under 40 CFR 180.1001(c).

Based upon the above information and review of its use, EPA has found that, when used in accordance with good agricultural practice, this ingredient is useful and a tolerance is not necessary to protect the public health. Therefore, EPA proposes that the exemption from the requirement of a tolerance be established as set forth below.

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

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the docket number, [PP 6E04666/P660].

A record has been established for this rulemaking under docket number [PP 6E04666/P660] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in ''ADDRESSES '' at the beginning of this document.

The Office of Management and Budget has exempted this proposed rule from the requirements of section 3 of Executive Order 12866.

This action does not impose any enforceable duty, or contain any ''unfunded mandates'' as described in Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), entitled Enhancing the Intergovernmental Partnership, or special consideration as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–3 54, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

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

Dated: May 16, 1996.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

2. In § 180.1001, the table to paragraph (c) is amended by adding alphabetically the inert ingredient ''Methyl esters of tall-oil fatty acids,'' to read as follows:

§ 180.1001 Exemptions from the requirements of a tolerance.

* * * * *

Ingredients	Limits	Uses
* *	* * *	* *
Methyl esters of tall-oil fatty acids. (Fatty acids not less than 58 percent, rosin acids not less than 44 percent unsaponifiables not less than 8 percent).	.....	Adjuvant
* *	* * *	* *

[FR Doc. 96–13441 Filed 5–28–96; 8:45 am]
BILLING CODE 6560–50–F

40 CFR Parts 180, 185 and 186

[OPP–300408; FRL–4992–5]

RIN 2070–AC18

Pesticide Chemicals; Various Tolerance Actions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to revoke tolerances established for residues of 13 pesticide chemicals in or on certain raw agricultural commodities (RACs) and processed foods. EPA is initiating this action because there are no current registrations associated with these food uses. The applicable registrations for these pesticide uses have been canceled because of nonpayment of maintenance fees, or by company request.

DATES: Written comments, identified by the document control number [OPP–300408], must be received on or before July 29, 1996.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number. [OPP-300408]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries. Additional information on electronic submission can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Owen F. Beeder, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460. Office location and telephone number: Sixth Floor, Crystal Station #1, 2800 Jefferson Davis Highway, Arlington, VA 22202, (703)-308-8351; e-mail: beeder.owen@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: This document proposes the revocation of tolerances and food and feed additive regulations (tolerances) established under sections 408 and 409 of the Federal Food, Drug, and Cosmetic Act (FFDCA) (21 U.S.C. 346a and 348) for residues of the herbicides dalapon, diphenamid, sesone, fluchloralin and metobromuron; the fungicides basic zinc sulfate, glyodin, hexachlorophene and manam; the insecticide hydrogen cyanide; the plant regulators DNOC and metachlorphenprop; and the food additive ethyl formate, in or on raw agricultural commodities (RACs), processed foods, and feeds. EPA is initiating this action because all registered uses of these pesticide chemicals in or on RACs and processed foods have been canceled. The registrations for these pesticide chemicals were canceled because the registrant failed to pay the required maintenance fee and/or the registrant voluntarily canceled all registered uses of the pesticide. Because there are no current food use registrations for any of these 13 pesticide chemicals, EPA proposes to revoke the tolerance and food additive and feed additive regulations for these pesticide chemicals. A tolerance, food additive, or feed additive regulation is not generally necessary for a pesticide chemical that is not registered for a particular food use. The Agency is not recommending the establishment of action levels in place of these regulations. Since there are no food use registrations associated with these tolerances-hence, no legal use in the United States-and since these pesticides are either not persistent, or sufficient time has elapsed since their prior use for residues to dissipate, residues should not appear in any domestically produced commodities.

Because there no current food use registrations for any of these 13 pesticide chemicals EPA proposes to immediately revoke the tolerances for all of the pesticides listed above with the exception of dalapon, diphenamid, glyodin, and DNOC and its sodium salt.

Although no usages in 1992 have been found for the herbicides dalapon and diphenamid, the fungicide glyodin, and the plant regulater DNOC and its sodium salt, and their registered products were canceled over three years ago (except for DNOC, for which the last product was canceled in February 1993), each of these chemicals still had small domestic usages on certain crops as late as 1994 and 1995. EPA has therefore decided to delay the revocation of dalapon, diphenamid, glyodin and DNOC until May 1, 1999, instead of immediately to allow domestic growers who may still have stocks on hand to use up their supplies and permit any treated raw commodities and products processed from such commodities to move through marketing channels, and, therefore, result in little or no domestic impacts. EPA is effecting this delayed revocation by including an expiration date in the tolerance.

The tolerances, food additive and feed additive regulations listed in 40 CFR part 180 being proposed for revocation are as follows: § 180.102 (sesone), § 180.124 (glyodin), § 180.130 (hydrogen cyanide), § 180.150 (dalapon), § 180.161 (manganous dimethyldithiocarbamate (manam)), § 180.230 (diphenamid), § 180.244 (basic zinc sulfate), § 180.250 (metobromuron), § 180.302 (hexachlorophene), § 180.325 2-(*m*-Chlorophenoxy) propionic acid (metachlorphenprop), § 180.344 (4,6-dinitro-o-cresol) (DNOC), and its sodium salt, § 180.363 (fluchloralin), § 185.2900 (ethyl formate), § 185.1500 (dalapon), and § 186.1500 (dalapon).

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

Interested persons are invited to submit written comments on the proposed regulation. Further, EPA is soliciting comments from anyone adversely affected by revocation of these tolerances, exemption from tolerance, food additive and feed additive regulations. EPA requests that anyone

adversely affected by these revocations submit information pertaining to why and provide specific information as follows: 1. Are there any existing stocks of the chemical? 2. If so, how much? 3. When will the stocks be depleted? 4. How long would the commodities treated with these chemicals be in the channels of trade? 5. Would residues on any of these pesticide chemicals be present in or on commodities grown in foreign countries and imported into the United States? Comments must bear a notation indicating the document control number, [OPP-300408]. All written comments filed in response to this document will be available for public inspection in the Public Response Section, at the Virginia address given above, from 8:00 a.m. to 4:30 p.m., Monday through Friday, except legal holidays.

A record has been established for this rulemaking under docket number [OPP-300408] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp Docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemking record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

Regulatory Assessment Requirements

A. Executive Order 12866

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

Pursuant to the terms of this Executive Order, it has been determined that this rule is not a ''significant regulatory action'' because it does not meet any of the regulatory-significance criteria listed above.

B. Regulatory Flexibility Act

This proposed rule has been reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96-354; 94 Stat. 1164, 5 U.S.C. 601 et seq.) and it has been determined that it will not have an economic impact on any small businesses, governments, or organizations. Accordingly, I certify that this proposed rule does not require a separate regulatory flexibility analysis under the Regulatory Flexibility Act.

C. Paperwork Reduction Act

This proposed regulatory action does not contain any information collection requirements subject to review by OMB under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

D. Unfunded Mandates

This action does not impose any enforceable duty, or contain any ''unfunded mandates'' as described in Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), entitled Enhancing the Intergovernmental Partnership, or special consideration as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

List of Subjects

40 CFR Part 180

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

40 CFR Part 185

Environmental protection, Food Additives, Pesticides and Pests.

40 CFR Part 186

Environmental protection, Animal feeds, Pesticides and Pests.

Dated: May 15, 1996.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

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

PART 180—[AMENDED]

1. In part 180:

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

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

§ 180.102 [Removed]

b. By removing § 180.102 *Sesone; tolerances for residues.*

c. By revising § 180.124 *Glyodin; tolerances for residues* to read as follows.

§ 180.124 Glyodin; tolerance for residues.

A time-limited tolerance of 5 parts per million, with an expiration date of May 1, 1999, is established for the residues of the fungicide glyodin (2-heptadecyl-2-imidazoline acetate or 2-heptadecyl-2-imidazoline (base) in or on the following raw agricultural commodities: apples, cherries, peaches, and pears.

§ 180.130 [Removed]

d. By removing § 180.130 *Hydrogen cyanide; tolerances for residues.*

e. By revising § 180.150 *Dalapon; tolerances for residues* to read as follows.

§ 180.150 Dalapon; tolerances for residues.

(a) A time-limited tolerance, with an expiration date of May 1, 1999, is established for residues of the herbicide dalapon (2,2-dichloropropionic acid) resulting from application of dalapon sodium salt or sodium-magnesium salt mixtures in or on the following raw agricultural commodities:

Commodity	Parts per million
Almonds	10
Almonds, hulls	50
Apples	3
Apricots	1
Asparagus	30

Commodity	Parts per million
Bananas	5
Beans	1
Beans, straw	1
Beets, sugar (roots)	5
Beets, sugar (tops)	5
Cattle, mbyp	0.2
Cattle, meat	0.2
Coffee beans	2
Corn, ear, dried (K+C)	10
Corn, fodder	5
Corn, forage	5
Corn, fresh (including sweet K+CWHR)	5
Corn, grain	10
Cottonseed	35
Cranberries	5
Eggs	0.3
Flaxseed	75
Goats, mbyp	0.2
Goats, meat	0.2
Grapefruit	5
Grapes	3
Grasses, pasture	10
Grasses, range	10
Hogs, mbyp	0.2
Hogs, meat	0.2
Lemons	5
Limes	5
Macadamia nuts	1
Milk	0.1
Oranges	5
Peaches	15
Pears	3
Peas, shelled	15
Peas, unshelled	15
Peas, vine, with pod	15
Peas, vine, without pod	15
Pecans	0.1
Pineapples	3
Plums	1
Potatoes	10
Poultry, (excluding kidney)	3
Poultry, kidney	9
Sheep, mbyp	0.2
Sheep, meat	0.2
Sorghum	1
Sorghum, forage	5
Soybeans	1
Soybeans, straw	1
Sugarcane	0.1
Tangerines	5
Walnuts	5

(b) A time-limited tolerance, with an expiration date of May 1, 1999, is established for residues of dalapon (2,2-dichloropropionic acid) resulting from application of dalapon sodium-magnesium salt mixtures to irrigation ditch banks in the western United States in or on the following raw agricultural commodities. Where tolerances are established at higher levels from other uses of dalapon on the subject crops, the higher tolerance applies also to residues from the irrigation ditch bank use.

Commodity	Parts per million
Avocados	0.2
Citrus fruits	0.2
Cottonseed	0.2
Cucurbits	0.5
Flaxseed	2.0
Fruits, pome	0.2
Fruits, small	0.2
Fruits, stone	0.2
Grain crops (exc wheat)	0.5
Grasses, forage	2
Hops	0.2
Legumes, forage	2
Nuts	0.2
Vegetables, fruiting	0.2
Vegetables, leafy	0.5
Vegetables, root crop	0.2
Vegetables, seed and pod	0.5
Wheat	2

§ 180.161 [Removed]

f. By removing § 180.161 *Manganous dimethyldithio-carbamate; tolerances for residues.*

g. By revising § 180.230 *Diphenamid; tolerances for residues* to read as follows.

§ 180.230 Diphenamid; tolerances for residues.

A time-limited tolerance with an expiration date of May 1, 1999, is established for the residues of the herbicide dipenamid (*N,N*,-dimethyl-2,2-diphenylacetamide) including its desmethyl metabolite *N*-methyl-2,2-diphenylacetamide in or on the raw agricultural commodities as follows:

2 parts per million in or on peanut hay and forage.

1 parts per million in or on potatoes and strawberries.

0.5 parts per million in or on peanut hulls and soybean hay and forage.

0.2 parts per million in or on cotton forage.

0.1 parts per million (negligible residue) in or on apples, cottonseed, fruiting vegetables, okra, peaches, peanuts, soybeans, and sweet potatoes.

0.05 parts per million in or on (negligible residue) in meat, fat, and meat byproducts of cattle, goats, hogs, horses, and sheep.

0.01 parts per million (negligible residue) in milk.

1.0 parts per million in or on raspberries.

§ 180.244 [Removed]

h. By removing § 180.244 *Basic zinc sulfate; tolerances for residues.*

§ 180.250 [Removed]

i. By removing § 180.250 *Metobromuron; tolerances for residues.*

§ 180.325 [Removed]

j. By removing § 180.325 *2-(m-*Chlorophenoxy) propionic acid; tolerances for residues.

k. By revising § 180.344 *4,6-Dinitro-o-cresol and its sodium salt; tolerance for residues* to read as follows.

§ 180.344 4,6-dinitro-o-cresol and its sodium salt; tolerance for residues.

A time-limited tolerance of 0.2 part per million, with an expiration date of May 1, 1999, is established for residues of the plant regulators 4,6-dinitro-*o*-cresol (DNOC) and its sodium salt in or on the raw agricultural commodity apples from application to apple trees at the blossom stage as a fruit-thinning agent.

§ 180.363 [Removed]

l. By removing § 180.363 *Fluchloralin; tolerances for residues.*

PART 185—[AMENDED]

2. In part 185:

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

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

b. By revising § 185.1500 *Dalapon; tolerances for residues* to read as follows.

§ 185.1500 Dalapon; tolerances for residues.

A time-limited tolerance of 0.2 part per million, with an expiration date of May 1, 1999, is established for the residues of the herbicide dalapon (2,2-dichloropropionic acid) in potable water when present therein as a result of the application of dalapon sodium-magnesium salt mixtures to irrigation ditch banks in the western United States.

§ 185.2900 [Removed]

c. By removing § 185.2900 *Ethyl formate; tolerances for residues.*

PART 186—[AMENDED]

3. In part 186:

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

Authority: 21 U.S.C. 348.

b. By revising § 186.1500 *Dalapon; tolerances for residues* to read as follows:

§ 186.1500 Dalapon; tolerances for residues.

A time-limited tolerance of 20 parts per million, with an expiration date of May 1, 1999, is established for residues of the herbicide dalapon (2,2-dichloropropionic acid) in dehydrated citrus pulp for cattle feed, when present therein as a result of the application of dalapon sodium salt or dalapon sodium-magnesium salt mixtures during the growing of citrus fruit.

[FR Doc. 96–13442 Filed 5–28–96; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter I

[MM Docket No. 87–268; FCC: 96–207]

Broadcast Services; Television Stations

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission proposes to require digital broadcast television licensees to use the digital television (''DTV'') system described by the ATSC (''Advanced Television Systems Committee'') DTV Standard and recommended to the Commission by the Advisory Committee on Advanced Television Service. The Commission also proposes to adopt one or more method of assuring that at some future time the Standard does not inhibit innovation and competition. The intended effect is to ensure that all affected partieis have sufficient confidence and certainty in order to promote the smooth introduction of a free and universally available digital broadcast television service while encouraging technological innovation and competition.

DATES: Comments are due by July 11, 1996, and reply comments are due by August 12, 1996.

ADDRESSES: Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554

FOR FURTHER INFORMATION CONTACT: Roger Holberg, Mass Media Bureau, Policy and Rules Division (202) 418–2134 or Saul Shapiro, Mass Media Bureau, (202) 418–2600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Fifth Further Notice of Proposed Rule Making* in MM Docket No. 87–268 , FCC 96–207, adopted May 9, 1996, and released May 20, 1996. The complete text of this *FNPRM* is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C., and also may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, N.W., Suite 140, Washington, DC 20037.

Synopsis of Further Notice of Proposed Rule Making

I. Introduction

1. In this proceeding we consider adoption of a digital television (''DTV'') broadcast standard. This action has been recommended to the Commission by its Advisory Committee on Advanced Television Service (''Advisory Committee'' or ''ACATS'').[1] We have the following objectives with regard to the authorization and implementation of a DTV standard.[2] We seek to ensure that all affected parties have sufficient confidence and certainty in order to promote the smooth introduction of a free and universally available digital broadcast television service. We seek to increase the availability of new products and services to consumers through the introduction of digital broadcasting. We seek to ensure that our rules encourage technological innovation and competition. And we seek to minimize regulation and assure that any regulations we do adopt remain in effect no longer than necessary.

II. Background

2. On February 13, 1987, 58 broadcast organizations (''Petitioners'') filed a joint ''Petition for Notice of Inquiry'' asking the Commission to initiate a proceeding to explore issues arising from the advent of new and advanced television (''ATV'') technologies and their possible impact, in either broadcast or non-broadcast uses, on existing television broadcast service. On July 16, 1987, as a result of the comments it received in response to the petition, the Commission inaugurated the instant proceeding, ''to consider the technical and public policy issues surrounding the use of advanced television technologies by television broadcast licensees.''[3]

3. The Commission empaneled the Advisory Committee on Advanced Television Service (ACATS) shortly after having opened the inquiry phase of this proceeding. Among other activities, ACATS designed the detailed testing plans for the system and conducted substantial related studies.

4. On May 24, 1993 the three groups that had developed the four final DTV systems examined by ACATS agreed to produce a single, best-of-the-best system to propose as the standard. The three ventures that joined to become the ''Grand Alliance'' consisted of AT&T and Zenith Electronics Corporation; General Instrument Corporation and Massachusetts Institute of Technology; and Philips Electronics North America Corporation, Thomson Consumer Electronics, and the David Sarnoff Research Center. The standard recommended by ACATS and now before us is based on the system developed, built, and proposed by the Digital HDTV Grand Alliance proposal to ACATS. The system described by the ATSC[4] DTV Standard having been successfully designed, built and tested, in November 1995, the Advisory Committee voted to recommend the Commission's adoption of the ATSC DTV Standard.

5. We believe that the ATSC DTV Standard embodies the world's best digital television technology and promises to permit striking improvements to today's television pictures and sound; to permit the provision of additional services and programs; to permit integration of future substantial improvements while maintaining compatibility with initial receivers; and to permit interoperability with computers and other digital equipment associated with the national information initiative.

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[1] ACATS Report at 19. The Advisory Committee was formed by the Commission on October 16, 1987, pursuant to the Federal Advisory Committee Act (86 Stat. 770, as amended, 5 U.S.C. App. 2 § 1 *et seq.* (1982 ed. and Supp. V)). It was established ''to assist the Commission in considering the issues surrounding the introduction of advanced television service in the United States.'' (*Notice*, 52 Fed. Reg. 38523 (October 16, 1987).) The Advisory Committee consisted of a twenty-five member parent committee and three subcommittees—Planning, Systems and Implementation. Its membership on the date that the ATSC DTV Standard was recommended to the Commission is at Appendix B.

[2] In issuing this *Notice*, we are requesting comment, *inter alia*, on whether to accept the conclusions of the Final Report and Recommendation of the Advisory Committee, adopted November 28, 1995 (''ACATS Report''), which recommends the Advanced Television Systems Committee Standard A/53 (1995) *ATSC Digital Television Standard* (''ATSC DTV Standard'') as the standard for DTV broadcasting in the United States. This standard is based on the Advisory Committee design specifications and the Digital HDTV Grand Alliance (''Grand Alliance'') System. The ACATS Report is hereby incorporated into the record of this proceeding. Copies of the ACATS Report are available through the Commission's copy contractor, International Transcription Services. Additionally, the ACATS Report, ACATS Final Technical Report and ATSC DTV Standard are available on the Internet at the ATSC site (http://www.atsc.org).

[3] *Notice of Inquiry* in MM Docket No. 87–268, (''*First Inquiry*''), 2 FCC Rcd 5125 (1987).

[4] ''ATSC'' is the Advanced Television Systems Committee. ATSC currently has 54 members including television networks, motion picture and television program producers, trade associations, television and other electronic equipment manufacturers and segments of the academic community. It was formed by the member organizations of the Joint Committee on InterSociety Coordination (''JCIC'') for the purpose of exploring the need for and, where appropriate, to coordinate development of the documentation of ATV systems. The JCIC is composed of the Electronic Industries Association, the Institute of Electrical and Electronics Engineers, the National Association of Broadcasters, the National Cable Television Association, and the Society of Motion Picture and Television Engineers. The membership of the ATSC when it adopted the ATSC DTV Standard is at Appendix C.

III. The ATSC DTV Standard

6. The five components described in the annexes to the ATSC DTV Standard are video coding, audio coding, transport, RF/transmission and receiver. These five basic components, plus a video format selection function, are sometimes referred to as comprising ''layers'' of the system. Compliance with the ATSC DTV Standard requires some of its provisions be followed, but many of these provisions include numerous acceptable options that the system's users may select. In addition to the required provisions, some additional provisions of the ATSC DTV Standard are recommended but not required, and others are optional. Finally, although it describes the coding and transmission of television video and audio, it also allows transmission of a variety of other services as ''ancillary data.'' This structure makes the system described by the ATSC DTV Standard extremely flexible and gives it room to incorporate a wide range of future improvements.

7. *Format selection:* The ATSC DTV Standard supports a variety of scanning formats. Table I shows the number of scanning lines and horizontal picture elements (or pixels) per line, which affect resolution. The 720-line and 1080-line formats below represent high resolution video. The lower-resolution 480-line formats accommodate existing NTSC[5] programming and equipment as well as material designed for viewing on VGA computer monitors.

TABLE I

Vertical lines	Horizontal pixels	Aspect ratio	Picture rate
1080	1920	16:9	60I 30P 24P
720	1280	16:9	60P 30P 24P
480	704	16:9 4:3	60I 60P 30P 24P
480	640	4:3	60I 60P 30P 24P

8. Table I also indicates that the high-resolution formats both use a picture aspect ratio of 16 units horizontally by 9 units vertically (that is, a picture 16 inches wide would be 9 inches tall or one 32 inches wide would be 18 inches tall). The choices of 1280 pixels per line for the 720-line format and 1920 pixels per line for the 1080-line format result in square pixels (that is, pixels which are displayed at equal distances, both horizontally and vertically) for both formats, based on the 16:9 aspect ratio. Material in the 480-line by 704-pixel format could use either a 16:9 or a 4:3 aspect ratio.

9. The picture rates specified in Table I identify the number of images that are sent each second, with an ''I'' designating interlaced scanning and a ''P'' designating progressive scanning. Progressive scanning lines are presented in succession from the top of the picture to the bottom, with a complete image sent in each frame as is commonly found in computer displays today. For interlaced scanning, which also is used in NTSC television, odd and even numbered lines of the picture are sent consecutively, as two separate fields. These two fields are superimposed to create one frame, or complete picture, at the receiver. The picture rates can be 24, 30 or 60 fields per second.

10. *Video coding:* For compression of video signals, the ATSC DTV Standard requires conformance with the main profile syntax of the MPEG–2 video standard.[6] Employing this standard, the amount of data needed to represent television pictures is reduced using a variety of tools, including a motion compensated discrete cosine transform (DCT) algorithm and bidirectional-frame (B-frame) prediction. Each of these tools serves to improve compression efficiency by reducing the total amount of digital information that needs to be transmitted.

11. *Audio coding:* For compression of audio signals, the ATSC DTV Standard requires conformance with ATSC Doc. A/52, the Digital Audio Compression (AC–3) Standard. The AC–3 perceptual coding system, which was developed by Dolby Labs, can encode a complete main audio service which includes left, center, right, left surround, right surround, and low frequency enhancement channels into a bit stream at a rate of 384 kilobits per second (kbps). Audio service can also include fewer channels (down to single channel, monophonic service) using a lower bit rate.

12. *Transport:* The service multiplex and transport layer of the ATSC DTV Standard is a compatible subset of the MPEG–2 systems standard that describes a means of delivering a digital data stream in fixed-length ''packets'' of information. Each packet contains only one type of data: video, audio or ancillary. There is no fixed mix of packet types, which further helps provide flexibility. Channel capacity can be dynamically allocated in the transport layer, under the direct control of the broadcaster. Within the transport layer, the packets of video, audio, closed captioning and any other data associated with a single digital television program are combined using a mechanism to ensure that the sound, pictures and closed captioning information can be synchronized at the receiver. Data describing multiple television programs, or unrelated data for other purposes, are also combined in the transport layer.

13. *RF/Transmission:* The transmission layer of the ATSC DTV Standard uses a vestigial sideband (VSB) technique with a small pilot carrier added at the suppressed carrier frequency. The relationship of the pilot carrier frequency to interference to lower adjacent channel NTSC service is discussed in the ''interference'' section below.

14. Terrestrial broadcasts of DTV will be exposed to situations that include strong interfering signals, electromagnetic noise from numerous sources, and configurations of buildings or terrain features that cause multipath interference. For successful reception under these difficult conditions, an 8-level VSB signal is specified and extensive error correction is provided. Taking into account the transport requirements and error correction, the 8–VSB signal carries an effective useful payload of approximately 19.28 megabits per second (Mbps). For more benign environments, like that provided in a cable system, the ATSC DTV

[5] NTSC refers to the current analog television system. It is named for the National Television System Committee, an industry group that developed the monochrome (black and white) television standard in 1940–41 and the color television standard in 1950–53.

[6] MPEG–2 is a video compression and transport standard created by the Moving Picture Experts Group of the International Organization for Standardization (ISO).

Standard includes a 16-level VSB high data rate mode that provides double the capacity of the 8-level VSB terrestrial broadcast mode.

15. *Receiver:* The ATSC DTV Standard does not specify requirements for a compliant receiver. In essence, the DTV receiver designs are to be based on the specifications of the signal contained in the other portions of the Standard. The receiver reverses the functions of the RF/transmission and transport layers, and, after decompression, generates video and audio suitable for its display.

16. *Flexibility.* The ATSC DTV Standard provides a method of accommodating a broad range of uses. The packetized transport structure is a critical component in achieving this broad level of flexibility. Scrambled packets can be sent, which allows conditional access subscription or pay-per-view services to be delivered.

17. *Extensibility.* In the future, new services may be uniquely identified through the use of new packet identifiers that would be ignored by previously deployed digital receivers. Such data could be used to augment DTV programs or could permit new services that have not yet been envisioned. Either extension of the DTV service would require new DTV receivers or new decoder devices to be developed and used in order to obtain the benefits of the new service or functionality, but would not disrupt provision of DTV service to consumers using existing sets. The marketplace would determine the extent to which sets with new functionalities are available.

IV. Adopting the ATSC DTV Standard

18. There is near universal agreement that transmission standards, either de facto or de jure, confer many benefits.[7] We believe that the proposals discussed herein would enable consumers, licensees and equipment manufacturers to realize the benefits of standards without unduly restricting innovation and competition.

19. *Previous Statements.* Previously, we have asked whether mandatory transmission standards serve the public interest. In our initial 1987 *Notice of Inquiry* in this proceeding, we noted that NTSC standards were established during the television industry's infancy when universal compatibility standards were arguably necessary in order to develop a national television broadcasting system in a timely manner.[8] However, we also stated that the continuation of mandatory standards may no longer be necessary and may even be counterproductive.[9]

20. In the 1988 *Second Inquiry,* we continued our examination of whether the NTSC standard should be relaxed or repealed, how standards should be established for advanced television, and whether it would be desirable to require compatibility between advanced television broadcast transmissions and other ATV distribution media.[10] In this regard, we asserted that establishing a standard has certain advantages such as pointing the various interested parties in the same direction, reducing the risk to both audiences and broadcasters of investments in systems that might become obsolete if a different system is introduced in the market, and overcoming reluctance to invest in new equipment.[11] We also stated that, ''detailed, inflexible standards that have the force of law may reduce consumer choice and prevent the timely introduction of new technology.'' [12]

21. Subsequent to our statements concerning standards in the 1987 and 1988 decisions, as described above, we concluded in 1990 that ''[c]onsistent with our goal of ensuring excellence in ATV service, we intend to select a simulcast high definition television system.'' [13] We also stated that, ''parties filing comments in response to the Further Notice generally assume that the Commission will ultimately authorize a system using new technology that will provide HDTV service.'' (Footnote omitted.) [14] The Commission's November 14, 1990 *Memorandum of Understanding* with the Advisory Committee, the Advanced Television Test Center, Inc., Cable Television Laboratories, Inc., and the Canadian Communications Research Centre, said, ''[t]he FCC's stated intention is to select an ATV standard by the second quarter of 1993.''

22. *Recent Developments.* Two recent developments are relevant to whether and, if so, what form of a required standard is desirable. First, the presence of multiple competing systems strengthened the argument for selecting a standard. Today, only one system has been recommended by our Advisory Committee and no other competing technology appears to demonstrate superiority over the ATSC DTV Standard.[15] Thus, concerns with the possibility of multiple competing systems may be less relevant today.

23. Second, prior to the development of the ATSC DTV Standard, it was widely believed that the service offered by a licensee would change from one NTSC program stream to one HDTV program stream. Today's digital technologies and improved compression techniques create the opportunity for delivering one, and under special circumstances perhaps two, HDTV program streams, or multiple program streams at lower resolution. Furthermore, digital technologies give each licensee the technical capacity to explore new business opportunities and provide new services. If the ATSC DTV Standard is as dynamic as believed, a required standard will not thwart technical advance.

24. *Analysis of Required Standards.* The traditional rationale for requiring a standard arises when two conditions are met.[16] First, that there is a substantial public benefit from a standard. Second, private industry either will not, or cannot, produce a standard because the private costs of getting involved in standard setting outweigh the private benefits, or a number of different standards have been developed and private industry cannot agree which should become the standard. The second condition may not be applicable in view of the strong industry coalescence around the ATSC DTV Standard. However, we believe that the first condition applies to DTV. Television today is a ubiquitous service that is available to almost every American household and is relied on by a majority of Americans as their primary news and information source.[17]

25. A required standard may provide additional certainty to consumers, licensees, and equipment manufacturers, especially during the launch of this new technology. A required standard may protect consumers against losses by assuring them that their investments in DTV equipment will not be made obsolete by a different technology. In addition, requiring use of a single standard

[7] For a discussion of the benefits of standards, *see* Stanley M. Besen and Leland L. Johnson, *Compatibility Standards, Competition, and Innovation in the Broadcast Industry* (Santa Monica, CA: The RAND Corporation, 1986) at 7–9.

[8] *First Inquiry, supra* at 5135.

[9] *1Id.*

[10] *Tentative Decision and Further Notice of Inquiry* in MM Docket No. 87–268 (''*Second Inquiry*''), 3 FCC Rcd 6520, 6534 (1988).

[11] *Id.* at 6534–35.

[12] *Id.* at 6535.

[13] *First Report and Order,* 5 FCC Rcd 5626, 5628 (1990).

[14] *Id.*

[15] ACATS Report at 17.

[16] Stanley M. Besen and Garth Saloner, ''The Economics of Telecommunications Standards,'' in *Changing the Rules: Technological Change, International Competition, and Regulation in Communications,* Robert W. Crandall and Kenneth Flamm, editors (The Brookings Institute, 1989).

[17] Seventy-two percent of Americans rely on television as their primary source of news. NTVA, Roper-Starch, NAB, *America's Watching—Public Attitudes Toward Television-1995,* at 17.

guarantees compatibility. This assures consumers that the DTV equipment they purchase to view one television station can be used to view every other television station. The compatibility guaranteed by a single required standard may also reduce consumer costs by eliminating the need to purchase duplicative equipment or special devices to convert from one standard to another. Finally, a required standard may lead to a more rapid development and acceptance of DTV equipment. Absent a required standard, some consumers and licensees may be reluctant to purchase DTV equipment if they believe that different DTV technologies may become available in the near future. A required standard may reduce such ''wait and see'' behavior.

26. Although there are benefits to required standards, there also may be certain costs. One may be deterrence of technical innovations.[18] Over time, we expect that normal technological progress will lead to improvements. If subsequent technological improvements cannot be readily incorporated into the ATSC DTV Standard, the Standard could lock the broadcast market into less than optimal technology. Required standards also may reduce some forms of competition while enhancing others. With required standards, equipment manufacturers cannot compete by offering differentiated products using different technologies. As such, a primary cost of required standards is loss of variety.[19] On the other hand, required standards, which are licensed to everyone on a non-discriminatory basis, may intensify the more conventional forms of competition, such as price, service, and product features.[20]

27. As we weigh the benefits and costs of required standards, we note that for MMDS and new services like PCS, DBS, and DARS, we have decided to allow the marketplace to determine transmission standards. We recognize that these decisions were made in a context different from that of terrestrial broadcast television, an established industry upon which the American people rely for both information and entertainment. Additionally, unlike these other services, free over-the-air broadcast television is a mass market media serving nearly all of the American public nationwide rather than a subscription service in which the service provider may supply the reception equipment.[21] In this context, the goals of certainty and reliability take on a different significance than may have been present with respect to other communications services and strengthens the case for our adoption of a DTV standard.

28. *Proposal.* We propose to adopt the ATSC DTV Standard. We tentatively conclude that requiring the use of the ATSC DTV Standard is appropriate because it would provide a measure of certainty and confidence to manufacturers, broadcasters and consumers, thus helping assure a smooth implementation of digital broadcast television and the preservation of a free and universally available broadcast television service.

29. The digital television system that has been recommended by the Advisory Committee appears to be dynamic, flexible and high quality. It provides a variety of picture formats that will allow broadcasters to select the one most appropriate for their program material, ranging from very high resolution providing the best possible picture quality to multiple programs of lower resolution, which could result in increased choices for viewers. Even at the lower resolutions, the recommended system represents a clear improvement over the current NTSC standard.

30. Use of the ATSC DTV Standard also represents a rare opportunity to increase significantly the efficient use of broadcast spectrum. The ATSC DTV Standard will allow channels unusable in the NTSC analog environment to be assigned for digital broadcasting between existing NTSC channels. It was designed to be flexible enough to incorporate future improvements, including those resulting in ever higher resolution, that the Advisory Committee believes will be made possible by future advances in compression and display technology.

31. We believe that the ''headroom'' for innovation incorporated in the ATSC DTV Standard, along with the desirability of providing certainty and confidence, argue in favor of a required standard. In addition, the flexibility of the ATSC DTV Standard significantly reduces some of the potential detriments associated with a required standard as the new technology is being launched. The packetized structure of the data transport, as described above, ensures a flexibility that will permit the DTV licensee to provide, for instance, several standard definition programs, or one high-definition program, or some standard definition programming together with data transfer or electronic publishing on the remaining bit streams, and to switch instantaneously between such applications. Other applications are limited primarily by the imagination of the DTV licensee. This means that a wide array of innovations can be introduced without Commission action.

32. We seek comment on the tentative conclusion that we will require use of the ATSC DTV Standard. Assuming that we do require the use of the ATSC DTV Standard by digital television licensees, we request comment on whether we should place the Standard into our rules in its entirety or whether we should incorporate it by reference.[22]

33.While we propose to require digital television licensees to use the ATSC DTV Standard, we recognize that the benefits of a required standard may become attenuated over time, as the costs of a requirement may increase. At some point, when the new digital broadcasting technology has become firmly established, requirements designed to promote certainty and to foster a smooth implementation of digital television may no longer be necessary. Meanwhile, over time, the likelihood increases that there will be technological innovation that even the flexible ATSC DTV Standard may not be able to accommodate. In addition, given the pace of technological change, it is likely that there will be unforeseeable innovations that are incompatible with the ATSC DTV Standard. As long as there is a requirement in our rules that DTV licensees use only the ATSC DTV Standard, such innovations could not be introduced to consumers without a potentially costly and time-consuming Commission proceeding. That, in turn, could reduce the incentive to conduct the research and development that leads to innovation.

34.In addition to ensuring that the Commission's rules promote the rapid

[18] For an overview of the characteristics of the television broadcast market that contribute to the inertia of established standards see Bruce M. Owen and Steven S. Wildman, *Video Economics,* (Harvard University Press, 1992): 260–313. For a more general discussion of the characteristics of one-way and two-way communications systems that affect the adoption of technology see Michael L. Katz and Carl Shapiro, ''Systems Competition and Network Effects,'' *Journal of Economic Perspectives* (Spring 1994): 93–115.

[19] Katz and Shapiro, *supra* at 110.

[20] Stanley M. Besen and Joseph Farrell, ''Choosing How to Compete: Strategies and Tactics in Standardization, *Journal of Economic Perspectives* (Spring 1994): 117–131.

[21] *America's Watching—Public Attitudes Toward Television—1995, supra,* at p. 3. Even nearly 60% of viewing in cable television households is of the programming of broadcast television stations. NCTA, *Cable Television Developments, Fall 1995,* at 5.

[22] *See* Letter dated April 2, 1996, submitted for the record by Joseph P. Markoski of the law firm of Squire, Sanders & Dempsey on behalf of the EIA and the EIA Advanced Television Committee. The letter cites as precedent for incorporating the standard into our Rules by reference Sections 73.682(a)(14), 73.682(a)(21)(iv) and 15.31(a)(6) of the Commission's Rules. A similar, but alternative, proposal would be to publish the Standard not in our Rules but, rather, as an OET technical bulletin.

introduction of digital television broadcasting, we seek in this proceeding to adopt rules that encourage further innovation by those who have devised the ATSC DTV Standard as well as new entrants. We also seek to minimize our regulations and to have the regulations that we do adopt remain in effect no longer than necessary. We are mindful, finally, of the spirit of the recently adopted Telecommunications Act of 1996, which seeks, ''[t]o promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies.'' [23]

35. There are several options that arguably could accomplish these goals and we propose to adopt one, or more than one in combination.[24] The Commission could proceed under its current processes for regulatory evolution and change, which include consideration, as appropriate, of requests from parties to amend its rules and reviews initiated by the agency.

36. Alternatively, the Commission could commit itself to conduct a proceeding to review the Standard at some future time. If the Commission chooses this option, should a review be structured to place the burden of persuasion on those seeking to continue requiring a standard or on those seeking to eliminate the requirement? When should such a review take place? Should we select a specific date or should we link the review to an objective event?

37. Finally, the Commission could establish a period of time after which the ATSC DTV Standard no longer would be required or exclusive. At the conclusion of some meaningful period of time, digital licensees would be free to use any technology that does not interfere with users of the ATSC DTV Standard. If such a sunset provision were to be adopted, how should we determine when the mandatory aspects of our rules would expire?

38. Commenters are encouraged to comment on the foregoing and to propose other options. In so doing, they should provide a thorough explanation of the benefits and detriments of their options and an explanation of how their options serve the goals that we have outlined above.

39.Finally, we seek comment on alternative approaches to requiring a standard, including those the Commission has previously identified: (1) authorizing use of a standard and prohibiting interference to it, but not requiring the use of that standard; [25] and (2) adopting a standard for allocation and assignment purposes only.[26] We also seek comment on requiring use of some layers of the ATSC DTV Standard (described more fully above) but making others optional. For example, would it be desirable to require digital licensees to use the RF/transmission layer of the ATSC DTV Standard, while leaving them free to choose coding and compression technologies different from those described in the ATSC DTV Standard?

40. *Acceptability of the ATSC DTV Standard.* Although the ATSC DTV Standard has many supporters, it also has its critics. Some in the computer industry argue that the presence of interlaced scanning formats, the 60 Hz transmission rate, aspect ratios, colorimetry and non-square pixel spacing in the ATSC DTV Standard all merit further consideration.[27] Proponents of the ATSC DTV Standard respond that the Standard was developed for terrestrial broadcasting but has incorporated significant elements to enhance compatibility with computers.[28] With respect to the issue of the presence of interlaced scanning in the proposed Standard, the Grand Alliance argues that, ''* * * the Grand Alliance HDTV system emphasizes progressive scan—five of the six HDTV formats are progressive scan, and the Advisory Committee believes that the lone interlaced format should be 'migrated' to progressive as soon as improvements in digital compression and transmission technology make an over-1000 line, 60 Hz progressively scanned format achievable within a 6 MHz terrestrial channel.'' [29]

41. There also has been objection from cinematographers to the 16:9 aspect ratio contained in the ATSC DTV Standard. They are concerned that the proposed Standard may limit broadcasters' ability to display the full artistic quality of their work. They suggest, instead, that HDTV be displayed in a 2:1 aspect ratio. In reply, the Society of Motion Picture and Television Engineers (SMPTE) states that the 16:9 aspect ratio was established by the SMPTE Working Group on High Definition Electronic Production in 1985 on the basis of studies of the requirement for both motion picture and television production. Moreover, it states that the value of 16:9 for aspect ratio was decided upon only after long debate and that ''due consideration was given to the then current practices both in North America and around the world.'' [30] SMPTE states that it has been demonstrated that there is no difficulty in accommodating program material or motion picture films of any reasonable aspect ratio within the 16:9 format and that material originally composed for a 2:1 aspect ratio could be accommodated by leaving 11% of the vertical space unused.[31]

42. Additionally, we note that low power television station (''LPTV'') operators generally want to be included in the implementation of digital technology, and have suggested that, if LPTV is excluded, its continued viability would be jeopardized. LPTV commenters are concerned that any standards that could adversely affect their operations be thoroughly documented in this proceeding.[32]

43. We seek comment on these issues. We believe that those opposing our mandate of the ATSC DTV Standard should have the burden of persuasion as to why that standard should not be adopted.

V. Protection From Interference

44. Protection from interference is a fundamental Commission function that must be considered when introducing new technologies into spectrum allocations currently in use. In addition to criteria we will propose in the near future, when we propose an initial Table of DTV Allotments and associated technical criteria, there are some interference-related aspects of the ATSC DTV Standard that we shall explore now. In the following paragraphs, we solicit comment on limitations on stations using the ATSC DTV Standard that might be needed to avoid

[23] Preamble to Pub. L. 104–104, 110 Stat. 56 (1996).

[24] These options are not necessarily incompatible. For example, we could adopt a sunset provision but also provide for Commission review of the Standard prior to the sunset.

[25] *Second Inquiry, supra* at 6535.

[26] *Id.*

[27] *See* Comments of Apple Computer, Inc., and Microsoft Corporation, in response to the *Fourth Further Notice of Proposed Rule Making and Third Notice of Inquiry* in MM Docket No. 87–268 (''*Fourth Further Notice*''), 10 FCC Rcd 10540 (1995).

[28] Letter of Stanley Baron, President, Society of Motion Picture and Television Engineers (''SMPTE''), 28 August 1995, at 2, Memo of Paul Misener, ACATS, to Fiona Branton, ITI (''Misener Memo''), August 18, 1995, at 1–2. Reply Comments of the Digital HDTV Grand Alliance, in response to the *Fourth Further Notice*, at 38 and 40.

[29] Reply Comments of the HDTV Grand Alliance, *supra* at 40.

[30] Letter of Stanley Baron, President, Society of Motion Picture and Television Engineers, 18 August 1995, at 2.

[31] *Id.* at 3. In this regard it notes that there is a broad range of aspect ratios that has been employed in modern times and that there is no single aspect ratio that is usable universally.

[32] *See, e.g.*, Comments of Abacus Television in response to the *Fourth Further Notice*, at 24–25.

objectionable interference to reception of either existing NTSC service or the reception of other stations that use the ATSC DTV Standard.

45. First, we propose to adopt an emission mask, limiting the out-of-channel emissions from a DTV station transmitter, measured after any external filter that may be used and based on a measurement bandwidth of 500 kHz. We seek comment on the following emission mask: (A) at the channel edge, emissions attenuated no less than 35 dB below the average transmitted power; (B) more than 6 MHz from the channel edge, emissions attenuated no less than 60 dB below the average transmitted power; and (C) at any frequency between 0 and 6 MHz from the channel edge, emissions attenuated no less than the value determined using the following formula:

$$\text{Attenuation in dB} = 35 + [(\Delta f)^2/1.44]$$

Where: Δf=frequency difference in MHz from the edge of the channel

This proposal is derived from analysis of the ACATS test results for protection of adjacent channel stations. The attenuation level is based on an assumption that the average DTV power in a 6 MHz channel is 12 dB less than the NTSC station effective radiated power (ERP). This power difference provides approximately equal noise limited coverage for DTV and NTSC stations in the UHF frequency band. If DTV stations are permitted to operate in a co-located adjacent channel arrangement with average DTV power exceeding that assumed value, greater attenuation of the out-of-band emissions may be required.

46. Second, ACATS has reported interference from an upper-adjacent channel DTV signal to reception of an NTSC station that is related to the precise location of the DTV signal pilot carrier frequency.[33] To prevent interference to NTSC receivers from this source, we are proposing to require an ATSC DTV Standard station pilot frequency to be located 5.082138 MHz above the visual carrier of the lower adjacent channel NTSC station. The above stated frequency difference between the NTSC visual carrier and the DTV VSB pilot would need to be maintained within a tolerance of ±3 Hz.[34]

47. Third, we propose to specify the maximum power for each DTV station as an average power across the occupied bandwidth, so an appropriate method or methods of determining operating power will be different from the established NTSC procedures, which determine the power transmitted during each synchronizing pulse (peak power). We propose that stations using the ATSC DTV Standard would be allowed to determine their average power using conventional RMS averaging power meters.

48. We seek comment on all of the foregoing including whether the proposed limits on out-of-channel emissions, pilot carrier frequency tolerance and average power determination are appropriate and represent the minimum necessary requirements for controlling the interference potential of stations operating in conformance with the ATSC DTV Standard. We also seek comment on whether the proposed limits are sufficient for this purpose, or if other parameters also need to be constrained.

49. In addition to rules restricting broadcast stations that relate to interference concerns, there are many rules that establish procedures or have been applied broadly to all broadcast stations. We propose to modify many of them to include DTV, or to adapt them and create new DTV rules, as appropriate so that eligible licensees might move quickly to introduce this new technology to consumers. A preliminary list of these technical and procedural rules is attached as Appendix A. We seek comment on whether they should be modified to include DTV, be changed to treat DTV differently than NTSC or other broadcast services are treated, or if they need not be applied to DTV. Commenters addressing this issue should provide specific recommendations, rule-by-rule, as to the modifications they advocate.

VI. Interoperability

50. *Cross-Industry Interoperability.* Compatibility with other transmission forms and media applications has been an important issue throughout this proceeding. Since its inception, ACATS emphasized the need for DTV broadcasting technology to be interoperable with alternative media.[35] In addition, ACATS has recognized that interoperability takes on critical importance given the future needs for high resolution digital imagery and the development of a National Information Infrastructure. ACATS believes that the ATSC DTV Standard is suitably interoperable with other video delivery media and imaging systems, including cable television, direct broadcast satellite, and computer systems.

51. The working party and an ''interoperability review panel'' also adopted a list of eleven characteristics critical to interoperability based on the needs and desires exhibited by alternative media advocates.[36] ACATS believes the Grand Alliance video system adequately addresses all eleven factors and strikes the best balance between various technical considerations and needs of different industries. It is a balance that has been endorsed by, among others, a subgroup of the Federal Government's Information Infrastructure Task Force, the 1994 NIST/ARPA Workshop on Advanced Digital Video, and the Information Technology Industry Council (''ITI'').[37] We request comment on the level of interoperability between the ATSC DTV Standard and alternative media and on the ACATS Report's conclusion that it is adequate. Are there any critical interoperability problems that remain? What additional actions, if any, might the Commission take to facilitate interoperability? We ask that in commenting on this issue, commenters provide specific technical or economic analyses upon which we can make our decision.

52. With digital technologies, differences in transmission methods could develop between broadcast and alternative media if an appropriate variant of the ATSC DTV Standard is not required for alternative media. There is no guarantee that alternative media will choose the ATSC DTV Standard. In our *Second Inquiry,* we expressed ''our tentative view that ATV compatibility among alternative media also may develop in an appropriate manner without government involvement.'' [38] While we recognized that there may be benefits to compatibility, we added that ''we do not intend to retard the introduction of ATV on non-broadcast media, nor do we intend at this point to require compatibility among the various media or set specific signal or equipment

[33] ACATS Final Technical Report at 5.2.8.

[34] *See* Annex to ACATS Report, Record of Test Results for Digital HDTV Grand Alliance System (October 1995), at I–14–67.

[35] This description of the ACATS position on interoperability is largely derived from the ACATS Report at 15–16.

[36] ACATS Report, Appendix I.

[37] ACATS Report at 16. *See also* Information Technology Industry Council, ''Position Statement on Standards for Advanced Television,'' October 31, 1995, at 1–2. We note that subsequently ITI stated that the ATSC DTV Standard ''will be an important part of a diverse and flexible NII'' and ''urges the Commission to promptly adopt and implement'' it, but without the interlace options, stating that it believes ''a truly interoperable ATV system will require the exclusive use of progressive scan.'' *See* Comments of the Industry Information Technology Industry Council filed in response to the *Fourth Further Notice,* at 2–3.

[38] *Second Inquiry, supra* at 6537.

standards for this purpose.''[39] We seek comment on whether this view remains correct.

53. In the Cable Television Consumer Protection and Competition Act of 1992 (1992 Cable Act), Congress expressed concern about compatibility between consumer electronics equipment and cable systems.[40] We are aware of concern within the broadcast industry that, for example, cable systems may voluntarily adopt QAM modulation in lieu of VSB modulation specified in the ATSC DTV Standard. Some cable system operators suggest deploying a DTV system that does not use B-frames. While we understand that technical distinctions between broadcast and cable may at some extreme cause consumer harm, we also recognize that it is in the economic interests of the providers to ensure consumers have access to the most desirable programming. Today, nearly 60 percent of cable viewing hours are spent watching broadcast programming, much of which is provided under retransmission consent agreements. In light of these concerns, we seek comment on whether the public interest would be served by Commission involvement to assure compatibility between digital broadcast standards and digital cable standards. Similarly, there would appear to be advantages and disadvantages to Commission involvement to assure compatibility between other existing and potential competing video delivery methods, including DBS, MMDS, Instructional Television Fixed Service (''ITFS'') and open video systems. We seek comment on the considerations that apply in these different environments.

VII. Other Issues

54. *Receiver Standards and Related Features.* In the *Fourth Further Notice,* we solicited comment on whether DTV receivers should be required to have the ability to receive both SDTV and HDTV transmissions, whether we should regulate how such signals should be displayed and whether permitting the manufacture only of ''all format'' receivers capable of displaying NTSC, SDTV and HDTV signals would be consistent with the All-Channel Receiver Act or otherwise in the public interest.[41]

55. Now, however, we have the ATSC DTV Standard before us. In Annex E, it indicates that our current TV rules should be appropriate for the digital TV service with respect to tuner performance, direct pickup and closed captioning.[42] It notes that a 10 dB ''noise figure'' was used for spectrum planning purposes and it expects that value to be appropriate. Additionally, the ATSC DTV Standard indicates that any decoder interface standards we adopt for NTSC ''cable-ready'' receivers in ET Docket No. 93–7 will almost certainly provide a basis for rules concerning this aspect of digital TV receivers.[43] In its Final Report, the Technical Subgroup of ACATS recommended that the Commission require that receivers (and set-top boxes designed to receive ATV broadcasts for display on NTSC sets) be able to receive adequately all DTV formats.[44] In response to the *Fourth Further Notice,* some commenters expressed concerned that such a requirement might have a large effect on either reception quality or receiver costs.[45] We request comment on the importance of this requirement for compatibility between receivers and broadcast signals. What level of reception performance should be considered adequate? Given our proposal that licensees must use the ATSC DTV Standard, is such a requirement necessary? We seek comment on necessary adjustments to the existing TV receiver rules so that they cover digital TV receivers.

56. *Licensing Technology.* We have previously stated that in order for DTV implementation to be fully realized, the patents on a DTV standard would have to be licensed to other manufacturing companies on reasonable and nondiscriminatory terms.[46] In response, the Advisory Committee's testing procedures have required proponents of any DTV system to follow American National Standards Institute patent policies which require assurance that: (1) a license will be made available without compensation to applicants desiring to utilize the license for the purpose of implementing the standard; or (2) a license will be made available to applicants under reasonable terms and conditions that are demonstrably free of any unfair discrimination.[47] We seek comment on whether we should require more detailed information on the specific terms, if any, for patenting and licensing the ATSC DTV Standard.

57. *International Trade.* We recognize that other countries may choose other digital television systems that they feel more appropriately meet their needs, expectations or national priorities. Their systems may well be incompatible with the ATSC DTV Standard. Would our proposal here serve to enhance competitiveness of a U.S. system worldwide and what are the benefits associated with such a result? Will a requirement to use the ATSC DTV Standard as the sole authorized system exacerbate or enhance the opportunities of U.S. based content providers, equipment manufacturers or other parties? Additionally, to increase international compatibility, the Grand Alliance adopted the MPEG–2 video stream syntax for encoding of video and the MPEG–2 transport stream syntax for the packetization and multiplexing of video, audio and data signals. Should we pursue additional measures to facilitate international compatibility?

58. *Captioning.* Section 305 of the Telecommunications Act of 1996[48] requires the Commission, within 18 months after the date of enactment of the Telecom Act, to prescribe regulations to assure that video programming is fully accessible through the provision of closed captions. The ATSC DTV Standard reserves a fixed 9600 bits-per-second data rate for closed captioning.[49] We understand that EIA's R4.3 Subcommittee on TV Data Systems is considering a standard to define the syntax for the data, as well as the issue of how to include closed captioning information for multichannel SDTV transmissions. Any comments parties may have concerning the ability of DTV to include captioning and how the Commission should implement

[39] *Id.*

[40] *See* Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102–385, 106 Stat. 1460, (1992). Section 17 of the 1992 Cable Act added a new Section 624A to the Communications Act of 1934, which has been implemented by *First Report and Order* in ET Docket No. 93–7, 9 FCC Rcd 1981 (1994). Section 301 of the Telecom Act, in turn, has modified Section 624A.

[41] *Id.* at 10552.

[42] ATSC DTV Standard at 61–64. Note that it describes ''appropriate'' as meaning that the existing rules for NTSC which are referenced contain most elements of future rules for digital television and, further, the rules may be expanded to cover digital television.

[43] *First Report and Order* in ET Docket No. 93–7, *supra.* Although the Commission adopted requirements for television receivers to be marketed as ''cable-ready,'' an open issue in that proceeding is a standard for a decoder interface.

[44] ACATS Report at 20.

[45] *See, e.g.,* Comments of the Electronic Industries Association and the Advanced Television Committee at 16. *See also* Comments of Zenith Electronics Corporation at 4.

[46] *Notice of Proposed Rule Making* in MM Docket No. 87–268, 6 FCC Rcd 7024, 7035 (1991); *Second Report and Order/Further Notice of Proposed Rule Making* in MM Docket No. 87–268, 7 FCC Rcd 3340, 3358 (1992); *Memorandum Opinion and Order/ Third Report and Order/Third Further Notice of Proposed Rule Making* in MM Docket 87–268, 7 FCC Rcd 6924, 6982 (1992).

[47] Advisory Committee ATV Test Procedures Test Management Plan at § 2.1.

[48] Pub. L. No. 104–104, 110 Stat. 56 (1996).

[49] ATSC DTV Standard at 26.

captioning requirements for DTV may be filed in response to this *Further Notice.*

Administrative Matters

59. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 C.F.R. Sections 1.415 and 1.419, interested parties may file comments on or before 45 days after publication in the Federal Register, and reply comments on or before 30 days after comments are due. To file formally in this proceeding, you must file an original plus six copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original plus eleven copies. You should send comments and reply comments to Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C. 20554.

60. This is a non-restricted notice and comment rulemaking proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission Rules. *See generally* 47 C.F.R. Sections 1.1202, 1.1203, and 1.1206(a).

Initial Regulatory Flexibility Act Statement

I. Reason for Action

The Commission seeks comment on a variety of issues concerning whether to adopt a technical standard for digital television and, if so, whether that standard should be the one reported to the Commission by the Advisory Committee on Advanced Television Systems.

II. Objectives of the Action

The *Fifth Further Notice of Proposed Rule Making* solicits comment on a variety of issues, in order to establish an accurate, comprehensive, reliable record on which to base the Commission's ultimate decisions in this proceeding. The record established from comments filed in response to this decision, as well as other Commission decisions, and the combined efforts of the Commission, the affected industries, the Advisory Committee on Advanced Television Service, and the DTV testing process, will lead to implementation of DTV in the most harmonious fashion and to selection of the most desirable DTV system.

III. Legal Basis

Authority for this action may be found at 47 U.S.C. §§ 154 and 303.

IV. Reporting, Recordkeeping and Other Compliance Requirements

Such requirements are not proposed in this phase of the proceeding, but may be raised and comment sought in future decisions in this proceeding.

V. Federal Rules Which Overlap, Duplicate or Conflict With These Rules

There are no rules which would overlap, duplicate, or conflict with these rules.

VI. Description, Potential Impact and Number of Small Entities Involved

There are approximately 1,546 UHF and VHF, commercial and educational television stations, 2,587 UHF translator stations, 2,275 VHF translator stations, and 1,825 UHF and VHF low power television stations which would be affected by decisions reached in this proceeding. The impact of actions taken in this proceeding on small entities would ultimately depend on the final decisions taken by the Commission. However, the Commission, in taking future action will continue to balance the need to provide the public with affordable, flexible, accessible digital broadcast television service with the economic and administrative interests of the affected industries.

VII. Any Significant Alternatives Minimizing the Impact on Small Entities Consistent with Stated Objectives.

This *Fifth Further Notice of Proposed Rule Making* is intended to examine the issue of what, if any, transmission standard for digital television should be adopted by the Commission. In so doing, we are soliciting comments and suggestions that hopefully will represent the views of all of the industries concerned, and thus the Commission will be better able to minimize whatever negative impact might face small entities as a result of our decisions.

Ordering Clause

61. Accordingly, *it is ordered* That pursuant to the authority contained in Sections 4 and 303 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154 and 303, this *Fifth Further Notice of Proposed Rule Making* IS ADOPTED.

62. Additional Information: For additional information regarding this proceeding, contact Saul Shapiro (202–418–2600) or Roger Holberg (202–418–2134), Mass Media Bureau.

63. As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals suggested in this document. The IRFA is set forth above. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the Notice, but they must have a separate and distinct heading designating them as responses to the Initial Regulatory Flexibility Analysis. The Secretary shall send a copy of this *Fifth Further Notice of Proposed Rule Making,* including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Public Law 96–354, 94 Stat. 1164, 5 U.S.C. Section 601 *et seq.* (1981).

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Appendix A

Additional procedural or general broadcast rules that may be modified or adapted for DTV.

Sec.
73.607 Availability of channels.
73.611 Reference points and distance computations.
73.612 Protection from interference.
73.615 Administrative changes in authorizations.
73.621 Noncommercial educational TV stations.
73.635 Use of common antenna site.
73.684 Prediction of coverage.
73.685 Transmitter location and antenna system.
73.686 Field strength measurements.
73.688 Indicating instruments.
73.1010 Cross reference to rules in other parts.
73.1015 Truthful written statements and responses to Commission inquiries and correspondence.
73.1030 Notifications concerning interference to radio astronomy, research and receiving installations.
73.1120 Station location.
73.1125 Station main studio location.
73.1201 Station identification.
73.1202 Retention of letters received from the public.
73.1206 Broadcast of telephone conversations.
73.1207 Rebroadcasts.
73.1208 Broadcast of taped, filmed, or recorded material.
73.1209 References to time.
73.1211 Broadcast of lottery information.
73.1212 Sponsorship identification; list retention; related requirements.
73.1213 Antenna structure, marking and lighting.
73.1216 Licensee-conducted contests.

73.1217 Broadcast hoaxes.
73.1225 Station inspections by FCC.
73.1226 Availability to FCC of station logs and records.
73.1230 Posting of station and operator licenses.
73.1250 Broadcasting emergency information.
73.1510 Experimental authorizations.
73.1515 Special field test authorizations.
73.1520 Operation for tests and maintenance.
73.1580 Transmission system inspections.
73.1590 Equipment performance measurements.
73.1610 Equipment tests.
73.1615 Operation during modification of facilities.
73.1620 Program tests.
73.1635 Special temporary authorizations (STA).
73.1660 Acceptability of broadcast transmitters.
73.1665 Main transmitters.
73.1670 Auxiliary transmitters.
73.1675 Auxiliary antennas.

[FR Doc. 96–13394 Filed 5–28–96; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 95–28; Notice 7]

RIN 2127–AF73

Lamps, Reflective Devices and Associated Equipment; Advisory Committee on Regulatory Negotiation Public Meeting

AGENCY: National Highway Traffic Safety Administration (NHTSA); DOT.

ACTION: Schedule of Advisory Committee on Regulatory Negotiation Meeting.

SUMMARY: This document announces the final meetings of NHTSA's Advisory Committee on Regulatory Negotiation (concerning the improvement of headlamp aimability performance and visual/optical headlamp aiming).

DATES: Wednesday-Thursday, May 29–30, 1996.

ADDRESSES: The meetings will be held at the Federal Mediation and Conciliation Service, 2100 K Street, NW., Washington, D.C. The meeting of May 29 is scheduled for noon to 5:00 p.m. The meeting of May 30 will be from 9:00 a.m. to 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Jere Medlin, Office of Vehicle Safety Standards, NHTSA (Phone: 202–366–5276; FAX: 202–366–4329). *Mediator:* Lynn Sylvester, Federal Mediation and Conciliation Service, (phone: 202–606–9140; FAX: 202–606–3679).

SUPPLEMENTARY INFORMATION: The final meetings of the Advisory Committee on Regulatory Negotiation (concerning the improvement of headlamp aimability performance and visual/optical headlamp aiming) will be held on May 29–30, at which time it is anticipated that final consensus will be reached on a notice of proposed rulemaking on the subject of the negotiations.

The meetings are open to the public.

Issued: May 24, 1996.

Barry Felrice,

Associate Administrator for Safety Performance Standards.

[FR Doc. 96–13556 Filed 5–24–96; 12:33 pm]

BILLING CODE 4910–59–P

Notices

Federal Register
Vol. 61, No. 104
Wednesday, May 29, 1996

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 Research Service

Notice of Availability for Licensing and Intent To Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of Availability and Intent.

SUMMARY: Notice is hereby given that U.S. Patent Application Serial No. 08/005,722, ''Insect Monitoring Trap,'' filed January 19, 1993, is available for licensing and that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant an exclusive license to Consep, Inc. of Bend, Oregon.

DATES: Comments must be received on or before August 27, 1996.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, Room 415, Building 005, BARC-West, Baltimore Boulevard, Beltsville, Maryland 20705–2350.

FOR FURTHER INFORMATION CONTACT: June Blalock of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5989.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights to this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as Consep, Inc. has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within ninety days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

R.M. Parry, Jr.,

Assistant Administrator.

[FR Doc. 96–13326 Filed 5–28–96; 8:45 am]

BILLING CODE 3410–03–M

Animal and Plant Health Inspection Service

[Docket No. 96–030–1]

Availability of Environmental Assessments and Findings of No Significant Impact

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has prepared an environmental assessment and a finding of no significant impact for the shipment of unlicensed veterinary biological products for field testing. A risk analysis, which forms the basis for the environmental assessment, has led us to conclude that shipment of the unlicensed veterinary biological products for field testing will not have a significant impact on the quality of the human environment. Based on our finding of no significant impact, we have determined that an environmental impact statement need not be prepared.

ADDRESSES: Copies of the environmental assessment and finding of no significant impact may be obtained by writing to the person listed under **FOR FURTHER INFORMATION CONTACT.** Please refer to the docket number and publication date of this notice, as well as the first two words of the product name, when requesting copies. Copies of the environmental assessment and finding of no significant impact (as well as the risk analysis with confidential business information removed) are also available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect those documents are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Jeanette Greenberg, Veterinary Biologics, BBEP, APHIS, 4700 River Road Unit 148, Riverdale, MD 20737–1237, telephone (301) 734–8400, fax (301) 734–8910, or E-mail: jgreenberg@aphis.usda.gov.

SUPPLEMENTARY INFORMATION: Under the Virus-Serum-Toxin Act (21 U.S.C. 151 *et seq.*), a veterinary biological product must be shown to be pure, safe, potent, and efficacious before a veterinary biological product license may be issued. A field test is generally necessary to satisfy prelicensing requirements for veterinary biological products. In order to ship an unlicensed veterinary biological product for the purpose of conducting a proposed field test, a person must receive authorization from the Animal and Plant Health Inspection Service (APHIS).

In determining whether to authorize shipment for field testing of the unlicensed veterinary biological products referenced in this notice, APHIS conducted a risk analysis to assess the potential effect of these products on the safety of animals, public health, and the environment. Based on that risk analysis, APHIS has prepared an environmental assessment. APHIS has concluded that shipment of the unlicensed veterinary biological products for field testing will not significantly affect the quality of the human environment. Based on this finding of no significant impact, we have determined that there is no need to prepare an environmental impact statement. An environmental assessment and finding of no significant impact have been prepared by APHIS for the shipment of the following unlicensed veterinary biological products for field testing:

Requestor	Products	Field test locations
Rhone Merieux, Inc	Canine Distemper-Adenovirus Type 2-Coronavirus-Parainfluenza-Parvovirus Vaccine, Modified Live Virus, Live Canarypox Vector, Leptospira Bacterin, Code 46J9.R1. Canine Distemper-Adenovirus Type 2-Coronavirus-Parainfluenza-Parvovirus Vaccine, Modified Live Virus, Live Canarypox Vector, Code 1591.R1.	California, Colorado, Florida, Georgia, Illinois, Maine, Missouri, New Jersey, New York, Ohio, Oregon, South Carolina, Virginia.

The environmental assessment and finding of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (*42 U.S.C. 4321 et seq.*), (2) Regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372; 60 FR 6000–6005, February 1, 1995).

Unless substantial environmental issues are raised in response to this notice, APHIS intends to authorize the shipment of the above products and the initiation of the field tests on June 12, 1996.

Done in Washington, DC, this 23rd day of May 1996.

William S. Wallace,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 96–13408 Filed 5–28–96; 8:45 am]

BILLING CODE 3410–34–P

ASSASSINATION RECORDS REVIEW BOARD

Sunshine Act Meeting

DATES: June 4–5, 1996.

PLACE: ARRB, 600 E Street, NW., Washington, DC.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Review and Accept Minutes of Closed Meeting.
2. Review of Assassination Records.
3. Other Business.

CONTACT PERSON FOR MORE INFORMATION: Thomas Samoluk, Associate Director for Communications, 600 E Street, NW., Second Floor, Washington, DC 20530. Telephone: (202) 724–0088; Fax: (202) 724–0457.

David G. Marwell,

Executive Director.

[FR Doc. 96–13482 Filed 5–23–96; 4:52 pm]

BILLING CODE 6118–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Florida Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Florida Advisory Committee to the Commission will convene at 9:00 a.m. and adjourn at 5:00 p.m. on Tuesday, June 11, 1996, at the OMNI Jacksonville Hotel, 245 Water Street, Jacksonville, Florida 32202. The purpose of the meeting is to hold a followup briefing to the committee report, Racial and Ethnic Tensions in Florida, and to discuss the current status of race relations in Jacksonville. The meeting is open to the public.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Rabbi Solomon Agin, 941–433–0018, or Bobby D. Doctor, Director of the Southern Regional Office, 404–730–2476 (TDD 404–730–2481). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 20, 1996.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 96–13355 Filed 5–28–96; 8:45 am]

BILLING CODE 6335–01–P

Agenda and Notice of Public Meeting of the Michigan Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Michigan Advisory Committee to the Commission will convene at 9:00 a.m. and adjourn at 6:00 p.m. on Tuesday, June 18, 1996, at the Westin Hotel, Renaissance Center, Detroit, Michigan 48243. The purpose of the meeting is to hold a Michigan Consultation: Focus on Affirmative Action.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Janice Frazier, 313–259–8180, or Constance Davis, Director of the Midwestern Regional Office, 312–353–8311 (TDD 312–353–8362). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 20, 1996.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 96–13356 Filed 5–28–96; 8:45 am]

BILLING CODE 6335–01–P

Sunshine Act Meeting

May 23, 1996.

AGENCY: U.S. Commission on Civil Rights.

DATE AND TIME: Friday, June 14, 1996, 9:30 a.m.

PLACE: U.S. Commission on Civil Rights, 624 Ninth Street NW., Room 540, Washington, DC 20425.

STATUS:

AGENDA

I. Approval of Agenda
II. Approval of Minutes of May 10, 1996 Meeting
III. Announcements
IV. Staff Director's Report
V. General Programmatic Theme—FY 1998
VI. Future Agenda Items
11:00 a.m. Briefing on Consumer Racism and Sexism

CONTACT PERSON FOR FURTHER INFORMATION: Barbara Brooks, Press and Communications (202) 376–8312.

Miguel A. Sapp,

Parliamentarian.

[FR Doc. 96–13483 Filed 5–23–96; 4:53 pm]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

Agency: Patent and Trademark Office (PTO).

Title: Initial Patent Application.

Form Numbers: Agency—PTO/SB/01/02/03/04/05/17/18/19/20.

Agency Approval Number: 0651–0032.

Type of Request: Revision of a currently approved collection.

Burden: 2,387,000 hours.

Number of Respondents: 221,000.

Avg. Hours Per Response: 10.8 hours.

Needs and Uses: The purpose of this information collection is to permit the Patent and Trademark Office to determine whether an application meets the criteria set forth in the patent statutes and regulations. The application paper quality, size, and format requirements will facilitate the automatic processing and digital image and/or optical character recognition scanning of application materials. The standard Fee Transmittal form (PTO/SB/17), New Utility Patent Application Transmittal form (PTO/SB/05), New Design Patent Application Transmittal form (PTO/SB/18), New Plant Patent Application Transmittal form (PTO/SB/19), Plant Color Coding Sheet (PTO/SB/20), Declaration (PTO/SB/01), and Plant Patent Application Declaration (PTO/SB/03) will assist applicants in complying with the requirements of the patent statutes and regulations, and will further assist the PTO in processing and examination of the application.

Affected Public: Any individual filing a patent application.

Frequency: When filing a patent application.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Maya A. Bernstein (202) 395–3785.

Copies of the above information collection proposal can be obtained by calling or writing DOC clearing officer, Linda Engelmeier, Department of Commerce, Room 5327.

Written comments and recommendations for the proposed information collection should be sent to Maya A. Bernstein, OMB Desk Officer, Room 10236, New Executive Office Building, Washington, D.C. 20230.

Dated: May 22, 1996.

Linda Engelmeier,

Department Clearance Officer, Office of Management and Organization.

[FR Doc. 96–13316 Filed 5–28–96; 8:45 am]

BILLING CODE 3510–16–P

Bureau of the Census

Survey of Plant Capacity

ACTION: Proposed Agency Information Collection Activity; Comment Request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before July 29, 1996.

ADDRESSES: Direct all written comments to Linda Engelmeier, Acting Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Elinor Champion, Bureau of the Census, Room 2135 FB–4, Washington, DC 20233, Telephone (301) 457–4683.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau plans to conduct a survey of plant capacity. The Census Bureau has conducted this survey annually from 1973 through 1988. Then in 1990, 1992, and 1994 we collected 2 years worth of data concurrently. This request is regarding the 1996 survey which will collect data for 1995 and 1996. Data are gathered from a sample of manufacturing plants in the United States. The survey forms will collect data on the value of plant production during actual operations and at full production capability. The survey will also collect estimates of production under a national emergency situation. Data are used in measuring inflationary pressures, capital flows, in understanding productivity determinants, and analyzing and forecasting economic and industrial trends. The survey results will be used by such agencies as the Federal Reserve Board, Federal Emergency Management Agency, International Trade Administration, and the Department of Defense.

II. Method of Collection

The Census Bureau will use mail out/mail back survey forms to collect the data. Companies will be asked to respond to the survey within 30 days of the initial mailing. Letters encouraging participation will be mailed to companies that have not responded by the designated time.

III. Data

OMB Number: 0607–0175.

Form Number: MQ–C1.

Type of Review: Regular.

Affected Public: Businesses or other for profit organizations.

Estimated Number of Respondents: 17,000.

Estimated Time Per Response: 2 hours.

Estimated Total Annual Burden Hours: 34,000.

Estimated Total Annual Cost: $589,900.

IV. Request for Comments

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

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 22, 1996.

Linda Engelmeier,

Acting Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 96–13328 Filed 5–28–96; 8:45 a.m.]

BILLING CODE 3510–07–P

International Trade Administration

[A–421–805]

Aramid Fiber Formed of Poly Para-Phenylene Terephthalamide From the Netherlands; Extension of Time Limit of Antidumping Duty Administrative Review

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

ACTION: Notice of Extension of Time Limit of Antidumping Duty Administrative Review.

SUMMARY: The Department of Commerce (the Department) is extending the time limit for the final results in the administrative review of the antidumping duty order on aramid fiber formed of poly para-phenylene terephthalamide (PPD–T aramid) from the Netherlands, covering the period December 16, 1993, through May 31, 1995, because it is not practicable to complete the review within the time limits mandated by the Tariff Act of 1930, as amended (the Act).

EFFECTIVE DATE: May 29, 1996.

FOR FURTHER INFORMATION CONTACT: Donald Little or Maureen Flannery, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On April 9, 1996, the Department published the preliminary results of this review (*see Aramid Fiber Formed of Poly Para-Phenylene Terephthalamide from the Netherlands; Preliminary Results of Antidumping Administrative Review,* 61 FR 15766). The review covers the period December 16, 1993, through May 31, 1995.

It is not practicable to complete this review within the time limits mandated by section 751(a)(3)(A) of the Act (*see* Memorandum for Paul Joffe from Joe Spetrini, Extension of Time Limits for 1993–95 Antidumping Duty Administrative Review of Aramid Fiber Formed of Poly Para-Phenylene Terephthalamide from the Netherlands, May 9, 1996). Therefore, in accordance with that section, the Department is extending the time limits for the final results to September 25, 1996. The Department adjusted the time limits by 28 days due to the government shutdowns, which lasted from November 14, 1995, to November 20, 1995, and from December 15, 1995, to January 6, 1996. *See* Memorandum to the file from Susan G. Esserman, Assistant Secretary for Import Administration, January 11, 1996. These extensions are in accordance with section 751(a)(3)(A) of the Act.

Dated: May 16, 1996.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 96–13321 Filed 5–28–96; 8:45 am]

BILLING CODE 3510–DS–M

[A–602–803]

Certain Corrosion-Resistant Carbon Steel Flat Products From Australia: Preliminary Results of Antidumping Duty Administrative Review

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

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review.

SUMMARY: In response to a request by the petitioners, Bethlehem Steel Corporation, U.S. Steel Group, a Unit of USX Corporation, Inland Steel Industries, Inc., LTV Steel Company, Inc., National Steel Corporation, AK Steel Corporation, Gulf States Steel Inc. of Alabama, Sharon Steel Corporation, WCI Steel, Inc., and Lukens Steel Company, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on *Certain Corrosion-Resistant Carbon Steel Flat Products from Australia.* This review covers The Broken Hill Proprietary Company, Ltd. (BHP), the sole manufacturer/exporter of the subject merchandise to the United States during the period of review (POR) August 1, 1994, through July 31, 1995. Because BHP failed to submit a response to our questionnaire, we have preliminarily determined to use facts otherwise available for cash deposit and assessment purposes.

Interested parties are invited to comment on these preliminary results. Parties who submit argument in this proceeding are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument.

EFFECTIVE DATE: May 29, 1996.

FOR FURTHER INFORMATION CONTACT: Robert Bolling or Jean Kemp, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–3793.

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the Federal Register on May 11, 1995 (60 FR 25130).

SUPPLEMENTARY INFORMATION:

Background

On July 9, 1993, the Department published in the Federal Register (58 FR 37079) the final affirmative antidumping duty determination on certain corrosion-resistant carbon steel flat products from Australia, and published an antidumping duty order on August 19, 1993 (58 FR 44161). On August 1, 1995, the Department published in the Federal Register (60 FR 39150) a notice of ''Opportunity to Request an Administrative Review'' of the antidumping duty order on certain corrosion-resistant carbon steel flat products from Australia. On August 31, 1995, petitioners requested an administrative review of BHP, a manufacturer/exporter of this merchandise to the United States. We initiated the review on September 8, 1995 (60 FR 46817).

Scope of the Review

Imports covered by this administrative review constitute one ''class or kind'' of merchandise: certain corrosion-resistant carbon steel flat products. The class or kind includes flat-rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the HTS under item numbers 7210.31.0000, 7210.39.0000, 7210.41.0000, 7210.49.0030,

7210.49.0090, 7210.60.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.21.0000, 7212.29.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.5000, 7217.12.1000, 7217.13.1000, 7217.19.1000, 7217.19.5000, 7217.22.5000, 7217.23.5000, 7217.29.1000, 7217.29.5000, 7217.32.5000, 7217.33.5000, 7217.39.1000, and 7217.39.5000. Included are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been ''worked after rolling'')—for example, products which have been bevelled or rounded at the edges. Excluded are flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead (''terne plate''), or both chromium and chromium oxides (''tin-free steel''), whether or not painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating. Also excluded are clad products in straight lengths of 0.1875 inch or more in composite thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness. Also excluded are certain clad stainless flat-rolled products, which are three-layered corrosion-resistant carbon steel flat-rolled products less than 4.75 millimeters in composite thickness that consist of a carbon steel flat-rolled product clad on both sides with stainless steel in a 20%–60%–20% ratio. These HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers BHP and the period August 1, 1994 through July 31, 1995 (POR).

Use of Facts Otherwise Available

We preliminarily determine, in accordance with section 776 of the Act, that the use of facts available is appropriate for BHP because it did not respond to the Department's antidumping questionnaire. We sent BHP a questionnaire on September 14, 1995, with deadlines of October 16, 1995 for section A and November 13, 1995 for the remaining sections. On October 11, 1995, BHP requested that the Department extend the deadlines for section A and all other portions of the questionnaire for one month. On October 13, 1995, the Department granted BHP a one-week extension for its section A response. However, the Department did not grant an extension for the remaining sections because we are conducting this review under statutory deadlines. Section A of the Department's questionnaire is a general information section that the Department uses to gather information on the respondents, (corporate structure, distribution process, sales process, accounting/financial practices, merchandise, aggregate quantity and value of sales, further manufacture or assembly in the United States, etc.). On October 23, 1995, we received a response to section A. Since section A is the general information section of the Department's questionnaire, the only relevant numerical data provided in section A is the aggregate quantity and value of sales. Sections B through E of the Department's questionnaire provide the Department with transaction-specific pricing and cost data used in the Department's calculation methodology. On November 20, 1995, BHP informed the Department that it no longer intended to continue to participate in this review. We did not receive a response to sections B through E of the questionnaire. Therefore, we must make our preliminary determination based on facts otherwise available (section 776(a) of the Act).

The Department finds that, in not responding to the questionnaire, BHP failed to cooperate by not acting to the best of its ability to comply with a request for information from the Department. Therefore, pursuant to section 776(b) of the Act, we may, in making our determination, use an adverse inference in selecting from the facts otherwise available. This adverse inference may include reliance on data derived from the petition, a previous determination in an investigation or review, or any other information placed on record. Accordingly, in this case, we preliminary assign to BHP a margin of 39.11 percent, the margin calculated in the first administrative review using information provided by BHP in that review (see *Certain Corrosion-Resistant Carbon Steel Flat Products from Australia, Final Results of Antidumping Duty Administrative Review*, 61 FR 14049–14057 (March 29, 1996)).

Because the margin selected for this review is based on information obtained in the course of an earlier segment of the proceeding, the Department is required, pursuant to section 776(c) of the Act, to corroborate this information to the extent practicable from independent sources reasonably at its disposal. This simply means that the Department will satisfy itself that the secondary information used has probative value (See Statement of Administrative Action accompanying the URAA, published in H. Doc. 103–106, 103d Cong., 2d Sess. At 870).

To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. However, unlike other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. The only source for margins is administrative determinations. Thus, in an administrative review, if the Department chooses as total adverse facts available a calculated dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin for that time period. With respect to the relevance aspect of corroboration, however, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin (see, e.g., *Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (February 22, 1996), where the Department disregarded the highest margin in that case as adverse BIA because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin). In this case, we have used the margin calculated in the most recently completed segment of this proceeding, the previous administrative review (see *Certain Corrosion-Resistant Carbon Steel Flat Products from Australia, Final Results of Antidumping Duty Administrative Review*, 61 FR 14049–14057 (March 29, 1996)). The margin calculated in the above first administrative review, 39.11 percent, was a calculated rate, based on information provided by BHP. There are no circumstances indicating that this margin is not relevant for use as adverse facts available.

Preliminary Results of Review

As a result of our review, we preliminarily determine that a margin of 39.11 percent exists for BHP for the period August 1, 1994 through July 31, 1995.

Parties to the proceeding may request disclosure within 5 days of the date of publication of this notice. Any interested party may request a hearing within 10 days of publication. Case

briefs and/or written comments from interested parties may be submitted no later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in the case briefs and comments, may be filed not later than 37 days after the date of publication of this notice. Any hearing, if requested, will be held 44 days after the date of publication, or the first workday thereafter. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such written comments or at a hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Upon completion of this administrative review, the Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of corrosion-resistant steel from Australia entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(c) of the Tariff Act: (1) the cash deposit rate for the reviewed company will be the rate established in the final results of this review; (2) for exporters not covered in this review, but covered in previous reviews or the original less-than-fair-value (LTFV) investigation, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, previous reviews, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be that established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be the ''All Others'' rate established in the original LTFV investigation, which is 24.96 percent.

These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and this notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: May 20, 1996.

Paul L. Joffe,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–13430 Filed 5–28–96; 8:45 am]

BILLING CODE 3510–DS–P

[A–403–801]

Fresh and Chilled Atlantic Salmon From Norway; Antidumping Duty Administrative Review; Time Limits

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

ACTION: Notice of Extension of Time Limits.

SUMMARY: The Department of Commerce (the Department) is extending the time limit of the preliminary results of the new shipper antidumping duty administrative review of fresh and chilled Atlantic salmon from Norway. The review covers one manufacturer/exporter of the subject merchandise to the United States and the period May 1, 1995 through October 31, 1995

EFFECTIVE DATE: May 29, 1996.

FOR FURTHER INFORMATION CONTACT: Todd Peterson or Thomas Futtner, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 482–4195/3814.

SUPPLEMENTARY INFORMATION: Because this review is extraordinarily complicated, the Department is extending the time limits for the completion of the preliminary results until September 30, 1996, in accordance with Section 751(a)(2)(B)(iv) of the Trade and Tariff Act of 1930, as amended by the Uruguay Round Agreements Act of 1994. (*See* Memorandum to the file.) We will issue our final results for this review by December 30, 1996.

These extensions are in accordance with section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)(3)(A)).

Dated: May 14, 1996.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 96–13320 Filed 5–28–96; 8:45 am]

BILLING CODE 3510–DS–M

[A–588–839]

Notice of Postponement of Preliminary Determination: Antidumping Duty Investigation of Sodium Azide From Japan

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

EFFECTIVE DATE: May 29, 1996.

FOR FURTHER INFORMATION CONTACT: Magd Zalok or John Beck, Office of Antidumping Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–4162 or (202) 482–3464, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930 (the Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Rounds Agreements Act.

Postponement of Preliminary Determination

On May 13, 1996, the American Azide Corporation, the petitioner in this investigation, requested that the Department postpone the preliminary determination of this investigation. We see no reason to deny this request. Therefore, pursuant to section 733 (c)(1)(A) of the Act, we are postponing the date of the preliminary determination as to whether sales of sodium azide from Japan have been made at less then fair value until no later than August 13, 1996.

This notice is published pursuant to section 733(c)(2) of the Act.

Dated: May 20, 1996.

Barbara R. Stafford,

Deputy Assistant Secretary for Investigations, Import Administration.

[FR Doc. 96–13322 Filed 5–28–96; 8:45 am]

BILLING CODE 3510–DS–M

[C–401–804]

Certain Cut-to-Length Carbon Steel Plate From Sweden; Extension of Time Limit for Countervailing Duty Administrative Review

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

ACTION: Notice of Extension of Time Limit for Countervailing Duty Administrative Review.

SUMMARY: The Department of Commerce (the Department) is extending the time

limit for preliminary and final results of the 1994 administrative review of the countervailing duty order on certain cut-to-length carbon steel plate from Sweden. This extension is made pursuant to the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (hereinafter, ''the Act'').

EFFECTIVE DATE: May 29, 1996.

FOR FURTHER INFORMATION CONTACT: Gayle Longest or Lorenza Olivas, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W. Washington, D.C., 20230; telephone: (202) 482–2786.

POSTPONEMENT: Under the Act, the Department may extend the deadline for completion of an administrative review if it determines that it is not practicable to complete the review within the statutory time limit of 365 days. The Department finds that it is not practicable to complete the 1994 administrative review of certain cut-to-length carbon steel plate from Sweden within this time limit.

In accordance with section 751(a)(3)(A) of the Act, the Department will extend the time for completion of the preliminary results of this review from a 245-day period to no later than a 365-day period and, thereafter, for completion of the final results of this review from a 120-day period to no later than a 180-day period.

Dated: May 21, 1996.

Roland L. MacDonald,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 96–13324 Filed 5–28–96; 8:45 am]

BILLING CODE 3510–DS–P

[C–533–063]

Certain Iron-Metal Castings From India; Extension of Time Limit for Countervailing Duty Administrative Review

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

ACTION: Notice of Extension of Time Limit for Countervailing Duty Administrative Review.

SUMMARY: The Department of Commerce (the Department) is extending the time limit for preliminary and final results of the tenth administrative review of the countervailing duty order on certain iron-metal castings from India. This extension is made pursuant to the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (hereinafter, ''the Act'').

EFFECTIVE DATE: May 29, 1996.

FOR FURTHER INFORMATION CONTACT: Christopher Cassel or Lorenza Olivas, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–2786.

POSTPONEMENT: Under the Act, the Department may extend the deadline for completion of an administrative review if it determines that it is not practicable to complete the review within the statutory time limit of 365 days. See Memorandum to the File dated May 17, 1996. The Department finds that it is not practicable to complete the calendar year 1994 administrative review of certain iron-metal castings from India within this time limit.

In accordance with section 751(a)(3)(A) of the Act, the Department will extend the time for completion of the preliminary results of this review from a 245-day period to no later than a 365-day period and for completion of the final results of this review from a 120-day period to no later than a 180-day period.

Dated: May 20, 1996.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 96–13319 Filed 5–28–96; 8:45 am]

BILLING CODE 3510–DS–M

[C–122–404]

Live Swine From Canada; Notice of Preliminary Results of Countervailing Duty Administrative Reviews; Initiation and Preliminary Results of Changed Circumstances Review and Intent To Revoke Order in Part

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

ACTION: Notice of Preliminary Results of Countervailing Duty Administrative Reviews; Notice of Initiation and Preliminary Results of Changed Circumstances Review and Preliminary Determination to Revoke Order in Part.

SUMMARY: The Department of Commerce (the Department) is conducting three administrative reviews of the countervailing duty order on live swine from Canada. We preliminarily determine the net subsidy to be Can$0.0594 per kilogram for the period April 1, 1991 through March 31, 1992, Can$0.0609 per kilogram for the period April 1, 1992 through March 31, 1993, and Can$0.0099 per kilogram for the period April 1, 1993 through March 31, 1994. If the final results remain the same as these preliminary results of administrative reviews, we will instruct the U.S. Customs Service to assess countervailing duties as indicated above. Interested parties are invited to comment on these preliminary results.

In accordance with 19 C.F.R § 355.22(h)(1)(i), the Department is initiating a changed circumstances countervailing duty administrative review and issuing a preliminary determination of its intent to revoke, in part, the countervailing duty order on live swine from Canada. On December 11, 1995, petitioners requested that the Department revoke the order, in part, as to slaughter sows and boars and weanlings, effective April 1, 1991. Based on the fact that this portion of the order is no longer of interest to domestic parties, we preliminarily determine that this order should be revoked, in part, with respect to slaughter sows and boars and weanlings. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: May 29, 1996.

FOR FURTHER INFORMATION CONTACT: Stephanie Moore or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On August 15, 1985, the Department published in the Federal Register (50 FR 32880) the countervailing duty order on live swine from Canada. On August 12, 1992, the Department published a notice of ''Opportunity to Request Administrative Review'' (56 FR 41506) of this countervailing duty order for the period April 1, 1991 through March 31, 1992. We received a timely request for review from the Government of Canada (GOC). Wood Lynn Farms and Pryme Pork Ltd. (Pryme), Canadian exporters of live swine, timely requested an individual administrative review. We initiated the review, covering April 1, 1991 through March 31, 1992, on September 28, 1992 (56 FR 44551).

On August 3, 1993, the Department published a notice of ''Opportunity to Request Administrative Review'' (58 FR 41239) of this countervailing duty order for the period April 1, 1992 through March 31, 1993. We received a timely request for review from the GOC; Pryme also made a timely request for an individual administrative review. We initiated the review, covering April 1, 1992 through March 31, 1993, on September 30, 1993 (58 FR 51053).

On August 3, 1994, the Department published a notice of ''Opportunity to Request Administrative Review'' (59 FR 39543) of this countervailing duty order for the period April 1, 1993 through March 31, 1994. We received a timely request for review from the GOC; Pryme also made a timely request for an individual administrative review. We initiated the review, covering April 1, 1993 through March 31, 1994, on September 16, 1994 (59 FR 47609). These three administrative reviews cover all producers/exporters of the subject merchandise and 46 programs.

On December 11, 1995, petitioners requested the partial revocation of the order on live swine from Canada with respect to slaughter sows and boars and weanlings due to lack of interest, effective April 1, 1991. As a result, the Department is initiating and simultaneously issuing the preliminary results of a changed circumstances review preliminarily determining that the order should be revoked, in part, with respect to slaughter sows and boars and weanlings.

Applicable Statute and Regulations

The Department is conducting these administrative reviews in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act). Unless otherwise indicated, all citations to the statute and to the Department's regulations are in reference to the provisions as they existed on December 31, 1994. However, references to the *Department's Countervailing Duties; Notice of Proposed Rulemaking and Request for Public Comments*, 54 FR 23366 (May 31, 1989) (*Proposed Regulations*), are provided solely for further explanation of the Department's countervailing duty practice. Although the Department has withdrawn the particular rulemaking proceeding pursuant to which the *Proposed Regulations* were issued, the subject matter of these regulations is being considered in connection with ongoing rulemaking proceeding which, among other things, is intended to conform the Department's regulations to the Uruguay Round Agreements Act. (See 60 FR 80) (Jan. 3, 1995)).

Scope of Review

The merchandise covered by these administrative reviews is live swine, except U.S. Department of Agriculture certified purebred breeding swine, from Canada. Such merchandise is classifiable under the *Harmonized Tariff Schedule* (HTS) item numbers 0103.91.00 and 0103.92.00. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The merchandise covered by the changed circumstances review are slaughter sows and boars and weanlings (weanlings are swine weighing up to 27 kilograms or 59.5 pounds).

Requests for Administrative Reviews of Individual Exporters

On August 28, 1992, Wood Lynn Farms submitted a timely request under 19 C.F.R 355.22(a)(2) that the Department conduct an administrative review of Wood Lynn Farms' exports of the subject merchandise to the United States for the 1991–92 review period. On August 10, 1993, the Department denied Wood Lynn Farms' request because the certifications it submitted did not comply with the requirements of 19 C.F.R 355.22(a)(2). Specifically, the certifications failed to state that during the period of review no net subsidy was bestowed upon Wood Lynn Farms or its suppliers with respect to the subject merchandise. For further discussion of the Department's position on Wood Lynn Farm's request, see letter from Barbara E. Tillman to Wood Lynn Farms dated August 10, 1993, which is on file in the Central Records Unit (Room B–099 of the Main Commerce Building)(CRU).

On August 31, 1992, Pryme submitted a request under 19 C.F.R 355.22(a)(2) that the Department conduct an administrative review of Pryme's exports of the subject merchandise to the United States for the 1991–92 review period. The Department found Pryme's certifications deficient (*see* letter from Barbara E. Tillman to Pryme Pork, Ltd. dated August 4, 1993, which is on file in the CRU). Subsequently, Pryme clarified its certifications, based on which the Department found that Pryme's request complied with 19 C.F.R. 355.22(a)(2)(*see Memorandum to the File* from Team E regarding the Countervailing Duty Administrative Review on Live Swine from Canada dated August 10, 1995, which is on file in the CRU). Based on Pryme's request, the Department initiated a review of Pryme's entries for the 1991–92 review period.

On August 30, 1993, Pryme submitted its request under 19 C.F.R. 355.22(a)(2) that the Department conduct an administrative review of Pryme's exports of the subject merchandise to the United States for the 1992–93 review period. Since this request was timely and met the provisions of 19 C.F.R. 355.22(a)(2), the Department initiated the review as requested (*see Memorandum on Pryme's Request for an Individual Administrative Review* to Barbara E. Tillman from The Team dated January 18, 1994, which is on file in the CRU).

On August 30, 1994, Pryme submitted a timely request under 19 C.F.R. 355.22(a)(2) that the Department conduct an administrative review of Pryme's exports of the subject merchandise to the United States for the 1993–94 review period. Since this request was timely and met the provisions of 19 C.F.R. 355.22(a)(2), the Department initiated the review as requested.

Pryme has since submitted a letter to the Department indicating that it is withdrawing its request for individual reviews in the 7th, 8th, and 9th reviews if the Department revokes the order with respect to weanlings and sows and boars. Since we are preliminarily determining to revoke the order, in part, with respect to the above products, we are also preliminarily determining to terminate the individual reviews of Pryme in the 7th, 8th, and 9th review periods.

Verification

Pursuant to 19 C.F.R. § 355.36(a)(1), the petitioner requested that the Department conduct a verification of the 1991–92 review period because the Department did not verify all information submitted in the two prior reviews. As provided in section 776(b) of the Act, we verified all information submitted in the 1991–92 review period. We also verified, as required under § 355.22(f) all certifications submitted with the requests for individual reviews in each of the three review periods. In conducting verification, we followed standard verification procedures, including meeting with government and company officials, and examining relevant accounting records and original source documents. Our verification results are outlined in the public versions of the verification reports, which are on file in the CRU.

Calculation Methodology for Assessment and Cash Deposit Purposes

For each review period, we calculated the net subsidy on a country-wide basis by first calculating the subsidy rate for each province subject to the administrative review. We then weight-averaged the rate received by each province using as the weight the province's share of total Canadian exports to the United States of subject merchandise. We then summed the individual provinces' weight-averaged rates to determine the subsidy rate from all programs benefitting exports of the subject merchandise to the United States. In prior proceedings, a separate

rate was calculated for sows and boars and for all other live swine. In these reviews, we are only calculating the rate for all other live swine. The calculation of the rate in these reviews is not affected by the partial revocation of sows and boars and weanlings.

Analysis of Programs

I. Programs Conferring Subsidies

A. Programs Previously Determined to Confer Subsidies

1. Federal Program. Feed Freight Assistance Program. The Feed Freight Assistance Program (FFA) is administered by the Livestock Feed Board of Canada (the Board) under the Livestock Feed Assistance Act of 1966 (LFA). The Board acts to ensure: (1) The availability of feed grain to meet the needs of livestock feeders; (2) the availability of adequate storage space in Eastern Canada to meet the needs of livestock feeders; (3) reasonable stability in the price of feed grain in Eastern Canada to meet the needs of livestock feeders; and (4) equalization of feed grain prices to livestock feeders in Eastern Canada, British Columbia, the Yukon Territory and the Northwest Territories. Although this program is clearly designed to benefit livestock feeders, FFA payments are also made to grain mills that transform the feed grain into livestock feed whenever these mills are the first purchasers of this grain. The Board makes payments related to the cost of feed grain storage in Eastern Canada, and payments related to the cost of feed grain transportation to, or for the benefit of, livestock feeders in Eastern Canada, British Columbia, the Yukon Territory and the Northwest Territories, in accordance with the regulations of the LFA.

In *Live Swine from Canada; Preliminary Results of Countervailing Duty Administrative Review* (55 FR 20613) (May 21, 1990)), and *Live Swine from Canada; Final Results of Countervailing Duty Administrative Review* (56 FR 10410) (March 12, 1991)) (*Swine Second and Third Review Results*), the Department found this program *de jure* specific and thus countervailable because, based on the language of the LFA, benefits are only available to a specific group of enterprises or industries (livestock feeders and feed mills). Subsequently, a U.S.-Canada Free Trade Agreement (FTA) binational panel (*See In the Matter of Live Swine From Canada,* USA–91–1904–04 (June 11, 1993) at 33–36)) affirmed the Department's determination in *Live Swine from Canada; Preliminary Results of Countervailing Duty Administrative Review* (56 FR 29224) (June 26, 1991)), and *Live Swine from Canada; Final Results of Countervailing Duty Administrative Review* (56 FR 50560) (October 7, 1991)) (*Swine Fifth Review Results*), regarding the countervailability of this program. No new information or evidence of changed circumstances has been submitted in this proceeding to warrant reconsideration of this finding.

To determine the FFA benefit in each review period, we used the methodology applied in *Live Swine from Canada; Preliminary Results of Countervailing Duty Administrative Review* (58 FR 54112, 54114) (October 20, 1993)), and *Live Swine from Canada; Final Results of Countervailing Duty Administrative Review* (59 FR 12243) (March 16, 1994)) (*Swine Sixth Review Results*). We first divided the feed transportation assistance to live swine producers in each province by the total weight of live swine produced in that province during the correspondent review period, calculating the benefit per kilogram on a province-by-province basis. We then weight-averaged each exporting province's benefit by that province's share of total Canadian exports of live swine to the United States during the same review period; we then summed the resulting weighted benefits, calculated for each province during the correspondent review period. On this basis, we preliminarily determine the benefits from this program to be less than Can$0.0001 per kilogram for the 1991–92, 1992–93, and 1993–94 review periods.

2. Federal/Provincial Program. (A) National Tripartite Stabilization Scheme for Hogs Background. The National Tripartite Stabilization Program (NTSP) was created in 1985 by an amendment to the Agricultural Stabilization Act (ASA). This amendment, codified at section 10.1 of the ASA, provides for the introduction of cost-sharing tripartite or bipartite stabilization schemes involving the producer, the federal government and the provinces. Pursuant to this amendment, federal and provincial ministers signed NTSP agreements covering specific commodities.

The general terms of the NTSP for Hogs are as follows: all participating hog producers receive the same level of support per market-hog unit; the cost of the scheme is shared equally between the federal government, the provincial government, and the producers, with each government's contribution, federal as well as provincial, capped at 3 percent of the aggregate market value; producer participation in the scheme is voluntary; the provinces may not offer separate stabilization plans or other *ad hoc* assistance for hogs (with the exception of Québec's FISI program); the federal government may not offer compensation to swine producers in a province not party to an agreement; and the scheme must operate at a level that limits losses but does not stimulate over-production.

Stabilization payments are made when the market price falls below the calculated support price. The difference between the support price and the average market price is the amount of the stabilization payment. Hogs eligible for stabilization payments under NTSP must index above 80 on a hog carcass grading scale.

In *Swine Fifth Review Results* (56 FR 29225), the Department determined that NTSP was *de facto* specific because benefits were being provided to a specific enterprise or industry or group thereof. The binational panel, in its August 26, 1992 decision, affirmed the Department's determination (USA–91–1904–04). *See,* also, *Swine Sixth Review Results* (58 FR 54115).

Integral Linkage Allegation. In the questionnaire response in the 1991–92 review, the GOC submitted new facts pertaining to NTSP, based on which the GOC argues that NTSP is no longer specific. As of April 1, 1991, all NTSP Agreements were brought under the statutory authority of the Farm Income Protection Act (FIPA), designed to cover all agricultural products. FIPA is an agricultural income stabilization act which covers four programs: (1) national tripartite stabilization programs (NTSPs), (2) net income stabilization accounts (NISA), (3) gross revenue insurance program (GRIP), and (4) crop insurance (CI). FIPA unifies all federal-level income stabilization initiatives for farmers under a single statute; it incorporates key concepts from existing programs and integrates them into a new system. As part of this process, the Crop Insurance Act, the Agricultural Stabilization Act (ASA), and the Western Grain Stabilization Act were repealed.

(1) NTSP

NTSP provides insurance coverage against market-price fluctuations for designated commodities. Income stabilization payments are triggered when the market price falls below a calculated support price. This program, thus, moderates the economic effects of losses to farmer's income due to short-term market fluctuations.

(2) NISA

NISA is designed to stabilize an individual farm's overall financial performance through a voluntary

savings plan. The participant is required to enroll all eligible commodities grown on the farm. Farmers may then deposit a portion of their net sales of eligible NISA commodities (up to two percent of net eligible sales) into individual savings accounts, receive matching government deposits (up to one percent of net sales from both the provincial and the federal governments), and make additional, non-matchable deposits (up to 20 percent of net sales).

NISA provides stabilization assistance on a ''whole farm'' basis. A producer can withdraw funds from a NISA account when the gross profit margin from the entire farming operation falls below an historical average, based on the previous five years. If poor market performance of some products is offset by increased revenues from others, no withdrawal is triggered.

(3) GRIP

GRIP is a voluntary plan offering farmers revenue insurance protection or revenue insurance combined with crop insurance protection. Under GRIP, producers must register their total production of all eligible crops whether they select the revenue insurance protection component of GRIP or the combined revenue insurance and crop insurance protection. Premiums are shared by farmers and the provincial and federal governments. Payouts are triggered when market revenue or yield of any of the covered crops falls below certain historical levels. GRIP's revenue insurance protection component provides for full offsets between yield and price; for example, if a producer received a crop price below the reference value, but produced a higher-than-average yield, no insurance payment would be triggered to the extent that the extra revenue earned from the extra yield offsets the lower price.

(4) Crop Insurance

The crop insurance component of FIPA stabilizes a farmer's income by moderating the economic effects of crop losses caused by natural events. The producers and the governments (federal and provincial) share the payment of the premiums. Payouts are based on a farmer's average crop yield and are triggered when a farmer suffers a yield loss due to a covered hazard.

The GOC argued that for specificity purposes the Department should examine NTSP, NISA, GRIP and CI under FIPA as one program that established a (1) common policy of offering income stabilization on equal terms throughout the country, (2) common administration by the provinces, Agriculture Canada, and through interlocking national committees, and (3) tripartite funding (funds contributed by the federal government, provincial governments and producers). The GOC further argued that FIPA covers a substantial proportion of Canadian producers of agricultural commodities.

The Department examined the information submitted by the GOC on the FIPA legislation, the agreements establishing the programs covered by FIPA, the types of benefits provided by the programs and previous determinations in similar cases. Although FIPA provides the statutory authority for the various separate programs, the federal/provincial agreements that established NISA and GRIP retain substantial discretion, while NTSP and crop insurance predated FIPA itself. Therefore, the Department preliminarily found it more appropriate to examine the NTSP, NISA, GRIP, and CI as separate programs. *See Memorandum on Farm Income Protection Act,* to Barbara E. Tillman from CVD team dated April 13, 1994, which is on file in the CRU.

The GOC also alleged that if the Department determines that NTSP, NISA, GRIP and CI under FIPA do not constitute one program, then the Department should find NTSP, NISA, GRIP and CI integrally linked within the meaning of section 355.43(b)(6) of the Department's *Proposed Regulations.*

Integral Linkage Analysis and Preliminary Determination. Section 355.43(b)(6) of the *Proposed Regulations* sets forth the criteria that the Department examines, among others, in determining whether programs are integrally linked:

- The purposes of the programs as stated in their enabling legislation;
- The administration of the programs;
- Evidence of a government policy to treat industries equally; and
- The manner of funding the programs.

First, to examine whether the purpose of NTSP is similar to the purpose of the other programs, we analyzed whether basically the same type of assistance is being provided to distinct users. We preliminarily find that the purposes of the programs are different, with NTSP providing coverage against market price fluctuations; NISA stabilizing the farmer's net income fluctuations; GRIP providing coverage against market price fluctuations and weather-related disasters, and CI provides coverage against weather-related disasters.

Second, in examining the administration of the programs, we preliminarily find that although the GOC and the provincial governments participate in the administration of each of the programs, there are clear differences in the manner in which the programs are administered. For instance, NTSP and NISA are federally administered, because it is more efficient to centralize the management of these programs in order to administer them uniformly throughout Canada. On the other hand, it was more efficient to grant provincial governments substantially heavier administrative responsibilities for crop insurance under GRIP and CI, because provincial governments are in a position to provide faster relief to farmers in the event of a weather-related disaster. (Questionnaire response dated June 23, 1993, I–42.)

Third, our analysis of the information submitted on the record regarding the government's policy to treat industries equally yielded inconclusive results, because the diversity of the programs did not allow for a comparison of benefits on a commodity by commodity basis. In fact, the four programs are structured to meet different purposes (insurance programs versus savings plan), are designed to cover different types of risks, and involve government participation of unequal proportional amounts. As a result, it is not possible to ascertain whether or not there is evidence of a government policy to treat industries equally.

Finally, although the funding for the four programs is provided by the same three sources, the federal and provincial governments and the producers, there are two distinct funding mechanisms. Under NISA, the GOC and the provincial government provide matching funds to the farmers who may make annual deposits up to 2 percent of eligible net sales. The other three programs are premium-funded insurance programs, in which producers and provincial and federal governments share the payment of the premiums. Moreover, the shares of the premiums funded by each source are different under the three programs. Under NTSP, the producer and the federal and provincial governments each contribute 33.3 percent. Under GRIP, the producers contribute 33.3 percent, the provincial government 25 percent, and the federal government 41.67 percent. On the other hand, for crop insurance, the producer contributes 50 percent and the federal and provincial governments contribute the remaining 50 percent equally.

As a result of our analysis, we preliminarily determine that the NTSP, NISA, GRIP and CI are not integrally linked. For a further discussion, *see Decision Memorandum on Farm Income Protection Act—Integral Linkage,* to

Paul L. Joffe from The Team dated May 15, 1996, which is on file in the CRU. Therefore, we preliminarily determine to continue to review NTSP as a separate program. We also examined the specificity of the NISA program because the petitioners alleged that its farm-fed provision allows farmers to make a deposit on the grain that is fed to their livestock, which can benefit live swine. For further discussion of the NISA program, see section II(B) of this notice.

Determination of Benefit from NTSP. In *Swine Sixth Review Results* (58 FR 54115) and (59 FR 12246), we determined NTSP to be de facto specific, and thus countervailable. No new information or evidence of changed circumstances has been submitted in these reviews, which would warrant reconsideration of this finding. The information on the record shows that the terms of the NTSP agreement on hogs did not change during the periods currently under review. During the 1991–92 and 1992–93 review periods, payouts for hogs were made under this program in each of the nine signatory provinces. There were no NTSP payments made to hog producers during the 1993–94 review period.

To calculate the benefit, we used the methodology applied in *Swine Sixth Review Results* (58 FR 54117). We first divided two-thirds of the stabilization payments (representing the federal and provincial contributions) made to producers in each province in each review period by the total weight of live swine produced in that province during the same review period, and calculated a benefit per kilogram on a province-by-province basis. We then weight-averaged each exporting province's per-kilo benefit by that province's share of total Canadian exports of live swine to the United States during the corresponding review period. We then added the weight-averaged benefits of all exporting provinces to calculate the average benefit per kilogram. On this basis, we preliminarily determine the benefit from this program to be Can$0.0508 per kilogram for the 1991–92 review period, Can$0.0578 for the 1992–93 review period, and zero for the 1993–94 review period.

3. Provincial Income Stabilization Programs. (A) Québec Farm Income Stabilization Insurance Program (FISI).

Background. FISI was established in 1976 under the ''Loi sur l'assurance-stabilisation des revenus agricoles.'' The program is administered by the Régie des Assurances Agricoles du Québec (Régie). The purpose of the program is to guarantee a positive net annual income to participants whose income is lower than the stabilized net annual income. Since Québec joined the federal government's NTSP for Hogs in February 1989, the FISI scheme for hogs has been covering only the difference between payments made under the NTSP for Hogs and what FISI payments would have been in the absence of the NTSP. FISI is the only provincial stabilization scheme that continues to operate in conjunction with the NTSP for Hogs. There are two FISI schemes which provide payments to the subject merchandise, the FISI scheme for Hogs and the FISI scheme for Piglets.

Two-thirds of the funding for the FISI program is provided by the provincial government and one-third by producer assessments. Participation in FISI is voluntary. However, once enrolled in the program, a producer must make a five-year commitment. Each farmer may insure a maximum of 5,000 feeder hogs and 400 sows. Whenever the balance in the FISI account is insufficient to make payments to participants, the provincial government lends the needed funds to the program at market rates. The principal and interest on these loans are repaid by the Régie using the producer and provincial contributions.

Integral Linkage Allegation. In the 1991–92 administrative review, the GOQ alleged that the FISI program is integrally linked to the crop insurance program. The GOQ also alleged that because the federal supply management programs are related in purpose and effect to these two provincial programs, the supply management program is integrally linked to FISI and crop insurance within the meaning of § 355.43(b)(1)(6).

Integral Linkage Analysis and Preliminary Determination. We conducted this analysis in accordance with the criteria set forth in section 355.43(b)(6) of the *Proposed Regulations*, and listed in the NTSP section of this notice. In our analysis of the first factor, we begin by reviewing the purpose of each program and then we examine whether the purpose of FISI is similar to the purpose of crop insurance and supply management. We preliminarily find that the purposes of the programs are different. FISI insures against market price fluctuations; crop insurance provides coverage against weather-related disasters; and supply management programs prevent fluctuations in the market price of covered commodities by regulating their supplies.

Second, in examining the administration of the programs, we preliminarily find that many of the procedures for enrolling in and receiving insurance payments under FISI and crop insurance are similar. However, because FISI and crop insurance have distinct purposes, the timing of the benefits is different. On the other hand, the supply management programs operate at both the national and provincial levels because total cooperation from producers of the commodity in all provinces is necessary to manage the supply of a commodity on the market. In addition, the supply management programs are administered independently from the agency that administers the FISI and the crop insurance programs.

Third, our analysis of the information submitted on the record regarding the government's policy to treat industries equally yielded inconclusive results. The actuarial study which the GOQ argued shows equal treatment among users of FISI and crop insurance was not sufficiently detailed to support this conclusion with respect to the subject merchandise.

Finally, regarding the manner of funding, we preliminarily find that the funding for the three programs is different. FISI and crop insurance are funded by premium payments shared between the producer and the GOQ; supply management is funded by producer levies only.

As a result of our analysis, we preliminarily determine that the FISI, crop insurance and supply management programs are not integrally linked. For a further discussion, *see Decision Memorandum on Farm Income Stabilization Insurance—Integral Linkage* to Paul L. Joffe from The Team, dated May 15, 1996, which is on file in the CRU. Therefore, we preliminarily determine to continue to review FISI as a separate program.

In *Swine Sixth Review Results* (58 FR 54117), we determined FISI to be *de facto* specific, and thus countervailable. No new information or evidence of changed circumstances has been submitted in these reviews, which would warrant reconsideration of this finding.

To calculate the benefit, we used the methodology applied in *Swine Sixth Review Results* (58 FR 54118). We multiplied the total payments made under both the piglet and feeder hog schemes during each review period by two-thirds (representing the provincial contribution). We divided this amount by the total weight of live swine produced in Québec during the same review period to get the average benefit per kilogram. We then weight-averaged the benefit by Québec's share of total Canadian exports of live swine to the United States during the corresponding review period. On this basis, we preliminarily determine the benefit from

this program to be Can$0.0050 per kilogram for the 1991–92 review period, Can$0.0001 per kilogram for the 1992–93 review period, and Can$0.0002 per kilogram for the 1993–94 review period.

(B) *British Columbia Farm Income Insurance Program* (FIIP). The FIIP was established in 1979 in accordance with the Farm Income Insurance Act of 1973 (Farm Act) in order to assure income to farmers when commodity market prices fluctuate below the basic costs of production. Schedule B of the Farm Act lists the guidelines for the individual commodities receiving benefits; Schedule B section 4 is the guideline for swine producers.

The program is administered by the provincial Ministry of Agriculture and Food and the British Columbia Federation of Agriculture, and is funded equally by producers and the provincial government. Premiums are paid in all quarters regardless of market returns.

In *Swine Second and Third Review Results* (55 FR 20615), the Department found this program to be countervailable because the program is limited to producers of commodities listed in Schedule B, a specific group of enterprises or industries. No new information or evidence of changed circumstances has been submitted in these proceedings to warrant reconsideration of this finding.

British Columbia did not export live swine to the United States during the 1991–92 period. However, British Columbia exported live swine to the United States during the 1992–93 and 1993–94 review periods. Since the government of British Columbia funds one-half of this program, we calculated the benefit for these review periods by dividing one-half of the total stabilization payments in each review period by the total weight of live swine produced in British Columbia during the same period. We then weight-averaged the result by British Columbia's share of total exports of live swine to the United States during the same review period. On this basis, we preliminarily determine the benefit from this program to be less than Can$0.0001 per kilogram for the 1992–93 review period and Can$0.0004 per kilogram for the 1993–94 review period.

(C) *Saskatchewan Hog Assured Returns Program* (SHARP). SHARP was established in 1976, pursuant to the Saskatchewan Agricultural Returns Stabilization Act which authorized provincial governments to establish stabilization plans for any agricultural commodity. SHARP provided income stabilization payments to hog producers in Saskatchewan when market prices fell below a designated ''floor price'', calculated quarterly. The program was administered by the Saskatchewan Pork Producers' Marketing Board (the Board) on behalf of the Saskatchewan Department of Agriculture. The program was funded by levies from participating producers on the sale of hogs covered by the program; they ranged from 1.5 to 4.5 percent of market returns and were matched by the provincial government. When the balance in the SHARP account was insufficient to cover payments to producers, the provincial government provided financing on commercial terms. The principal and interest on these loans was to be repaid by the Board from the producer and provincial contributions. After the NTSP for Hogs was implemented on July 1, 1986, SHARP payments were reduced by the amount of the NTSP payments.

In *Swine First Review Results* (53 FR 22192), the Department found the SHARP program to be *de jure* specific, and thus countervailable, because the legislation expressly made the program available only to a single industry (hog producers). No new information or evidence of changed circumstances was submitted in the 1991–92 and 1992–93 review periods to warrant reconsideration of these findings.

In accordance with the NTSP agreement, SHARP was terminated on March 31, 1991. At the time of termination, the SHARP fund had a sizeable deficit because of the cumulation over the operating years of loans from the provincial government. In *Swine Sixth Review Results* (58 FR 54118), the Department found that interest on the loans had stopped accruing on October 31, 1989. The Department determined that interest not accruing on the outstanding loan balance constituted a residual benefit to live swine producers.

To determine the benefit for the 1991–92 review period, we used the methodology applied in Swine Sixth Review Results (59 FR 12260). Since the government of Saskatchewan provided half of the funds of the SHARP program, we calculated the benefit for this review period by multiplying half of the outstanding principal amount at the end of the review period by the benchmark interest rate. We used, as our benchmark interest rate, the simple average of the monthly rates (for the review period) reported as ''Typical Short-Term Interest Rates'' in Canada in the *Financial Statistics Monthly,* published by the Organization for Economic Cooperation and Development (OECD). We selected this benchmark because the interest rates provided in the questionnaire response pertained to years prior to 1991 and were therefore inappropriate as benchmarks for loans provided during the review period. We selected a short-term rate because the duration of these loans was uncertain, since no indication was provided by respondents on the final disposition of these loans. Next, we divided the amount thus obtained by the total weight of live swine produced in Saskatchewan during the review period. We then weight-averaged the benefit by Saskatchewan's share of total Canadian exports of live swine to the United States during the review period. On this basis, we preliminarily determine the benefit to be Can$0.0009 per kilogram for the 1991–92 review period.

To calculate the benefit from the outstanding loans during the 1992–93 review period, we followed the methodology outlined above. However, during the 1992–93 review period, live swine producers also received residual stabilization payments. The residual payments were due to live swine producers as of the 1991–92 fiscal year, but were paid during the 1992–93 fiscal year. Because the residual payments are co-funded by the government, we divided the total payment amount by two, and added the result to the interest amount calculated on the outstanding loans. We thus obtained the full benefit to swine producers during the review period. On this basis, we preliminarily determine the benefit to be Can$0.0006 per kilogram for the 1992–93 review period.

During the 1993–94 review period, the government canceled the outstanding SHARP deficit. To calculate the benefit from the loan forgiveness, we treated one-half of the amount written off as a grant in accordance with section 355.49 (b)(1) of the *Proposed Regulations*. We took into account only half of the amount because this was the share of the outstanding loans that the producers were responsible for repaying.

The Department's policy with respect to grants is (1) to expense recurring grants in the year of receipt or (2) to allocate non-recurring grants over the average useful life of assets in the industry, unless the sum of grants provided under a particular program is less than 0.50 percent of a firm's total or export sales (depending on whether the program is a domestic or export subsidy) in the year in which the grants were received. (See section 355.49(a) of the *Proposed Regulations* and the *General Issues Appendix*, at 37226, which is attached to the *Final Countervailing Duty Determination; Certain Steel Products from Austria* (58

FR 37217, 37226)) (General Issues Appendix).

The Department considers a grant non-recurring when the benefits are exceptional, the recipient cannot expect to receive benefits on an ongoing basis from year to year, and/or the provision of funds by the government must be approved every year. The Department has preliminarily determined that the write-off of the SHARP deficit is a non-recurring grant because debt forgiveness is exceptional, and it is a one-time event. On this basis, we allocated the benefit from this grant over three years, which is the average useful life of depreciable assets used in the swine industry, as set out in the U.S. Internal Revenue Service Class Life Asset Depreciation Range System. We used, as a discount rate, the simple average of the quarterly medium-term government bond rates (for the review period) from the *International Financial Statistics*, published by the International Monetary Fund. Next, we divided the benefit allocated to the period by the total weight of live swine produced in Saskatchewan during the review period to obtain the average benefit per kilogram. We then weight-averaged the per-kilogram benefit by Saskatchewan's share of total Canadian exports of live swine to the United States during the same review period. On this basis, we preliminarily determine the benefit to be Can$0.0051 per kilogram for the 1993–94 review period. Since residual benefits from this program will continue, we will continue to examine this program in any future administrative reviews.

4. *Other Provincial Programs.* (A) Alberta Crow Benefit Offset Program (ACBOP). This program, administered by the Alberta Department of Agriculture, is designed to compensate producers and users of feed grain for market distortions in feed grain prices, created by the federal government's policy on grain transportation. Assistance is provided for feed grain produced in Alberta, feed grain produced outside Alberta but sold in Alberta, and feed grain produced in Alberta to be fed to livestock on the same farm. The government provides ''A'' certificates to registered feed grain users and ''B'' certificates to registered feed grain merchants to use as partial payments for grain purchased from grain producers. Feed grain producers who feed their grain to their own livestock submit a Farm Fed Claim directly to the government for payment.

Hog producers receive benefits in one of three ways: hog producers who do not grow any of their own feed grain receive ''A'' certificates which are used to cover part of the cost of purchasing grain; hog producers who grow all of their own grain submit a Farm Fed Claim to the government of Alberta for direct payment; and hog producers who grow part of their own grain but also purchase grain receive both ''A'' certificates and direct payments.

In *Swine Second and Third Review Results* (56 FR 10412), the Department found this program to be *de jure* specific, and thus countervailable, because the legislation expressly makes it available only to a specific group of enterprises or industries (producers and users of feed grain). No new information or evidence of changed circumstances has been submitted in these proceedings to warrant reconsideration of this finding.

To determine the benefit to swine producers from this program, we followed the methodology used in calculating ACBOP benefits in our redetermination on remand in the U.S.-Canada Binational Panel proceedings on the 1989–1990 (fifth) review period. *In the Matter of Live Swine from Canada*, USA–91–1904–04 (June 11, 1993) at 33–36. However, we further improved on this methodology by using more accurate information submitted in the 1991–92 questionnaire response. *See* also the verification report at 31–32, which is available in CRU.

Thus, we calculated the benefit from this program as follows. Using the Alberta *Supply and Disposition Tables*, we first estimated the quantity of grain consumed by livestock in Alberta during the correspondent review period. Then, we multiplied the number of swine produced in Alberta during the same review period by the estimated average grain consumption per hog, and divided the result by the amount of total grains used to feed livestock during the review period. We thus calculated the percentage of total livestock consumption of all grains in Alberta attributable to live swine during the corresponding review period. We then multiplied this percentage by the total value of ''A'' certificates and farm-fed claim payments received by producers during the same review period. We divided this amount by the total weight of live swine produced in Alberta during the same review period. We then weight-averaged this per-kilo benefit by Alberta's share of total Canadian exports of live swine to the United States during the corresponding review period. On this basis, we preliminarily determine the benefit to be Can$0.0023 per kilogram for the 1991–92 review period, Can$0.0019 per kilogram for the 1992–93 review period, and Can$0.0017 per kilogram for the 1993–94 review period.

(B) Alberta Livestock and Beeyard Compensation Program (Livestock Predator Compensation Sub-program). This program compensates Alberta livestock producers for losses of food-producing livestock, including cattle, sheep, hogs, goats, rabbits and poultry, to predators. The Alberta Department of Agriculture administers this program, and provides assistance in the form of grants, compensating farmers for up to 100 percent of the value of the depredated livestock.

In *Swine Fifth Review Results* (56 FR 29227), the Department found this program to be *de jure* specific and thus countervailable because the legislation expressly makes it available only to a specific group of enterprises or industries (livestock farmers). No new information or evidence of changed circumstances has been submitted in these proceedings to warrant reconsideration of this finding.

To calculate the benefit, we used the methodology applied in *Swine Sixth Review Results* (58 FR 54119). We divided the total payments to hog producers during each review period by the total weight of live swine produced in Alberta during the same review period. We then weight-averaged the result by Alberta's share of Canadian exports of live swine to the United States during the same review period. On this basis, we preliminarily determine the benefit from this program to be less than Can$0.0001 per kilogram for the 1991–92, 1992–93, and 1993–94 review periods.

(C) Ontario Rabies Indemnification Program. This program, administered by the Farm Assistance Branch of the Ontario Ministry of Agriculture and Food, and Rural Affairs compensates livestock producers, including producers of cattle, horses, sheep, swine, and goats, for damage caused by rabies. Producers apply for compensation through a federal inspector, who determines that the animal is rabid and must be destroyed. Farmers receive a maximum of Can$100 per hog under this program.

In *Swine Fifth Review Results* (56 FR 29228), the Department found this program to be *de jure* specific, and thus countervailable, because the program's legislation expressly makes it available only to livestock producers. No new information or evidence of changed circumstances has been submitted in these proceedings to warrant reconsideration of this finding.

To calculate the benefit, we used the methodology applied in *Swine Sixth Review Results* (58 FR 54120). We divided the total payments to swine producers during each review period by

the total weight of live swine produced in Ontario during the same review period. We then weight-averaged the result by Ontario's share of total Canadian exports of live swine to the United States during the same review period. On this basis, we preliminarily determine the benefits from this program to be less than Can$0.0001 per kilogram for the 1991–92, 1992–93, and 1993–94 review periods.

(D) Ontario Livestock and Poultry and Honeybee Compensation Program. This program, administered by the Farm Assistance Programs Branch of the Ontario Ministry of Agriculture, Food, and Rural Affairs, provides assistance in the form of grants which compensate producers for livestock and poultry injured or killed by wolves, coyotes, or dogs. Swine producers apply for and receive compensation through the local municipal government. The Ontario Ministry of Agriculture, Food, and Rural Affairs reimburses the municipality.

In *Swine Fifth Review Results* (56 FR 29227), the Department found this program to be *de jure* specific, and thus countervailable, because the legislation expressly makes it available only to a specific group of enterprises or industries (livestock and poultry farmers). No new information or evidence of changed circumstances has been submitted in these proceedings to warrant reconsideration of this finding.

To calculate the benefit, we used the methodology applied in *Swine Sixth Review Results* (58 FR 54119). We divided the total payment to hog producers during each review period by the total weight of live swine produced in Ontario during the same review period. We then weight-averaged the result by Ontario's share of Canadian exports of live swine to the United Stated during the same review period. On this basis, we preliminarily determine the benefits from this program to be less than Can$0.0001 per kilogram for the 1991–92, and 1993–94 review periods.

(E) Saskatchewan Livestock Investment Tax Credit. Saskatchewan's 1984 Livestock Tax Credit Act provides tax credits to individuals, partnerships, and corporations residents in Saskatchewan on livestock raised in Saskatchewan that were marketed or slaughtered by December 31, 1989. Claimants had to be residents of Saskatchewan, paying Saskatchewan income taxes. Eligible claimants received credits of Can$3 for each hog. Although this program was terminated on December 31, 1989, tax credits are carried forward for up to seven years. In *Swine First Review Results* (53 FR 22198), the Department found this program to be *de jure* specific, and thus countervailable, because the program's legislation expressly made it available only to livestock producers. No new information or evidence of changed circumstances has been submitted in these proceedings to warrant reconsideration of this finding.

To calculate the benefit, we used the methodology applied in *Swine Sixth Review Results* (58 FR 54120). In the questionnaire responses, the GOC provided estimates of the amount of tax credits used by hog producers in Saskatchewan in each review period, since the actual amounts are unavailable. At verification, we reviewed the methodology used to calculate these estimates and found it reasonable and consistent with that used in prior reviews. (See *Verification Report* dated June 8, 1994, p. 24). We divided this amount by the total weight of live swine produced in Saskatchewan during each review period. We then weight-averaged the result by Saskatchewan's share of total exports of live swine to the United States during the same review period. On this basis, we preliminarily determine the benefit from this program to be Can$0.0002 per kilogram for the 1991–92, 1992–93, and 1993–94 review periods.

(F) Saskatchewan Livestock Facilities Tax Credit Program. This program, which was terminated on December 31, 1989, provided tax credits to livestock producers based on their investments in livestock production facilities. The tax credits can only be used to offset provincial taxes and may be carried forward for up to seven years. Livestock covered by this program includes cattle, horses, sheep, swine, goats, poultry, bees, fur-bearing animals raised in captivity, or any other designated animals; it can be raised for either breeding or slaughter. Investments covered under the program include new buildings, improvements to existing livestock facilities, and any stationary equipment related to livestock facilities. The program pays 15 percent of 95 percent of project costs, or 14.25 percent of total costs.

In *Swine Second and Third Review Results* (55 FR 20610), the Department found this program to be *de jure* specific, and thus countervailable, because the program's legislation expressly made it available only to livestock producers. No new information or evidence of changed circumstances has been submitted in these proceedings to warrant reconsideration of this finding.

To calculate the benefit, we used the methodology applied in *Swine Sixth Review Results* (58 FR 54120). In the questionnaire responses, the GOC provided estimates of the amount of tax credits used by hog producers in Saskatchewan, for each review period, since the actual amounts are unavailable. At verification, we reviewed the methodology used to calculate these estimates and found it reasonable and consistent with that used in prior reviews. (See *Verification Report* dated June 8, 1994, p. 24). We divided each amount by the total weight of live swine produced in Saskatchewan during the correspondent review period. We then weight-averaged the result by Saskatchewan's share of total exports of live swine to the United States during the same period. On this basis, we preliminarily determine the benefit from this program to be Can$0.0001 per kilogram for the 1991–92, 1992–93, and 1993–94 review periods.

B. Programs Preliminarily Found to Confer Subsidies

1. Provincial Programs. (A) Saskatchewan Interim Red Meat Production Equalization Program. In the 1992–93 administrative review, the Department received a timely allegation from the petitioner stating that this program may provide benefits to live swine producers in Canada. The Department initiated an investigation of the program and verified the information provided in the questionnaire response. *See Memorandum on New Allegations of Canadian Subsidy Programs,* to Barbara E. Tillman from The Team dated February 18, 1994, which is on file in the CRU.

The Saskatchewan Interim Red Meat Production Equalization Program (IRMPEP), administered by the Saskatchewan Department of Agriculture and Food, was established by the Government of Saskatchewan (GOS) in November 1992. IRMPEP provides grants to livestock producers who raise and feed their livestock in Saskatchewan. In order to qualify for IRMPEP, producers must have sold a minimum number of the eligible livestock which includes steers, heifers and virgin bulls, cull cows, hogs, lambs, kid goats, and horses. Once the minimum number of eligible livestock has been sold, the producer fills out an application and, if the criteria are met, is automatically eligible to receive grants under this program.

Because the program's legislation expressly limits its availability to a specific group of enterprises or industries (livestock producers), we preliminarily determine that benefits from this program are *de jure* specific, and thus countervailable. *See Decision*

Memorandum on the Saskatchewan Interim Red Meat Production Equalization Program, to Paul L. Joffe from The Team dated May 15, 1996, which is on file in the CRU.

The Department has preliminarily determined that these grants are recurring because the recipient can expect to receive benefits on an ongoing basis from review period to review period. (*See General Issues Appendix* (58 FR at 37226)). Therefore, to calculate the benefit, we have allocated the amounts of the grants to the year of receipt. Consequently, we divided the amount of IRMPEP grants to live swine producers for the 1992–93 and for the 1993–94 review periods, by the total weight of live swine produced in Saskatchewan in the correspondent review period. We then weight-averaged the result by Saskatchewan's share of total exports of live swine to the United States during the same review period. On this basis, we preliminarily determine the benefit from this program to be Can$0.0002 per kilogram for the 1992–93 review period, and Can$0.0021 for the 1993–94 review period.

(B) Ontario Export Sales Aid Program. The Ontario Export Sales Aid Program was established in 1987 to assist producers and processors of Ontario agricultural and food products to develop their export markets. It was not used in prior reviews. It was used in the 1991–92 and 1993–94 review periods; it was not used during the 1992–93 review period.

The Ontario Export Sales Aid Program is administered by the Ontario Ministry of Agriculture, Food and Rural Affairs which reimburses producers or processors for the costs they incur in developing their export marketing materials. Grants are made on a per-project basis, limited to two projects per producer or company, per fiscal year. The Ministry provides reimbursements for up to 50 percent of the project costs, with a maximum dollar amount. Producers submit a completed application form outlining the objectives of the market development plan, anticipated costs, and forecasted benefits to a review committee for approval. Upon approval, the producer or company receives the grant and initiates the project.

Because receipt of benefits from this program is contingent upon actual or anticipated exportation, the Department preliminarily determines this program to be a countervailable export subsidy. The benefits under this program are provided in the form of grants for specific projects. Assistance is provided on a project-specific basis, and approved by a review committee (with no repeat projects allowed). Therefore, the Department has preliminarily determined that these are non-recurring grants because the recipient cannot expect to receive benefits on an ongoing basis from review period to review period. *See Decision Memorandum on the Ontario Export Sales Aid Program,* to Paul L. Joffe from The Team dated May 15, 1996, which is on file in the CRU. However, because the amount received by live swine producers in both review periods is less than 0.50 percent of the value of live swine exports from this province, we are allocating the benefit to the year of receipt. (*See General Issues Appendix* (58 FR at 37226)).

To calculate the benefit received in the 1991–92 and the 1993–94 review periods, we divided the total grant amount in the correspondent review period by the total weight of live swine produced in Ontario in the same review period. We then weight-averaged the result by Ontario's share of total exports of live swine to the United States during the same review period. On this basis, we preliminarily determine the benefit from this program to be less than Can$0.0001 per kilogram for the 1991–92, and 1993–94 review periods.

II. Programs Preliminarily Found Not To Confer Subsidies

(1) Federal/Provincial Programs

(A) Canada/British Columbia Agri-Food Regional Development Subsidiary Agreement Canada/Manitoba Agri-Food Development Agreement Canada/Québec Subsidiary Agreement on Agri-Food Development. On July 25, 1985, the GOC and British Columbia signed an agreement to promote agricultural development cooperation between the two governments. The objectives of this agreement are to improve the competitiveness of the agri-food industry in British Columbia, increase economic output and employment opportunities in the industry, and conserve and improve the province's agricultural resources. Under this agreement, the federal and provincial governments share funding for projects in the following areas: (1) Productivity enhancement, (2) resource development, and (3) commodity development.

On May 30, 1984, the GOC and Manitoba signed an agreement to support research programs for the development of agriculture. Under this agreement, the federal and provincial governments share funding for research in the following areas: (1) Enhanced agricultural productivity, (2) enhanced soil and water resource management, (3) human resources management, and (4) analysis, evaluation, and public relations.

On December 14, 1984, the GOC entered into an Economic and Regional Development Agreement with the Province of Québec. Under this agreement, the federal and provincial governments share the funding of projects in the following areas: (1) Research and development, (2) technological innovations and new initiatives, and (3) soil conservation and improvement.

The Department has examined these three programs, focusing its inquiry on the public availability of the results of swine-related projects. After finding that the results of the projects funded by these programs were made publicly available, the Department has preliminarily determined in each review that the programs provided no countervailable benefit to producers of live swine in accordance with section 355.44(l) of the *Proposed Regulations,* which states that ''assistance provided by a government to a firm in order to finance research and development does not confer a countervailable benefit where the Secretary determines that the results of such research and development have been, or will be, made available to the public, including competitors of the firm in the United States.''

(B) NISA. In the 1991–92 administrative review the National Pork Producers Council, petitioner, alleged that the farm-fed grain provision of NISA constitutes a countervailable benefit to hog producers who grow grains. The farm-fed grain provision of NISA is an administrative mechanism that ensures that farm-fed grains are offered the same coverage under that program as marketed grains. Without this provision, NISA's method of calculating deposit entitlements would exclude grains that are fed ''on farms'' rather than sold. To provide coverage to farm-fed grains, NISA treats fixed portions of a farmer's net sales of cattle, calves, swine, sheep, and lambs, which are not covered under NISA, as sales of covered products, i.e., as sales of the grain the animals were fed.

In the instant case, the relevant program is NISA. The farm-fed provisions of that program are an administrative mechanism to deal with special circumstances concerning one of the numerous eligible products under that program. Livestock producers, including hog producers, who also produce NISA-eligible products may receive benefits under NISA regardless of whether they utilize the farm-fed grain provisions. Thus, any benefits

received under NISA are countervailable only if NISA is specific.

In order to determine the specificity of NISA to ascertain whether the benefits provided to hog producers under its farm-fed provision are countervailable, the Department's *Proposed Regulations* at section 355.43(b)(2) direct us to examine four factors, among others:

(i) The extent to which a government acts to limit the availability of a program;

(ii) The number of enterprises, industries, or groups thereof that actually use a program;

(iii) Whether there are dominant users of a program, or whether certain enterprises, industries, or groups thereof receive disproportionately large benefits, under a program; and

(iv) The extent to which a government exercises discretion in conferring benefits under a program.

In analyzing the first factor, we preliminarily find that NISA's enabling legislation is *de jure* not specific based on its stated purpose to cover all agricultural products. Section 355.43(b)(8) of the *Proposed Regulations* does not regard a program as being specific solely because the program is limited to the agricultural sector. However, section 771(5)(B) of the Tariff Act of 1930, as amended, states that ''[n]ominal general availability, under the terms of the law, * * * of the benefits thereunder is not a basis for determining that the bounty, grant, or subsidy is not, or has not been, in fact provided to a specific enterprise or industry, or group thereof''; thus, we turn to our *de facto* specificity analysis. The second factor, the number of users of the program, goes to the *de facto* analysis of the specificity of NISA. In its first year of operation NISA covered 65 products, which accounted for 70 percent of the products grown in Canada. (*See* Verification Report dated June 8, 1994, page 82). In our analysis of the third factor, we found no evidence that hog producers were dominant users or were receiving disproportionate benefits from the NISA program. Finally, we found no evidence that the GOC exercises discretion in conferring benefits under the NISA program.

Because NISA covers a large number and variety of agricultural products, no evidence of dominance or disproportionality, and lack of the GOC's discretion in conferring benefits under NISA, we preliminarily determine that the NISA farm-fed grain provision is not limited to a specific enterprise or industry, or group of enterprises, or group thereof. For further discussion, see *Decision Memorandum on the Specificity of the Net Income Stabilization Account Program* to Paul L. Joffe from The Team dated May 15, 1996, which is available in CRU.

(C) Cash Flow Enhancement Program. In the 1991–92 administrative review, the petitioner alleged that the Cash Flow Enhancement Program provides countervailable benefits to live swine producers. Therefore, the Department examined whether this program provided countervailable benefits to live swine producers.

The Cash Flow Enhancement Program provides farmers with interest-free cash advances on loans under the Prairie Grain Advance Payment Act and under the Advance Payments for Crops Act. Both of these Acts specifically state that the advances are strictly for crops that are sold, not used on the farm. Therefore, we preliminarily find this program does not provide countervailable benefits to hog producers because the advances are tied to products other than the subject merchandise. *See Decision Memorandum on the Cash Flow Enhancement Program,* to Paul L. Joffe from The Team dated May 15, 1996, which is on file in the CRU.

2. Provincial Programs. (A) Saskatchewan Livestock Cash Advance Program. Information provided in the 1991–92 review indicates that the correct name for the Saskatchewan Livestock Advance Program is the Saskatchewan Livestock Cash Advance Program (SLCAP). The Department found this program not countervailable in the first review. (*Swine First Review Results*) (53 FR 22198)). Therefore, absent new information, the Department will no longer examine this program.

(B) Ontario Farm Tax Rebate Program. This program provides eligible farmers with rebates of up to 75 percent of the taxes levied on their properties for municipal and school purposes or for local improvements. These taxes are levied under the Local Improvement Act, the Provincial Land Tax Act, or the Local Roads Boards Act, and imposed under the Local Services Boards Act. Eligible farm properties are properties used in a farming enterprise that produces agricultural products.

Any resident of Ontario may receive a rebate if he or she owns or rents and pays taxes on eligible properties. Before January 1, 1990, the minimum gross production level requirements for eligibility varied among regions: Can$8,000 for residents of Southern and Western Ontario and Can$5,000 for residents of Northern and Eastern Ontario. In *Swine First Review Results* (53 FR 22196), the Department found this program to be *de jure* specific, and thus countervailable, because the eligibility criteria varied depending on the region of Ontario in which the farm was located.

In the 1991–92 administrative review, we verified that, as of April 1, 1991 all farmers in Ontario with a minimum gross production value of Can$7,000 are eligible to receive tax rebates. Since there is no restriction on the types of farm products that receive these rebates, and we found no evidence at verification that the government exercises discretion in distributing these rebates, we have reconsidered our prior decision and preliminarily determine that this program is not specific, and therefore, not countervailable. *See Memorandum on the Ontario Farm Tax Rebate Program,* to Barbara E. Tillman from The Team dated March 5, 1996, which is on file in the CRU.

(C) *Prince Edward Island Pro Pork Assistance Program.* The Prince Edward Island (PEI) Pro Pork Assistance Program replaced the Prince Edward Island Swine Incentive Policy Program which terminated September 30, 1990. The Pro Pork Assistance Program was established on January 12, 1991, to improve the profitability, efficiency, and market quality of pork production in PEI; to improve the quality of pork marketed as measured by weight and index; and to develop an equitable marketing system for quality weaner pigs.

This program is administered by the PEI Department of Agriculture in cooperation with the PEI Hog Commodity Marketing Board. Eligible producers submit an application to the Ministry and receive assistance under two sub-programs. Under the Swine Enterprise Analysis and Consulting Service sub-program, Ministry consultants analyze farmers' production records and financial statements to identify areas in which changes to production systems and financial management systems will lead to more profitable operations. The data collected from individual producers is then averaged and used to set an industry benchmark. Thus, a producer can compare his farm's performance with that of other farms and identify areas where improvements can lead to greater productivity and profits. Under the Market Hog Weight and Index Targeting sub-program, producers receive assistance from Ministry consultants in improving swine carcass weights and lean meat yield. Qualifying producers also receive payments for ''slaughtered'' hogs meeting stipulated weight and index criteria, which are adjusted annually in response to market

requirements. Payments to producers are only made on dressed pork (after slaughter).

In order for the producers to qualify for payments under this program, the swine must have been slaughtered on PEI or in New Brunswick. Since producers are not eligible for, and cannot receive benefits under this program unless hogs are slaughtered in Canada, we preliminarily determine that this program does not benefit live swine exported to the United States. *See Decision Memorandum on the Pro Pork Assistance Program,* to Paul L. Joffe from The Team dated May 15, 1996, which is on file in the CRU.

III. Programs Preliminarily Found to be Not Used

We have examined the following programs and preliminarily determine that Canadian exporters of live swine to the United States did not use them during the periods under review: (1) Agricultural Products Board Program; (2) Federal Atlantic Livestock Feed Initiative (New Brunswick, Newfoundland, Nova Scotia, and Prince Edward Island); (3) Western Diversification Program; (4) British Columbia Special Hog Payment Program; (5) New Brunswick Agriculture Development Act—Swine Assistance Program; (6) New Brunswick Livestock Incentive Program; (7) New Brunswick Swine Assistance Policy on Boars; (8) New Brunswick Swine Industry Financial Restructuring Program; (9) Newfoundland Farm Products Corporation—Hog Price Support; (10) Newfoundland Weanling Bonus Incentive Policy; (11) Nova Scotia Improved Sire Policy; (12) Ontario Bear Damage to Livestock Compensation Program; and (13) Ontario Swine Sales Assistance Policy.

IV. Program Preliminarily Found to be Terminated

(A) New Brunswick Hog Price Stabilization Plan

The New Brunswick Hog Price Stabilization Plan (NBHPSP) was established in 1974 to assure hog producers income stabilization during periods of both high and low market prices. The plan was administered jointly by the New Brunswick Department of Agriculture Hog Stabilization Board and the New Brunswick Hog Marketing Board. The plan operated as follows: the board established a base price based on production costs; when the average weekly market price exceeded the base price by Can$5.00, producers paid into the stabilization fund. When the same market price fell below the base price, producers received payments to make up the difference between the two prices. Half of the payment to producers was provided by the Government of New Brunswick as a grant to the producer and the other half was drawn from the producers' equity in the fund. When the producers exhausted their equity in the fund, the provincial government assumed the producers' portion of the payment by providing an interest-free loan, which was to be repaid when the fund was in surplus. In *Swine First Review Results* (53 FR 22194), the Department found this program to be *de jure* specific, and thus countervailable, because the legislation expressly made it available only to a specific group of enterprises or industries (hog producers). In these reviews, neither the GOC nor the government of New Brunswick submitted new information or evidence of changed circumstances to warrant reconsideration of this finding.

The program was terminated on March 31, 1989, with the fund showing a sizeable deficit. This deficit represents the cumulation over the operating years of loans made by the provincial government to cover payouts to producers. These loans were written off by the provincial government by Order-in-Council 89,1016 on December 21, 1989.

The Department's *Proposed Regulations,* at section 355.49(g), state that ''where during a year, a government forgives all or part of a loan, the Department will treat the forgiven amount as a grant and will expense or allocate it.'' The Department considers this grant to be non-recurring because the benefits are exceptional. (*General Issues Appendix*) (58 FR 37226)). Because the grant allocation period is three years, the last year in which producers of live swine may have received benefits under this program was 1991–92. However, New Brunswick did not export to the United States during that review period. Therefore, we preliminarily determine that this program was terminated and that no residual benefits accrued to swine producers after the 1991–92 review period. For a more detailed discussion on the Department's decision *see Memorandum on the New Brunswick Hog Price Stabilization Plan,* to Barbara E. Tillman from The Team dated May 15, 1996, which is on file in the CRU.

(B) Other Programs

We have also examined the following programs and preliminarily determine that they were terminated prior to April 1, 1991, and that no residual benefits were provided during the 1991–92, 1992–93 and 1993–94 review periods: (1) Canada/Alberta Swine Improvement Program Study; (2) Canada/Ontario Western Agribition Livestock Transportation Assistance Program; (3) Canada/Ontario Stabilization Plan for Hog Producers; (4) Alberta Red Meat Interim Insurance; (5) Ontario Livestock Improvement Program for Northern Ontario; (6) Ontario Pork Industry Improvement Plan; (7) Prince Edward Island Interest Payments on Assembly Yard Loan; and (8) Prince Edward Island Swine Incentive Policy.

Preliminary Results of Review

We preliminarily determine the total net subsidy on live swine from Canada to be Can$0.0594 per kilogram for the 1991–92 review period, Can$0.0609 per kilogram for the 1992–93 review period, and Can$0.0099 per kilogram for the 1993–94 review period.

If the final results of these reviews remain the same as these preliminary results, the Department intends to instruct the U.S. Customs Service to assess countervailing duties of Can$0.0594 per kilogram on shipments of live swine exported on or after April 1, 1991 and on or before March 31, 1992, Can$0.0609 per kilogram on shipments of live swine exported on or after April 1, 1992 and on or before March 31, 1993, and Can$0.0099 per kilogram on shipments of live swine exported on or after April 1, 1993 and on or before March 31, 1994.

Furthermore, if our final determination upholds our preliminary determination to revoke, in part, with respect to slaughter sows and boars and weanlings, the Department intends to instruct the U.S. Customs Service to liquidate, without regard to countervailing duties, and to refund any estimated countervailing duties collected for all unliquidated entries of slaughter sows and boars and weanlings made on or after April 1, 1991, the effective date of the partial revocation, in accordance with 19 C.F.R. 355.25(d)(5). We will also instruct the U.S. Customs Service to refund interest for entries of slaughter sows and boars and weanlings made on or after April 1, 1991, in accordance with section 778 of the Act.

The Department also intends to instruct the U.S. Customs Service to collect a cash deposit of estimated countervailing duties of Can$0.0099 per kilogram on shipments of all live swine, except slaughter sows and boars and weanlings, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of these reviews.

Parties to the proceeding may request disclosure of the calculation methodology and interested parties may request a hearing not later than 10 days after the date of publication of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven days after the time limit for filing the case brief. Parties who submit argument in this proceeding are requested to submit with the argument (1) a statement of the issue and (2) a brief summary of the argument. Any hearing, if requested, will be held seven days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 C.F.R. section 355.38(e).

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs under 19 C.F.R. section 355.38(c) are due. The Department will publish the final results of these administrative reviews including the results of its analysis of issues raised in any case or rebuttal briefs.

These administrative reviews and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. section 1675(a)(1)) and 19 C.F.R. 355.22.

Dated: May 20, 1996.

Paul L. Joffe,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–13318 Filed 5–28–96; 8:45 am]

BILLING CODE 3510–DS–P

Determination Not To Revoke Countervailing Duty Orders

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

ACTION: Notice of determination not to revoke countervailing duty orders.

SUMMARY: The Department of Commerce (the Department) is notifying the public of its determination not to revoke the countervailing duty orders listed below.

EFFECTIVE DATE: May 29, 1996.

FOR FURTHER INFORMATION CONTACT: Brian Albright or Cameron Cardozo, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On February 28, 1996, the Department published in the Federal Register (61 FR 7475) its intent to revoke the countervailing duty orders listed below. Under 19 CFR 355.25(d)(4)(iii), the Secretary of Commerce will conclude that an order is no longer of interest to interested parties and will revoke the order if no domestic interested party (as defined in sections 355.2(i)(3), (i)(4), (i)(5), and (i)(6) of the regulations) objects to revocation and no interested party requests an administrative review by the last day of the 5th anniversary month.

Within the specified time frame, we received from a domestic interested party either an objection to our intent to revoke, or a request for administrative review, for each of these countervailing duty orders. Therefore, because the requirements of 19 CFR 355.25(d)(4)(iii) have not been met, we will not revoke these orders.

This determination is in accordance with 19 CFR 355.25(d)(4).

Countervailing duty orders	
Brazil: Brass Sheet and Strip (C–351–604).	01/08/87 52 FR 698
Chile: Standard Carnations (C–337–601).	03/19/87 52 FR 8635
France: Brass Sheet and Strip (C–427–603).	03/06/87 52 FR 6996
Iran: Raw Pistachios (C–507–501).	03/11/86 51 FR 8344
Israel: Oil Country Tubular Goods (C–508–601).	03/06/87 52 FR 6999
Korea: Stainless steel Cookware (C–580–602).	01/20/87 52 FR 2140
Spain: Stainless Steel Wire Rod (C–469–004).	01/03/83 48 FR 52
Taiwan: Stainless steel Cookware (C–583–604).	01/20/87 52 FR 2141
Turkey: Welded Carbon Steel Pipes and Tubes (C–489–502).	03/07/86 51 FR 7984
Turkey: Welded Carbon Steel Line Pipe (C–489–502).	03/07/86 51 FR 7984

Dated: May 16, 1996.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 96–13323 Filed 5–28–96; 8:45 am]

BILLING CODE 3510–DS–P

Export Trade Certificate of Review

ACTION: Notice of application for an amendment to an export trade certificate of review, application No. 88–4A013.

SUMMARY: The Department of Commerce has received an application to amend an Export Trade Certificate of Review. This notice summarizes the amendment and requests comments relevant to whether the amended Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: W. Dawn Busby, Director, Office of Export Trading Company Affairs, International Trade Administration, 202–482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the Federal Register identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to determining whether the Certificate should be amended. An original and five (5) copies should be submitted not later than 30 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1800H, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as ''Export Trade Certificate of Review, application number 88–4A013.''

CISA Export Trade Group, Inc.'s (CISA ETC) original Certificate of Review No. 88–00013 was issued to CISA on October 19, 1988. Notice of issuance of the Certificate was published in the Federal Register on October 26, 1988 (53 FR 43253). Previous amendments to the Certificate were issued on March 2, 1990 (55 FR 23123, June 6, 1990) and on December 16, 1991 (57 FR 883, January 9, 1992).

Summary of the Application:

Applicant: CISA Export Trade Group, Inc. 124 Fieldstone Drive, Venice, Florida 34292.

Contact: Pierre A. Dahmani, Legal Counsel, Telephone: (312) 876–0200.

Application No.: 88–4A013.

Date Deemed Submitted: May 8, 1996.

Proposed Amendment: CISA Export Trade Group, Inc. seeks to amend its Certificate to:

1. add the following companies as ''Members'' within the meaning of Section 325.2 (1) of the Regulations (15 CFR 325.2(1)): Allied Mineral Products, Inc., Columbus, Ohio; American Colloid Company, Arlington Heights, Illinois; Borden, Inc./North American Resins, Westchester, Illinois; Delta Resins & Refractories, Inc, Milwaukee, Wisconsin; Eirich Machines, Inc., Gurnee, Illinois; Equipment Merchants Int'l, Inc., Cleveland, Ohio; Fargo Wear, Detroit, Michigan; Palmer Manufacturing Company, Springfield, Ohio; Thermtroniz, Adelanto, California; Vulcan Engineering Company, Helena, Alabama;

2. delete the following company as a ''Member'' within the meaning of Section 325.2(1) of the Regulations (15 CFR 325.2(1)): Carrier Vibrating Equipment, Inc.;

3. change the name of National Engineering Company to Simpson Technologies Corp.

Dated: May 22,1996.

W. Dawn Busby,

Director, Office of Export, Trading Company Affairs.

[FR Doc. 96–13339 Filed 5–28–96; 8:45 am]

BILLING CODE 3510–DR–M

Environmental Technologies Trade Advisory Committee

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of open meeting.

SUMMARY: The Environmental Technologies Trade Advisory Committee (ETTAC) will hold its seventh plenary meeting. The ETTAC was created on May 31, 1994, to promote a close working-relationship between government and industry and to expand export growth in priority and emerging markets for environmental products and services.

DATES AND PLACE: May 29, 1996 from 9:00 a.m. to 5:00 p.m. The meeting will take place in Room 6800 of the Department of Commerce, 14th Street and Constitution Avenue NW., Washington D.C. 20230.

The agenda will include a discussion of ETTAC recommendations with agency representatives from the Environmental Trade Working Group of the Trade Promotion Coordinating Committee; a discussion of a background report prepared by the ETTAC that will accompany its recommendations to the Secretary of Commerce; future steps for the ETTAC.

This program is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Jane Siegel, Department of Commerce, Room 1002, Washington D.C. 20230. Seating is limited and will be on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: The Office of Environmental Technologies Exports, Room 1003, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230, phone (202) 482–5225, facsimile (202) 482–5665 TDD 1–800-833–8723.

Dated: May 21, 1996.

Anne Alonzo,

Deputy Assistant Secretary for Environmental Technologies Exports.

[FR Doc. 96–13327 Filed 5–28–96; 8:45 am]

BILLING CODE 3510–DR–M

National Institute of Standards and Technology

[Docket No. 950802199–6064–02]

RIN 0693–XX10

Approval of Withdrawal of Eighteen Federal Information Processing Standards

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice.

SUMMARY: The purpose of this notice is to announce that the Secretary of Commerce has approved the withdrawal of eighteen Federal Information Processing Standards (FIPS).

On August 22, 1995, notice was published in the Federal Register (60 FR 43586–43587) proposing withdrawal of eighteen Federal Information Processing Standards (FIPS). These FIPS adopt voluntary industry standards for Federal government use. In some cases, the FIPS documents have not been updated to reference current or revised voluntary industry standards. In other cases, commercial products implementing the voluntary industry standards, such as punched cards, paper tape, optical character recognition equipment, and microfilm readers, are widely available; as a result, it is no longer necessary for the government to mandate standards in these areas.

Withdrawal means that the FIPS will no longer be part of a subscription series that is provided by the National Technical Information Service, and that NIST will no longer be able to support the standards by answering implementation questions or updating the FIPS when the voluntary industry standards are revised. Current voluntary industry standards should be used by agencies in their procurement actions were appropriate, in accordance with OMB Circular A–119, Federal Participation and Use of Voluntary Standards.

The written comments submitted by interested parties and other material available to the Department relevant to these standards were revised by NIST. On the basis of this review, NIST recommended that the Secretary approve the withdrawal of the eighteen FIPS, and prepared a detailed justification document for the Secretary's review in support of that recommendation.

The detailed justification document which was presented to the Secretary is part of the public record and is available for inspection and copying in the Department's Central Reference and Records Inspection Facility, Room 6020, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenue, NW., Washington, DC 20230.

This notice provides only the FIPS publication number, title, and the technical specifications number for each of the eighteen standards being withdrawn:

—FIPS 2–1, Perforated Tape Code for Information Interchange (ANSI X3.6–1965/R1991)

—FIPS 13, Rectangular Holes in Twelve-Row Punched Cards (ANSI X3.21–1967/R1991)

—FIPS 14–1, Hollerith Punched Card Code (ANSI X3.26–1980/R1991)

—FIPS 26, One-Inch Perforated Paper Tape for Information Interchange (ANSI X3.18–1967/R1990)

—FIPS 27, Take-Up Reels for One-Inch Perforated Tape for Information Interchange (ANSI X3.20–1967/R1990)

—FIPS 32–1, Character Sets for Optical Character Recognition (OCR) (ANSI X3.2–1970/R1976, X3.17–1981, and X3.49–1975/R1982)

—FIPS 33–1, Character Set for Handprinting (ANSI X3.45–1982)

—FIPS 40, Guideline for Optical Character Recognition Forms

—FIPS 54–1, Computer Output Microform (COM) Formats and Reduction Ratios, 16mm and 105mm (ANSI/AIIM MS5–1991 and MS14–1988)

—FIPS 82, Guideline for Inspection and Quality Control for Alphanumeric Computer-Output Microforms (ANSI/AIIM MS1–1980)

—FIPS 84, Microfilm Readers (ANSI/AIIM (NMA) MS20–1979)

—FIPS 85, Optical Character Recognition (OCR) Inks (ANSI X3.86–1980)
—FIPS 89, Optical Character Recognition (OCR) Character Positioning (ANSI X3.93M–1981)
—FIPS 90, Guideline for Optical Character Recognition (OCR) Print Quality (ANSI X3.99–1983)
—FIPS 107, Local Area Networks: Baseband Carrier Sense Multiple Access with Collision Detection Access Method and Physical Layer Specifications and Link Layer Protocol (ANSI/IEEE 802.2 and 802.3)
—FIPS 108, Alphanumeric Computer Output Microform Quality Test Slide (AIIM MS28–1983)
—FIPS 129, Optical Character Recognition (OCR)—Dot Matrix Character Sets for OCR–MA (ANSI X3.111–1986)
—FIPS 149, General Aspects of Group 4 Facsimile Apparatus (ANSI/EIA–536–1988)

EFFECTIVE DATE: This withdrawal is effective May 29, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. Shirley Radack, National Institute of Standards and Technology, Gaithersburg, MD 20899, telephone (301) 975–2833.

Authority: Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Institute of Standards and Technology after approval by the Secretary of Commerce pursuant to section 5131 of the Information Technology Management Reform Act of 1996 and the Computer Security Act of 1987, Pub. L. 104–106.

Dated: May 22, 1996.

Samuel Kramer,

Associate Director.

[FR Doc. 96–13399 Filed 5–28–96; 8:45 am]

BILLING CODE 3510–CN–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0142]

Submission for OMB Review; Comment Request Entitled Past Performance Information

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000–0142).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Past Performance Information. A request for public comments was published at 61 FR 9983, March 12, 1996. One comment was received resulting in a change to block 11c of Standard Form 83–I, *i.e.*, including ''not-for-profit institutions'' as part of the affected public.

DATES: *Comment Due Date:* June 28, 1996.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 18th & F Streets, NW, Room 4037, Washington, DC 20405. Please cite OMB Control No. 9000–0142, Past Performance Information, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Klein, Federal Acquisition Policy Division, GSA (202) 501–3775.

SUPPLEMENTARY INFORMATION:

A. Purpose

Past performance information is relevant information, for future source selection purposes, regarding a contractor's actions under previously awarded contracts. When past performance is to be evaluated, the rule states that the solicitation shall afford offerors the opportunity to identify Federal, state and local government, and private contracts performed by offerors that were similar in nature to the contract being evaluated.

A submission for OMB review entitled Past Performance Information was published in the Federal Register under the emergency processing procedure on March 12, 1996, with a notice of request for public comment. One comment was received calling attention to the fact that block 11c on Standard Form 83–I, Paperwork Reduction Act Submission, should have also been checked. Block 11 concerns ''Affected public'' and ''c'' is entitled ''Not-for-profit institutions.'' As a result of the comment, block 11c has now been checked to include ''not-for-profit institutions.'' The burden estimates have not been affected as a result of the comment because the burden estimates are based on the total number of estimated affected contract actions and not on the status of the contractors themselves.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *2* 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 as follows: Respondents, *150,000*; responses per respondent, 4; total annual responses, *600,000*; preparation hours per response, *2*; and total response burden hours, *1,200,000*.

OBTAINING COPIES OF PROPOSALS: Requester may obtain copies of justifications from the General Services Administration, FAR Secretariat (MVRS), Room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0142, Past Performance Information, in all correspondence.

Dated: May 22, 1996.

Patricia A. Ting,

Secretariat.

[FR Doc. 96–13357 Filed 5–28–96; 8:45 am]

BILLING CODE 6820–EP–P

Department of the Army Corps of Engineers

Availability of Surplus Land and Buildings Located on Fort Greely, Alaska

AGENCY: U.S. Army Corps of Engineers, Alaska District.

ACTION: Notice of Availability.

SUMMARY: This notice identifies surplus real property located within the cantonment area of Fort Greely, Alaska. Fort Greely is located 107 miles southeast of Fairbanks, Alaska, and is 5 miles south of Delta Junction, Alaska. The Richardson Highway traverses the eastern portion of the installation. Delta Junction is the northern terminus of the Alaska Highway.

FOR FURTHER INFORMATION CONTACT: For more information regarding particular properties identified in this notice (i.e., acreage, floor plans, existing sanitary facilities, etc.), contact Angie Gori, U.S. Army Engineer District, Alaska, ATTN: CENPA–RE–MD, Post Office Box 898, Anchorage, Alaska 99506–0898, telephone 907/753–2845, or Mr. Woodruff at the below address.

SUPPLEMENTARY INFORMATION: This surplus property is available under the

provisions of the Federal Property and Administrative Services Act of 1949 and the Base Closure Community Redevelopment and Homeless Assistance Act of 1994. Notices of interest should be forwarded to the Delta/Greely Community Coalition, ATTN: Mr. Ray Woodruff, Executive Director, Post Office Box 780, Delta Junction, Alaska 99737–0780, telephone 907/895–1081.

The surplus real property consists of a parcel of land containing 1,785 acres and includes 210 buildings and facilities. The current range of uses include training, maintenance, research and development, storage, medical, administrative, barracks, family housing, transient quarters, community and utility plants.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 96–13381 Filed 5–28–96; 8:45 am]

BILLING CODE 3710–NL–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Proposed collection; comment request.

SUMMARY: The Acting 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 July 29, 1996.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue SW., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the 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 Acting 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.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: May 22, 1996.

Kent Hannaman,

Acting Director, Information Resources Group.

Office of Postsecondary Education

Type of Review: New.

Title: William D. Ford Federal Direct Loan Program Income Contingent Repayment Plan Alternative Documentation of Income Form.

Frequency: Annually.

Affected Public: Individuals or households

Annual Reporting and Recordkeeping Hour Burden:

Responses: 75,000.

Burden Hours: 24,750.

Abstract: Borrowers in the William D. Ford Federal Direct Loan Program Income Contingent Repayment Plan will use this form to submit documentation of their current income when Adjusted Gross Income information is unavailable or does not reflect current income.

Type of Review: Revision.

Title: Income Contingent Repayment Plan Consent to Disclosure of Tax Information.

Frequency: Once every five years.

Affected Public: Individuals or households.

Annual Reporting and Recordkeeping Hour Burden:

Responses: 235,288.

Burden Hours: 47,058

Abstract: This form is a means by which a William D. Ford Federal Direct Loan Program borrower (and, if married, the borrower's spouse) choosing to repay under the Income Contingent Repayment Plan provides written consent to the disclosure of certain tax return information by the Internal Revenue Service to the Department of Education and its agents for the purpose of calculating the borrower's monthly repayment amount.

Type of Review: Reinstatement.

Title: General Education Provisions Act (GEPA) 424 (formerly GEPA 406A) Biennial Report on the Distribution of Federal Education Funds.

Frequency: Biennially.

Affected Public: Federal Government, State, Local or Tribal Government, SEAs or LEAs.

Annual Reporting and Recordkeeping Hour Burden:

Responses: 142.

Burden Hours: 3,420.

Abstract: Section 424 of the GEPA requires State to report on the distribution of funds for State-administered Federal education funds. This reporting requirement, previously known as GEPA 406A, underwent significant revisions during the 1994 reauthorization of the Elementary and Secondary Education Act, including changing the collection from annual to biennial, extending the reporting deadlines, and expanding the report to include Federally-administered programs.

[FR Doc. 96–13336 Filed 5–28–96; 8:45 am]

BILLING CODE 4000–01–P

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Acting Director, Information Resources Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507 (j)), since public harm is reasonably likely to

result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by May 28, 1996. A regular clearance process is also beginning. Interested persons are invited to submit comments on or before July 29, 1996.

ADDRESSES: Written comments regarding the emergency review 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 request should be addressed to Patrick J. Sherrill, Department of Education, 7th & D Streets SW., Room 5624, Regional Office Building 3, Washington, DC 20202–4651. Written comments regarding the regular clearance and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue SW., Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronic mailed to the internet address #FIRB@ed.gov, or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 3506 (c)(2)(A) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Director of the Information Resources Group, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. ED invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: May 22, 1996.

Kent Hannaman,

Acting Director, Information Resources Group.

Office of Elementary and Secondary Education

Type of Review: New.

Title: Impact Aid Funding Memorandum—Availability of Construction Funds for Certain Impact Aid Local Educational Agencies (LEAs).

Abstract: In order to be considered for special Impact Aid construction funding, certain Impact Aid LEAs must request consideration for the funding on or before May 28, 1996.

Additional Information: Due to the statutory deadline of May 28, the Department is requesting an emergency clearance for this collection. If this collection is not cleared by May 28, the Department will not be able to make grant awards by the end of the fiscal year. This notice is not intended to solicit comments because of the requested approval date of May 28.

Frequency: One-time.

Affected Public: State, local or Tribal Gov't, SEAs and LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 8.

Burden Hours: 24.

[FR Doc. 96–13337 Filed 5–28–96; 8:45 am].

BILLING CODE 4000–01–U.

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Acting Director, Information Resources Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507 (j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by June 7, 1996. A regular clearance process is also beginning. Interested persons are invited to submit comments on or before July 29, 1996.

ADDRESSES: Written comments regarding the emergency review 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, D.C. 20503. Requests for copies of the proposed information collection request should be addressed to Patrick J. Sherrill, Department of Education, 7th & D Streets, S.W., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651. Written comments regarding the regular clearance and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronic mailed to the internet address #FIRB@ed.gov, or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 3506 (c)(2)(A) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the

information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Director of the Information Resources Group, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. ED invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: May 22, 1996.

Kent Hannaman,

Acting Director, Information Resources Group.

Office of Postsecondary Education

Type of Review: Revision.

Title: Drug and Violence Prevention Program in Higher Education, The Institution-Wide Program Competition.

Abstract: Safe and Drug-Free Schools and Communities National Programs (ESEA–A–2) legislation calls for drug and violence prevention programs that benefit college and university students. The Institution-Wide grant competition responds to the mandate by making federal funds available to colleges and universities through a competitive grant making process.

Additional Information: Congress approved this unfunded program during its final budget decisions. If the collection is not cleared quickly, the Department will not be able to fund postsecondary institutions in 1996.

Frequency: At time of grant application.

Affected Public: Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 240.

Burden Hours: 3,840.

[FR Doc. 96–13338 Filed 5–28–96; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Department of Energy/Los Alamos National Laboratory

AGENCY: Department of Energy.

ACTION: Notice of Open Meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Los Alamos National Laboratory.

DATES: Tuesday, June 4, 1996: 6:30 pm–9:30 pm; 7:00 pm to 7:30 pm (public comment session).

ADDRESSES: Northern New Mexico Community College, 1002 N. Onate, Espanola, New Mexico 87532, 505–753–8970.

FOR FURTHER INFORMATION CONTACT: Ms. Kimberly Roybal, Los Alamos National Laboratory Citizens' Advisory Board Support, Northern New Mexico Community College, 1002 Onate Street, Espanola, NM 87352, (800)753–8970, or (505)753–8970.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Advisory Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

Tuesday, June 4, 1996

6:30 PM	Call to Order and Welcome
7:00 PM	Public Comment
7:30 PM	Old Business
8:30 PM	Sub-Committee Reports
9:30 PM	Adjourn

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ms. Lisa Roybal, at the telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. This notice is being published less than 15 days in advance of the meeting due to programmatic issues that needed to be resolved.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to Herman Le-Doux, Department of Energy, Los Alamos Area Office, 528 35th Street, Los Alamos, NM 87185–5400.

Issued at Washington, DC on May 22, 1996.

Rachel M. Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 96–13403 Filed 5–28–96; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[FERC–519]

Information Collection Submitted for Review and Request for Comments

May 22, 1996.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of submission for review by the Office of Management and Budget (OMB) and request for comments.

SUMMARY: In compliance with the requirements of Section 3507 of the Paperwork Reduction Act of 1995 (Pub L. No. 104–13), the Federal Energy Regulatory Commission (Commission) is submitting a collection of information listed in this notice to OMB for review under the provisions of the Act.

DATES: Comments regarding this collection of information are best assured of having their full effect if received within 30 days of this notification.

ADDRESSES: Copies of the collection of information can be obtained from and written comments may be submitted to the Federal Energy Regulatory Commission, Attn: Michael P. Miller, Information Services Division, ED–12.4, 888 First Street NE., Washington, DC 20426. Comments should also be addressed to: Desk Officer, Federal Energy Regulatory Commission, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Michael P. Miller may be reached by telephone at (202) 208–1415, by fax at (202) 273–0873, and by e-mail at mmiller@ferc.fed.us.

SUPPLEMENTARY INFORMATION:

Abstract: The information collected under the requirements of FERC–519 ''Disposition of Facilities, Mergers and Acquisitions of Securities'' (OMB No. 1902–0082) is used by the Commission to implement the statutory provisions of Section 203 of the Federal Power Act (FPA), 16 U.S.C. Section 203 authorizes the Commission to grant approval for transactions in which a public utility disposes of jurisdictional facilities, merges such facilities with the facilities owned by another person, or acquires the securities of another public utility. Under the statute, the Commission must find that the proposed transaction will be consistent with the public interest. Section 318 of the FPA exempts certain persons from the requirements of Section 203 which would otherwise concurrently apply under the Public Utility Holding Company Act of 1935. The Commission implements these filing requirements in the Code of Federal Regulations (CFR) under 18 CFR Part 33.

Action: The Commission is requesting a three-year extension of the current expiration date, with no changes to the existing collection of data.

Burden Statement: Public reporting burden for this collection is estimated as:

Number of respondents annually (1)	Number of responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1)×(2)×(3)
30	1	80 hours	2,400 hours.

Estimated cost burden to respondents: 2,400 hours/2,087 hours per year × $102,000 per year = $117,298.

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Lois D. Cashell,

Secretary.

[FR Doc. 96–13353 Filed 5–28–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–118–001]

Eastern Shore Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

May 22, 1996.

Take notice that on May 20, 1996 Eastern Shore Natural Gas Company (ESNG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, certain revised tariff sheets in the above captioned docket, with proposed effective date of November 13, 1995.

ESNG states that the purpose of the instant filing is to supplement ESNG's January 19, 1996 Compliance Filing in Docket No. RP96–118–000 in order to reflect further revisions in ESNG's Purchased Gas Cost Adjustment (PGA) Clause required by the Commission order dated February 15, 1996.

On January 19, 1996, ESNG filed revised PGA tariff sheets (as directed by Commission order dated December 29, 1995 in Docket No. TQ96–2–23–000) to remove all references to the PGA regulations in effect prior to the issuance of Commission Order No. 582 in ESNG's currently effective PGA clause. Upon review of ESNG's January 19, 1996 filing the Commission found that ESNG had failed to remove references to PGA regulations on Original Sheet Nos. 250 and 253. In addition the Commission further required ESNG to incorporate relevant definitions formerly contained in previously effective Section 154.302 into its PGA provisions, adjusting the regulatory references as appropriate.

ESNG states that copies of the filing have been served upon its jurisdictional customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR Section 325.211). All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–13345 Filed 5–28–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER96–1356–000]

Entergy Power, Inc.; Notice of filing

May 22, 1996.

Take notice that on May 15, 1996, Entergy Power, 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 June 3, 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. 96–13346 Filed 5–28–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER96–1357–000]

Entergy Power, Inc.; Notice of Filing

May 22, 1996.

Take notice that on May 6, 1996, Entergy Power, Inc. tendered for filing a Certificate of Concurrence 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 June 3, 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. 96–13347 Filed 5–28–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–755–000]

Missouri Gas Energy, a Division of Southern Union Company, et al.; Notice of Order To Show Cause

May 22, 1996.

Take notice that on May 16, 1996, the Commission issued an order under section 5 of the Natural Gas Act for Panhandle Eastern Pipe Line Company (Panhandle) to show cause why, in light of its earlier agreement to interconnect with Stahl Specialty Company (Stahl) to provide interruptible service, it should not be required to provide an interconnect for Missouri Gas Energy (Missouri Gas) as well. In doing so, the Commission required that Panhandle explain, in particular, why it does not view Missouri Gas as ''similarly situated'' to Stahl. Additionally, the Commission required that Panhandle explain why other previously constructed interconnects for interruptible customers qualified for construction under its expressed policy while Missouri Gas does not, or explain why it changed its policy since it constructed, or decided to construct, those interconnects. The Commission required that Panhandle's response contain information concerning: (1) Other requests to construct facilities for interruptible service that Panhandle denied, including any requests for an interconnect for interruptible service that the customer subsequently converted to a request for firm service when the initial request was denied; and (2) specific operational and system integrity information concerning each requested interconnect which Panhandle considered when it denied the requests.

Any person desiring to be heard or to make a protest with reference the order to show cause should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed within 20 days of the date of publication of this notice in the Federal Register. 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 to the proceeding must file a motion to intervene.[1] Copies of the order to show cause are available on the Commission Issuance Posting System.

Lois D. Cashell,

Secretary.

[FR Doc. 96–13348 Filed 5–28–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–240–000]

Northwest Alaskan Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

May 22, 1996.

Take notice that on May 17, 1996, Northwest Alaskan Pipeline Company (Northwest Alaskan), tendered for filing as part of its FERC Gas Tariff, Original Volume No. 2, Thirty-Eighth Revised Sheet No. 5, with an effective date of July 1, 1996.

Northwest Alaskan states that it is submitting Thirty-Eighth Revised Sheet No. 5 reflecting a decrease in total demand charges for Canadian gas purchased by Northwest Alaskan from Pan-Alberta Gas Ltd. (''Pan-Alberta'') and resold to Pan-Alberta Gas (U.S.), Inc. (''PAG-US'') under Rate Schedules X–1, X–2 and X–3, and an increase in total demand charges for Canadian gas resold to Pacific Interstate Transmission Company (''PIT'') under Rate Schedule X–4.

Northwest Alaskan states that it is submitting Thirty-Eighth Revised Sheet No. 5 pursuant to the provisions of the amended purchase agreements between Northwest Alaskan and PAG–US and PIT, and pursuant to Rate Schedules X–1, X–2, X–3 and X–4, which provide for Northwest Alaskan to file 45 days prior to the commencement of the next demand charge period (July 1, 1996 through December 31, 1996) the demand charges and demand charge adjustments which Northwest Alaskan will charge during the period.

Northwest Alaskan states that a copy of this filing has been served on Northwest Alaskan's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed as provided in section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–13349 Filed 5–28–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER96–1742–000]

Southern California Edison Company; Notice of Filing

May 22, 1996.

Take notice that on May 7, 1996, Southern California Edison Company tendered for filing a Notice of Cancellation of Rate Schedule FERC No. 338 and all supplements thereto.

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

[1] We note that persons who filed a motion to intervene in the complaint filed by Missouri Gas in this proceeding already are parties to the proceeding and do not have to file another motion to intervene.

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 June 4, 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. 96–13350 Filed 5–28–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MT96–14–000]

Texas Eastern Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

May 22, 1996.

Take notice that on May 17, 1996 Texas Eastern Transmission Corporation (Texas Eastern) submitted for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following revised tariff sheets:

Third Revised Sheet No. 624
First Revised Sheet No. 624A
Second Revised Sheet No. 647

Texas Eastern states that the purpose of this filing is to reflect the name change of Panhandle Trading Company to PanEnergy Gas Services, Inc. (PGS), which is the marketing company which manages day to day performance of Texas Eastern's remainnig gas purchase contracts.

The proposed effective date of these tariff sheets is June 17, 1996.

Texas Eastern states that copies of the filing were served on Texas Eastern's jurisdictional customers, interested state commissions, and all current interruptible customers.

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, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. 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. 96–13351 Filed 5–28–96; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 11077–001]

Alaska Power and Telephone Company; Notice of Availability of Final Environmental Assessment

May 22, 1996.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for an original license for the Goat lake Hydroelectric Project, located on Pitchfork Falls, about 7 miles from the town of Skagway, in southeast Alaska.

The Federal Energy Regulatory Commission and the U.S. Forest Service have prepared a Final Environmental Assessment (FEA) for the project which analyzes existing and potential future environmental effects of the project. Our conclusion is that license issuance for the project, with appropriate environmental protective or enhancement measures, would not be a major federal action significantly affecting the quality of the human environment.

Copies of the FEA are available for review in the Public Reference Branch, Room 2A, of the Commission's offices at 888 First Street, N.E. Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 96–13354 Filed 5–28–96; 8:45 am]

BILLING CODE 6717–01–M

Sunshine Act Meeting

May 22, 1996.

The following notice of meeting is published pursuant to section 3(A) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552B:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: May 29, 1996, 10:00 a.m.

PLACE: Room 2C, 888 First Street, N.E., Washington, D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda. *Note—Items Listed on the Agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 208–0400. For a Recording Listing Items Stricken from or Added to the Meeting, call (202) 208–1627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Reference and Information Center.

Consent Agenda—Hydro
653rd Meeting—May 29, 1996, Regular Meeting (10:00 a.m.)

CAH–1.	DOCKET# DI94–1	001	TOWN OF ESTES PARK, COLORADO.
CAH–2.	DOCKET# P–2396	003	CENTRAL VERMONT PUBLIC SERVICE CORPORATION.
	OTHER#S P–2397	003	CENTRAL VERMONT PUBLIC SERVICE CORPORATION.
	P–2399	004	CENTRAL VERMONT PUBLIC CERVICE CORPORATION.
	P–2400	003	CENTRAL VERMONT PUBLIC SERVICE CORPORATION.
CAH–3.	DOCKET# P–2513	005	GREEN MOUNTAIN pOWER CORPORATION.
CAH–4.	DOCKET# P–9974	020	ROUGH AND READY HYDRO COMPANY.
CAH–5.	DOCKET# P–349	030	ALABAMA POWER COMPANY.
CAH–6.	OMITTED		
CAH–7.	DOCKET# P–3409	016	BOYNE USA RESORTS.

CONSENT AGENDA—ELECTRIC

CAE–1.	DOCKET# ER95–1141	000	CENTRAL POWER AND LIGHT COMPANY.
CAE–2.	OMITTED		

CAE–3.	OMITTED		
CAE–4.	OMITTED		
CAE–5.	DOCKET# ER96–1471	000	CLEVELAND ELECTRIC ILLUMINATING COMPANY.
CAE–6.	DOCKET# ER96–1497	000	MIDWEST ENERGY, INC.
CAE–7.	DOCKET# ER96–1551	000	PUBLIC SERVICE COMPANY OF NEW MEXICO.
CAE–8.	DOCKET# ER96–1554	000	PORTLAND GENERAL ELECTRIC COMPANY AND SOUTHERN CALIFORNIA EDISON COMPANY.
CAE–9.	DOCKET# ER96–1552	000	DAYTON POWER AND LIGHT COMPANY.
CAE–10.	DOCKET# ER96–1426	000	NORTHERN INDIANA PUBLIC SERVICE COMPANY.
	OTHER# ER96–1431	000	NIPSCO ENERGY SERVICES, INC.
CAE–11.	DOCKET# TX96–1	000	CITIZENS UTILITIES COMPANY.
	OTHER#S TX96–3	000	CITIZENS UTILITIES COMPANY.
CAE–12.	DOCKET# ER94–1559	000	PUGET SOUND POWER & LIGHT COMPANY.
CAE–13.	DOCKET# ER96–391	001	KANSAS CITY POWER & LIGHT COMPANY.
	OTHER#S ER94–1045	008	KANSAS CITY POWER & LIGHT COMPANY.
CAE–14.	DOCKET# ER95–1787	001	TEXACO NATURAL GAS INC.
CAE–15.	DOCKET# ER96–108	002	DUKE/LOUIS DREYFUS L.L.C.
	OTHER#S ER95–760	002	DUKE POWER COMPANY.
	ER96–109	001	DUKE ENERGY MARKETING CORPORATION.
	ER96–110	002	DUKE POWER COMPANY.
CAE–16.	DOCKET# QF89–58	006	MEGAN-RACINE ASSOCIATES, INC.
CAE–17.	DOCKET# QF95–302	003	BROOKLYN NAVY YARD COGENERATION PARTNERS, L.P.
CAE–18.	DOCKET# ER96–930	001	PENNSYLVANIA POWER & LIGHT COMPANY.
	OTHER#S ER96–931	001	PENNSYLVANIA POWER & LIGHT COMPANY.
	ER96–932	001	PENNSYLVANIA POWER & LIGHT COMPANY.
	ER96–933	001	PENNSYLVANIA POWER & LIGHT COMPANY.
CAE–19.	DOCKET# EL94–75	001	CLEVELAND ELECTRIC ILLUMINATING COMPANY V. CITY OF CLEVELAND, OHIO.
	OTHER#S EL94–80	001	CITY OF CLEVELAND, OHIO V. CLEVELAND ELECTRIC ILLUMINATING COMPANY.
	EL94–86	001	CITY OF CLEVELAND, OHIO V. CLEVELAND ELECTRIC ILLUMINATING COMPANY.
CAE–20.	DOCKET# ER95–1561	001	MONTAUP ELECTRIC COMPANY.
CAE–21.	DOCKET# ER95–1842	001	NEW ENGLAND POWER COMPANY.
	OTHER#S ER92–764	005	NEW ENGLAND POWER COMPANY.
	ER92–766	005	NORTHEAST UTILITIES SERVICE COMPANY.
	ER95–1668	001	NORTHEAST UTILITIES SERVICE COMPANY.
CAE–22.	DOCKET# EL91–32	003	POWER AUTHORITY OF THE STATE OF NEW YORK V. LONG ISLAND LIGHTING COMPANY.
	OTHER#S EL91–34	003	MUNICIPAL ELECTRIC UTILITIES ASSOCIATION OF NEW YORK V. LONG ISLAND LIGHTING COMPANY.
CAE–23.	DOCKET# EL96–46	000	METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA.
CAE–24.	DOCKET# AC96–81	000	PECO ENERGY COMPANY.
CAE–25.	DOCKET# EL96–2	000	ASHBURNHAM MUNICIPAL LIGHT DEPARTMENT, ET AL. V. MAINE YANKEE ATOMIC POWER COMPANY.
CAE–26.	DOCKET# NJ96–1	000	SOUTH CAROLINA PUBLIC SERVICE AUTHORITY.

CONSENT AGENDA—GAS AND OIL

CAG–1.	OMITTED		
CAG–2.	DOCKET# RP96–211	000	TRANSCONTINENTAL GAS PIPE LINE CORPORATION.
	OTHER#S RP95–197	010	TRANSCONTINENTAL GAS PIPE LINE CORPORATION.
CAG–3.	DOCKET# RP96–215	000	FLORIDA GAS TRANSMISSION COMPANY.
	OTHER#S RP96–215	001	FLORIDA GAS TRANSMISSION COMPANY.
CAG–4.	DOCKET# RP96–217	000	GREAT LAKES GAS TRANSMISSION LIMITED PARTNERSHIP.
CAG–5.	DOCKET# RP96–218	000	TEXAS EASTERN TRANSMISSION CORPORATION.
CAG–6.	DOCKET# RP96–222	000	COLUMBIA GAS TRANSMISSION CORPORATION.
CAG–7.	DOCKET# tM96–9–23	000	EASTERN SHORE NATURAL GAS COMPANY.
	OTHER#S TM96–10–23	000	EASTERN SHORE NATURAL GAS COMPANY.
CAG–8.	DOCKET# RP96–223	000	PANHANDLE EASTERN PIPE LINE COMPANY.
CAG–9.	DOCKET# RP96–224	000	PANHANDLE EASTERN PIPE LINE COMPANY.
CAG–10.	DOCKET# RP96–225	000	NATURAL GAS PIPELINE COMPANY OF AMERICA.
CAG–11.	OMITTED		
CAG–12.	OMITTED		
CAG–13.	DOCKET# RP96–213	000	KERN RIVER GAS TRANSMISSION COMPANY.
CAG–14.	DOCKET# RP96–99	000	NORA TRANSMISSION COMPANY.
	OTHER#S RP96–99	000	NORA TRANSMISSION COMPANY.
CAG–15.	DOCKET# RP96–1–8	000	SOUTH GEORGIA NATURAL GAS COMPANY.
	OTHER#S RP95–38	000	SOUTH GEORGIA NATURAL GAS COMPANY.
CAG–16.	DOCKET# RP95–411	000	PANHANDLE EASTERN PIPE LINE COMPANY.
	OTHER#S RP95–411	001	PANHANDLE EASTERN PIPE LINE COMPANY.
CAG–17.	DOCKET# RP96–51	002	PANHANDLE EASTERN PIPE LINE COMPANY.
	OTHER#S RP96–51	000	PANHANDLE EASTERN PIPE LINE COMPANY.
CAG–18.	DOCKET# PR96–111	000	SEA ROBIN PIPELINE COMPANY.
CAG–19.	DOCKET# PR96–16	000	OLYMPIC PIPELINE COMPANY.
	OTHER#S RP95–17	000	OLYMPIC PIPELINE COMPANY.
CAG–20.	DOCKET# RP91–26	015	EL PASO NATURAL GAS COMPANY.

	OTHER#S RP91–162	006	EL PASO NATURAL GAS COMPANY.
CAG–21.	DOCKET# RP95–449	002	TRUNKLINE GAS COMPANY
CAG–22	OMITTEED		
CAG–23	DOCKET #OR95–2	001	SANTEE DISTRIBTUING COMPANY V. DIXIE PIPELINE COMPANY.
CAG–24	DOCKET #SA94–5	001	CENTANA INTRASTATE PIPELINE COMPANY.
CAG–25	DOCKET #RP95–88	007	TENNSSEE GAS PIPELINE COMPANY.
CAG–26	OMITTED		
CAG–27	DOCKET #MG96–10	000	CARNEGIE INTERSTATE PIPELINE COMPANY.
CAG–28	OMITTED		
CAG–29	DOCKET #CP95–482	001	COLUMBIA GAS TRANSMISSION CORPORATION.
CAG–30	OMITTED		
CAG–31	DOCKET #CP95–76	001	TEXAS EASTERN TRANSMISSION CORPORATION.
	OTHER # SCP95–2	000	TEXAS EASTERN TRANSMISSION CORPORATION.
	CP95–2	001	TEXAS EASTERN TRANSMISSION CORPORATION.
	CP95–76	000	TEXAS EASTERN TRANSMISSION CORPORATION.
	CP95–76	002	TEXAS EASTERN TRANSMISSION CORPORATION.
CAG–32	DOCKET #CP95–376	000	MISSISSIPPI RIVER TRANSMISSION CORPORATION AND NORMA FIELD SERVICES CORPORATION.
CAG–33	DOCKET #95–700	001	WILLIAMS NATURAL GAS COMPANY.
	OTHER SCP95–700	000	WILLIAMS NATURAL GAS COMPANY.
CAG–34	DOCKET #CP95–609	000	EQUITRANS, INC.
CAG–35	OMITTED		
CAG–36	OMITTED		
CAG–37	DOCKET #CP95–500	001	SOUTHERN NATURAL GAS COMPANY.
CAG–38.	DOCKET #RP96–226	000	YOUNG GAS STORAGE COMPANY, LTD.
HYDRO AGENDA			
H–1	RESERVED		
ELECTRIC AGENDA			
E–1.	RESERVED		
OIL AND GAS AGENDA			
I	PIPELINE RATE MATTERS		
PR	RESERVED		
II.	PIPELINE CERTIFICATE MATTERS		
PC–1.	RESERVED		

Lois D. Cashell,

Secretary.

[FR Doc. 96–13484 Filed 5–23–95; 4:54 pm]

BILLING CODE 6717–01–P

[Docket No. RM95–4–000]

Revisiosn to Uniform System of Accounts, Forms, Statements, and Reporting Requirements for Natural Gas Companies; Notice of Revised Electronic Filing Specifications for Index of Customers and Discount Transportation Rate Report

May 22, 1996.

On September 28, 1995, the Federal Energy Regulatory Commission (Commission) issued Order No. 581, amending its Uniform System of Accounts, forms, and reports and statements for natural gas companies.[1] The changes wrought by the rule include modifications to the Commission's electronic filing requirements.

Although Order No. 581 imposed new and revised electronic filing requirements, it did not include the final electronic filing specifications. On February 29, 1996, the Commission issued ''Notice Adopting Electronic Filing Specifications for Index of Customers and Discount Transportation Rate Report'' (the Notice) in Docket No. RM95–4–000.[2] The Notice contained the instructions for filing the Index of Customers and discount rate reports electronically.[3] The first Index of Customers filing was due April 1, 1996. The first discount rate report filed electronically was due with the filing of the March report.

On April 29, 1996, the Commission issued an Order on Clarification addressing requests for clarification of the instructions for filing the Index and discount rate reports electronically. The Commission agreed to make two modifications to its instructions. The Commission directed staff to include these changes, and other minor modifications staff has identified, in revised instruction manuals to be issued soon after issuance of the Notice.

In compliance with the Notice, staff is revising the instruction manuals for the Index of Customers and discount rate reports appended as Attachments A and B, respectively.[4]

Changes Required by the Order on Clarification

In accordance with the Order on Clarification, General Instruction 1(B) of both sets of instructions is modified to eliminate the impression that the respondent has the election to comply with the Index of Customers and discount rate report requirements. The phrase ''[i]f the respondent does not want to report a value for a specific data item on the record, then the data item can be omitted * * * is replaced by the phrase ''If a data item is not applicable,

[1] Revisions to Uniform System of Accounts, Forms, Statements, and Reporting Requirements for Natural Gas Companies, 60 FR 53019 (October 11, 1995).

[2] 61 FR 8870, March 6, 1996.

[3] The requirement to file an Index of Customers is set forth in §§ 284.106(c) and 284.223(b). The requirement to file the discount rate report is contained in § 284.7(c)(6). The instructions for filing the Index of Customers electronically are entitled ''Instruction Manual for Electronic Filing of the *Index of Customers.*'' The instructions for filing the discount rate reports electronically are entitled ''Instruction Manual for Electronic Filing of the *Discount Transportation Rate Report.*''

[4] These Attachments are not being published in the Federal Register, but are available from the Commission's Public Reference Room.

the data item must be omitted, * * *.'' A similar modification is made at General Instruction 5(B).

In the instruction manual for the Index of Customers, the last sentence of the Purpose section is revised to clarify that the electronic file must be downloadable from the pipeline's EBB.

Minor Changes Common to Both Sets of Instructions

Staff desires to make several minor modifications to correct typographical errors and make other corrections. Due to experience gained from the filing of the Index of Customers and discount rate reports in April, several instructions are added or clarified to avoid confusion.

The section, What to Submit, now instructs the pipeline on the proper contents of a revised filing. The instructions applicable to the Report Date are clarified. The Report Date is the date the pipeline expects to file the report with the Secretary of the Commission. In other words, the Report Date is the anticipated filing date.

The instructions concerning the footnote record are revised. The data item, Footnote ID, is renamed Footnote Number to avoid confusion with a data item of the same name on the detail record. The format of this data item is changed to numeric. The instruction is rewritten to ensure that only the number of the footnote is reported on the footnote record. The proper format for the footnote record is displayed at page 10 of the instructions.

Recently issued pipeline ID codes are added to the pipeline ID code listing. Erroneous pipeline ID codes are corrected. Several pipeline names are also corrected.

In the appendix containing the file creation hints, instructions for saving a tab delimited file in Wordperfect 6.0 are added.

Modifications Unique to the Index of Customers

In the instructions concerning the detail record, the definition of the data item, Max Storage Quantity, is clarified. There has been some confusion over which storage contract quantity the Commission requires to be reported. The Max Storage Quantity is the largest quantity of natural gas the pipeline is obligated to store for the shipper under the reported contract. The commission does not want a daily injection or withdrawal quantity reported in this field. Similarly, a pipeline must not report the daily injection or withdrawal quantity in the field reserved for the data item, Max Daily Transportation Quantity.

Staff would also like to bring to the pipelines' attention two instructions to which some pipelines are not adhering. First, the regulation at 18 CFR 284.106(c)(3)(i) requires the pipeline to report the full legal name of the customer. Some of the indices received to date do not reflect the full legal name of the customers.

Several guidelines should be followed when recording a customer's name. Take care to check the correct spelling of the name. TransCanada Pipelines Limited was spelled also TransCanada PipeLines Limited. Do not leave words out of a customer's name. The name, Washington Gas Light Company, was submitted correctly in some instances but also incorrectly as, Washington Gas Light, and Washington Gas.

Pay attention to punctuation and do not abbreviate words within the name. NGC Transportation, Inc. was spelled:

NGC Transportation Inc.
NGC Transportation, Inc.
NGC TRANSPORTATION, INC.
NGC TRANS., INC.

By far, however, the most common error is the omission of the words company, corporation, or Inc. The pipeline must report the full legal name of the shipper.

The regulation at 18 CFR 284.106(c)(3) requires the pipeline to report all firm transportation or storage service contracts. Individually certificated contracts appearing in Volume No. 2 of the pipeline's FERC Gas Tariff must be included. Several pipelines appear to have excluded these contracts from their indices. All firm transportation and storage contracts must be reported in the Index of Customers, including individually certificated transactions.

Modifications Unique to the Discount Rate Report

The Commission received several discount rate reports in April which did not contain a paper copy of the report. The Commission requires a paper copy filing of the discount rate report. To avoid any further confusion, an instruction is added in the section, What to Submit, requiring an original and at least five paper copies of the letter of transmittal and of the data items required by 18 CFR 284.7(c)(6) to accompany the electronic filing.

The section, When to Submit, is modified to clarify that all reports submitted subsequent to the report due for March must comply with the electronic filing instructions. All resubmissions filed after April 15, 1996, therefore, no matter to what billing periods they apply, must be filed electronically.

General Instruction 3 clarifies the file naming convention. Resubmissions for prior months must be segregated into separate files. However, they may be filed on a single diskette if submitted under the cover of a single letter of transmittal.

General Instruction 5(C) is revised to refer to the measurement basis to be used when reporting the maximum and discounted rates. All of the rates must be reported on the same measurement basis as the rates reported in the pipeline's FERC Gas Tariff. General Instruction 5(E) is modified to remind pipelines not to include dollar signs when reporting rates. General Instruction 7(B) is deleted since no rate schedules are reported in the discount rate report.

The format for the paper copy of the discount rate report is unspecified. Several pipelines have simply printed on paper the contents of the electronic file. This is an acceptable format with the following modifications:

(a) The pipeline must add column headers to the data to explain the contents of each column.

(b) The Item ID must appear in the column heading for each data item so the Footnote ID can be properly interpreted.

Conclusion

The filing requirements and regulations have been carefully crafted to ensure the data submitted by the pipelines is compatible with typical computer processing techniques. It is imperative for pipelines to adhere closely to the instructions to ensure the data's usefulness. Where a pipeline's data on file with the Commission does not conform to the regulations and filing requirements, we would expect to see a revision filed to bring the data into conformance.

Lois D. Cashell,

Secretary.

[FR Doc. 96–13352 Filed 5–28–96; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5510–5]

Agency Information Collection Activities Up for Renewal; Neshap for Benzene Emissions for Benzene Waste Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C.

3501 *et* seq.), this notice announces that the Information Collection Request (ICR) listed below is coming up for renewal. Before submitting the renewal package to the Office of Management and Budget (OMB), EPA is soliciting comments on specific aspects of the collection as described below.

DATES: Comments must be submitted on or before July 29, 1996.

ADDRESSES: United States Environmental Protection Agency, Office of Enforcement and Compliance Assurance, Office of Compliance, Manufacturing, Energy and Transportation Division, Energy and Transportation Branch (2223A), 401 M Street, SW, Washington, DC. 20460.

FOR FURTHER INFORMATION CONTACT: Mr. Ráfael Sanchez, United States Environmental Protection Agency, Office of Enforcement and Compliance Assurance, Office of Compliance, Manufacturing, Energy and Transportation Division, Energy and Transportation Branch (2223A), 401 M Street, SW. Telephone: (202) 564–7028. Facsimile: (202) 564–0039. Internet: Sanchez.Rafael@EPAMAIL.EPA.GOV

SUPPLEMENTARY INFORMATION:

Affected entities: Entities affected by this action are facilities which generate wastes that contain benzene, such as chemical manufacturing plants, coke by-product recovery plants, and petroleum refineries. Other affected entities are those owners and operators of hazardous waste treatment, storage, and disposal facilities (TSDF) which receive wastes from the above facilities.

Title: NESHAP for Benzene Emissions for Benzene Waste Operations—40 CFR part 61, subpart FF, OMB No. 2060–0183, Expiration Date: 8/31/96.

Abstract: The National Emission Standards for Benzene Emissions for Benzene Waste Operations were promulgated on March 7, 1990. Due to widespread confusion among affected industries concerning key provisions of the rule, EPA issued a stay of effectiveness of subpart FF on March 5, 1992 (57 FR 8012). The stay remained in effect until January 7, 1993, when EPA promulgated clarifying amendments to Subpart FF. The standards are codified at 40 CFR part 61, subpart FF.

The provisions of this subpart apply to owners and operators of chemical manufacturing plants, coke by-product recovery plants, and petroleum refineries. In addition, this subpart applies to owners and operators of hazardous waste treatment, storage, and disposal facilities that treat, store, or dispose of hazardous waste generated from the above facilities.

The calculation of total annual benzene (TAB) quantity in all aqueous waste streams determines whether a facility is subject to control requirements of the rule. A facility at or above the TAB threshold in the rule of 10 megagram per year (Mg/yr) is required to control each benzene waste stream at the facility, or demonstrate that the waste stream meets a criterion in the rule for exemption from control. A facility with a TAB below 10 Mg/yr is only subject to the rule's reporting and record keeping provisions, unless the facility receives a waste from offsite that must be controlled in order to meet Subpart FF, in which case that waste must be controlled. A facility with a TAB less than 1 Mg/yr is only subject to maintain documentation of the quantity of benzene in the waste.

Owners or operators of the affected facilities described above must make the following one-time-only notices or reports: notification of anticipated startup; notification of actual startup; notification of an emission test, report following an emission test; notification of any physical/operational changes (i.e., modification) that could increase emissions, a monitoring system performance test; and a report following a monitoring system performance test. These notifications and reports are general provisions and required of all sources subject to any NESHAP.

Reporting requirements specific to benzene waste operations include submission, within 90 days after January 7, 1993, or by the initial startup for a new source, of an initial report that summarizes the regulatory status of each waste stream containing benzene. Each owner or operator who has no benzene onsite in wastes, products, byproducts, or intermediary shall submit an initial report that is a statement to this effect.

If the TAB quantity from facility waste is less than 1 Mg/yr, then the owner and operator shall submit a report that updates its regulatory status whenever there is a change in the process that may cause the TAB to increase.

If the TAB is less than 10 Mg/yr, but equal to or greater than 1 Mg/yr, then the owner or operator shall submit a report that updates the regulatory status of each waste stream containing benzene. The report shall be submitted annually and whenever there is a change in the process generating the waste stream that could cause the total annual benzene quantity from facility waste to increase to 10 Mg/yr or more. If the information in the annual report does not change in the following year, the owner or operator may submit a statement to that effect.

If the total annual benzene quantity from facility waste is equal to or greater than 10 Mg/yr, then the owner or operator shall submit the following reports:

(1) Within 90 days after January 7, 1993, or by the date of initial startup for a new source with an initial startup after the effective date, a certification that the equipment necessary to comply with these standards has been installed, and that the required initial inspections or tests have been carried out in accordance with this subpart.

(2) Beginning on the date that the equipment necessary to comply with these standards has been certified, the owner or operator shall submit, annually, a report that updates the regulatory status of each stream.

(3) Beginning three months after the date that the equipment necessary to comply with these standards has been certified, the owner or operator shall submit, quarterly, a certification that all the required inspections have been carried out in accordance with the requirements of this subpart.

(4) Beginning three months after the date that the equipment necessary to comply with these standards has been certified, the owner or operator shall submit a report, quarterly, that summarizes all the monitoring of operations.

(5) Beginning one year after the date that the equipment necessary to comply with these standards has been certified, the owner or operator shall submit, annually, a report that summarizes all inspections during which detectable emissions are measured or a problem (such as a broken seal, gap or other problem) that could result in benzene emissions is identified, including information about the repairs or corrective action taken.

Monitoring and record keeping requirements specific to benzene waste operations include maintaining records that identify each waste stream at the facility subject to this subpart, and indicate whether the waste stream is controlled for benzene emissions in accordance with this subpart. In addition, the owner or operator shall maintain the following records:

(1) For each waste stream not controlled for benzene emissions in accordance with this subpart, the records shall include all test results, measurements, calculations, and other documentation used to determine the following information for the waste stream: waste stream identification, water content, whether or not the waste stream is a process wastewater stream,

annual waste quantity, range of benzene concentrations, annual average flow-weighted benzene concentration, and annual benzene quantity.

(2) For each process wastewater stream not controlled for benzene emissions, the records shall include all measurements, calculations, and other documentation used to determine that the continuous flow of process wastewater is less than 0.02 liters per minute, or the annual waste quantity of process wastewater is less than 10 Mg/yr.

(3) For each facility where process wastewater streams are controlled for benzene emissions, the records shall include for each treated process wastewater stream: all measurements, calculations, and other documentation used to determine the annual benzene quantity in the process wastewater stream exiting the treatment process.

(4) For each facility where wastewater streams are controlled for benzene emissions, the records shall include all measurements, calculations, and other documentation used to determine the annual benzene quantity in the wastewater streams exiting wastewater treatment systems at the facility.

(5) Owners or operators transferring waste off-site to another facility for treatment shall maintain documentation for each offsite waste shipment that includes the following information: date waste is shipped offsite, quantity of waste shipped offsite, name and address of the facility receiving the waste, and a copy of the notice sent with the waste shipment.

(6) An owner or operator using control equipment, shall maintain engineering design documentation for all control equipment installed on the waste management unit. The documentation shall be retained for the life of the control equipment.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement

Most of the industry costs associated with the information collection activity in the standards are labor. The current average annual burden to industry from these record keeping and reporting requirements is estimated at 17,028 person-hours. The respondent costs have been calculated based on $14.50 per hour plus 110 percent overhead. The current average annual burden to industry is estimated to be $518,503.

Based upon available information, it has been estimated that 395 facilities are subject to the standards, and 140 of those are estimated to have more than 10 Mg/yr of benzene in the waste. In addition, EPA estimates that these 140 facilities have a total of 2,819 waste streams per facility for which initial benzene concentration determination could be made. A total of 57 facilities are estimated to have more than 50 Mg/yr of benzene in their wastes and are expected to apply controls without applying for exceptions.

No person is required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are displayed in 40 CFR part 9.

Send comments regarding these matters, or any aspect of the information collection, including suggestions for reducing the burden, to the address listed above.

Dated: May 17, 1995.

Elaine G. Stanley,

Director, Office of Compliance.

[FR Doc. 96–13436 Filed 5–28–96; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5511–3]

Proposed Settlement Agreement, Determinations of Attainment of the Ozone Standard by Pittsburgh-Beaver Valley, Pennsylvania and Reading, Pennsylvania Ozone Nonattainment Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement agreement; request for public comment.

SUMMARY: Inaccordance with Section 113(g) of the Clean Air Act (''Act''), notice is hereby given of a proposed settlement agreement concerning litigation instituted against the Environmental Protection Agency (''EPA'') regarding EPA's July 19, 1995 determinations regarding the attainment of the ozone standard by the Pittsburgh-Beaver Valley, Pennsylvania, and Reading, Pennsylvania ozone nonattainment areas and the applicability of certain pollution control requirements, 60 Fed. Reg. 37,015 (July 19, 1995). *Delaware Valley Citizens' Council for Clean Air* v. *Browner,* No. 95–3494 (3rd Cir.) and *Delaware Valley Citizens' Council for Clean Air* v. *Browner,* No. 96–3086 (3rd Cir.).

The proposed settlement agreement provides that, no later than June 30, 1996, the EPA Regional Administrator, Region 3, will sign a notice of final rulemaking concerning the proposed Revocation of Determination of Attainment of Ozone Standard by the Pittsburgh-Beaver Ozone Nonattainment and Reinstatement of Applicability of Certain Reasonable Further Progress and Attainment Demonstration Requirements. 61 Fed. Reg. 5360 (Feb. 12, 1996). The proposed agreement also provides that, no later than July 31, 1996, the EPA Regional Administrator, Region 3, shall sign a notice of proposed rulemaking proposing action on the Commonwealth of Pennsylvania's request, submitted November 12, 1993, for EPA to redesignate to attainment for ozone the Reading, Pennsylvania ozone nonattainment area; and that the EPA Regional Administrator, Region 3 shall sign a notice of final rulemaking concerning the above request no later than December 31, 1996.

For a period of thirty [30] days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. EPA or the Department of Justice may withhold or withdraw consent to the proposed settlement agreement if the comments disclose facts or circumstances that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act.

Copies of the settlement agreement are available from Sonja Lee, Air and Radiation Division (2344), Office of General Counsel, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 (202) 260–7606. Written comments should be sent to Kendra Sagoff at the above address and must be submitted on or before June 28, 1996.

Dated: May 22, 1996.

Scott Fulton,

Acting General Counsel.

[FR Doc. 96–13433 Filed 5–28–96; 8:45 am]

BILLING CODE 6560–50–M

[PF–655; FRL–5371–9]

Cyfluthrin; Amended Notice of Filing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces that Bayer Corporation, 8400 Hawthorn Rd., P.O. Box 4913, Kansas City, MO has submitted an amendment to pesticide petition 2F4137 proposing to increase tolerances for cyfluthrin, cyano-(4-fluoro-3-pheroxyphenyl)methyl 3-(2,2-dichloroethyl)-2,2-dimethly-cyclopropanecarboxylate in or on the raw agricultural commodities cattle, fat, goat, fat, hogs, fat, horses, fat, sheep, fat, milkfat, and aspirated grain fractions.

DATES: Comments, identified by the docket number [PF–655] must be received on or before June 27, 1996.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA. Information submitted and any comment(s) concerning this notice may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment(s) that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. Information on the proposed test and any written comments will be available for public inspection in Rm. 1132 at the Virginia address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [PF–655]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Goerge LaRocca, Product Manager (PM) 13, Registration Division, (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 204, CM #2, 2801 Jefferson Davis Highway, Arlington, VA 22202, (703)–305–6224; e-mail: larocca.george@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: The Bayer Corporation (formerly Miles, Inc.), 8400 Hawthorn Rd., P.O. Box 4913, Kansas City, MO 64120–0013 has submitted an amendment to pesticide petition (PP) 2F4137. The amendment proposes to amend 40 CFR 180.436 by increasing tolerances for residues of the insecticide cyfluthrin, cyano-(4-fluoro-3-pheroxyphenyl)methyl 3-(2,2-dichloroethyl)-2,2-dimethly-cyclopropanecarboxlate in or on the raw agricultural commodities cattle, fat at 5.00 ppm, goats, fat at 5.00 ppm, hogs, fat at 5.00 ppm, horses, fat, at 5.00 ppm, sheep, fat at 5.00 ppm, milkfat at 15.0 (reflecting 0.5 ppm in whole milk), and aspirated grain fractions at 300 ppm. The original notice of filing published in the Federal Register on December 30, 1992 (57 FR 62333) (PF–569; FRL–4177–7).

A record has been established for this document under docket number [PF–655] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-Docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this document, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

List of Subjects

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

Authority: 7 U.S.C. 136a.

Dated: May 17, 1996.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 96–13439; Filed 5–28–96; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL HOUSING FINANCE BOARD

Sunshine Act Meeting; Announcing an Open Meeting of the Board

TIME AND DATES: 10:00 a.m. Wednesday, June 5, 1996.

PLACE: Board Room, Second Floor, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

STATUS: The entire meeting will be open to the public.

MATTERS TO BE CONSIDERED DURING PORTIONS OPEN TO THE PUBLIC:

- Federal Home Loan Bank of Des Moines Proposal to make advances to the Minneapolis Community Development Agency
- Federal Home Loan Bank of Seattle Proposal to Certify the Montana Board of Housing as a Nonmember Mortgagee
- Approval of the Federal Home Loan Bank of Atlanta President
- Federal Home Loan Bank of San Francisco's request to increase AHP Award to California Savings Bank
- Federal Home Loan Bank of San Francisco's 1996 AHP Priority
- Federal Home Loan Bank of Des Moines request for approval to purchase Manufactured Housing Securities

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Secretary to the Board, (202) 408–2837.

Rita I. Fair,

Managing Director.

[FR Doc. 96–13568 Filed 5–24–96; 12:57 pm]

BILLING CODE 6725–01–P

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

All-Ways Forwarding Int'l Inc., Hemisphere Center, U.S. Rt. 1–9 South, Newark, NJ 07114, Officers: Solomon Weber, President, Paul Jeka, Vice President

H.Y.H. International Cargo Services, Inc., 1620 NW 82nd Avenue, Miami, FL 33126, Officer: Hans G. Hofmann, President

Mundial Forwarding, 918 Dunwoody Drive, Houston, TX 77076, Timoteo Muro Martinez, Sole Proprietor

Dated: May 22, 1996.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 96–13325 Filed 5–28–96; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

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 June 11, 1996.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Richard Kundert, Blanchardville, Wisconsin; to acquire an additional 7.38 percent, for a total of 31.91 percent, of the voting shares of Blanchardville Financial Services, Inc., Blanchardville, Wisconsin, and thereby indirectly acquire First National Bank of Blanchardville, Blanchardville, Wisconsin.

Board of Governors of the Federal Reserve System, May 22, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–13379 Filed 5–28–96; 8:45 am]

BILLING CODE 6210–01–F

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act, including whether the acquisition of the nonbanking company can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices'' (12 U.S.C. 1843). Any request for a hearing must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 21, 1996.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. First Banking Company of Southeast Georgia, Statesboro, Georgia; to acquire 100 percent of the voting shares of FNB Bancshares, Inc., Springfield, Georgia, and thereby indirectly acquire First National Bank of Effingham, Springfield, Georgia.

2. First National Banc, Inc., St. Marys, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank, St. Marys, Georgia.

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Brickyard Bancorp, Inc., Chicago, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Sysco Financial, Inc., Lincolnwood, Illinois, and thereby indirectly acquire Brickyard Bank, Lincolnwood, Illinois.

Board of Governors of the Federal Reserve System, May 22, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–13377 Filed 5–29–96; 8:45 am]

BILLING CODE 6210–01–F

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That Are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.25 of Regulation Y (12 CFR 225.25) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for

processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act, including whether consummation of the proposal can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices'' (12 U.S.C. 1843). Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 11, 1996.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Fort Calhoun Investment Company, Fort Calhoun, Nebraska; to engage *de novo* in expanding its insurance agency activity to include the sale of all types of life insurance products other than life insurance or annuities, pursuant to § 225.25(b)(vi) of the Board's Regulation Y. Company is a bank holding company with consolidated assets of under $50 million.

Board of Governors of the Federal Reserve System, May 22, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–13378 Filed 5–28–96; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE BOARD

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:00 a.m., Monday, June 3, 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: May 24, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–13593 Filed 5–24–96; 2:36 pm]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION

[GSA Bulletin FTR 18]

Federal Travel Regulation; Reimbursement of Higher Actual Subsistence Expenses for Official Travel to Augusta, Georgia

AGENCY: Office of Policy, Planning and Evaluation, GSA.

ACTION: Notice of bulletin.

SUMMARY: The attached bulletin informs agencies of the establishment of a special actual subsistence expense ceiling for official travel to Augusta (Richmond County), Georgia. The Secretary of Transportation (DOT) requested establishment of the increased rate to accommodate employees who performed temporary duty in this locality and who experienced a temporary but significant increase in lodging costs due to the escalation of lodging rates during the annual Masters Golf Tournament held in Augusta.

EFFECTIVE DATES: This special rate is retroactively applicable to claims for reimbursement covering travel to Augusta, Georgia, during the period April 8 through April 15, 1996.

FOR FURTHER INFORMATION CONTACT: Devoanna R. Reels, General Services Administration, Travel and Transportation Management Policy Division (MTT), Washington, DC 20405, telephone 202–501–1538.

SUPPLEMENTARY INFORMATION: The Administrator of General Services, pursuant to 41 CFR 301–8.3(c) and at the request of the Secretary of Transportation, increased the maximum daily amount of reimbursement that agencies may retroactively approve for actual and necessary subsistence expenses for official travel to Augusta (Richmond County), Georgia, during the period April 8 through April 15, 1996. The attached GSA Bulletin FTR 18 is issued to inform agencies of the establishment of this special actual subsistence expense ceiling.

Dated: May 20, 1996.

William T. Rivers,

Acting Deputy Associate Administrator, Office of Transportation and Personal Property.

Attachment

[GSA Bulletin FTR 18]

May 20, 1996.

To: Heads of Federal agencies

Subject: Reimbursement of higher actual subsistence expenses for official travel to Augusta (Richmond County), Georgia

1. *Purpose.* This bulletin informs agencies of the establishment of a special actual subsistence expense ceiling for official travel to Augusta (Richmond County), Georgia, due to the escalation of lodging rates during the annual Masters Golf Tournament held there. This special rate is retroactively applicable to claims for reimbursement covering travel during the period April 8 through April 15, 1996.

2. *Background.* The Federal Travel Regulation (FTR) (41 CFR chapters 301–304) part 301–8 permits the Administrator of General Services to establish a higher maximum daily rate for the reimbursement of actual subsistence expenses of Federal employees on official travel to an area within the continental United States. The head of an agency may request establishment of such a rate when special or unusual circumstances result in an extreme increase in subsistence costs for a temporary period. The Secretary of Transportation (DOT) requested establishment of such a rate for Augusta to accommodate employees who performed temporary duty there and experienced a temporary but significant increase in lodging costs due to the escalation of lodging rates during the annual Masters Golf Tournament. These circumstances justify the need for higher subsistence expense reimbursement in Augusta during the designated period.

3. *Maximum rate and effective date.* The Administrator of General Services, pursuant to 41 CFR 301–8.3(c), increased the maximum daily amount of reimbursement that agencies may retroactively approve for actual and necessary subsistence expenses for official travel to Augusta (Richmond County), Georgia, during the period April 8 through April 15, 1996. Agencies may retroactively approve actual subsistence expense reimbursement not to exceed $214 ($184 maximum for lodging and a $30 allowance for meals and incidental expenses) for official travel to Augusta (Richmond County), Georgia, during this time period.

4. *Expiration date.* This bulletin expires on October 1, 1996.

5. *For further information contact.* Devoanna R. Reels, General Services

Administration, Travel and Transportation Management Policy Division (MTT), Washington, DC 20405, telephone 202–501–1538.

[FR Doc. 96–13410 Filed 5–28–96; 8:45 am]

BILLING CODE 6820–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[INFO–96–17]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Wilma Johnson, CDC Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Projects

1. HIV Prevention Programs in National/Regional Minority and Other Community Based Organization Project Reports—(0920–0249)—Reinstatement—CDC is responsible for monitoring and evaluating HIV prevention activities conducted under cooperative agreements with National/Regional Minority and Other Community Based Organizations. Enhancing and assuring quality programming requires that CDC have current information regarding the progress of activities and services supported through these cooperative agreements. In some instances, these cooperative agreements have been awarded to organizations that have not previously been awarded Federal funds, or provided HIV prevention services. Additionally, many have limited infrastructure, requiring greater oversight and technical assistance. Technical assistance site visits and telephone communications do provide some of the required information; yet, site visits have been dramatically reduced and specific contents of phone conversations can be easily forgotten, especially when several awards are administered by one individual. Therefore, thorough quarterly project reports are considered a critical component of the monitoring/evaluation process. Because this program encompasses at least 23 N/RMOs and 90 CBOs awards, there is a need for a standardized system for reporting the progress of each organization's activities. The total cost to respondents is $22,028.80.

Respondents	Nunber of respondents	Number of responses/respondent	Avg. burden/response (in hrs.)	Total burden (in hrs.)
National/Regional	23	4	4	368
CBO	90	4	4	1,440
Total				1,808

Dated: May 22, 1996.

Wilma G. Johnson,

Acting Associate Director for Policy Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 96–13392 Filed 5–28–96; 8:45 am]

BILLING CODE 4163–18–P

[30DAY–12]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request more information on these projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer at (404) 639–7090. Send written comments to Wilma Johnson, CDC Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 30 days of this notice.

The following requests have been submitted for review since the last publication date on May 9, 1996.

Proposed Projects

1. Resources and Services Database of the CDC National AIDS Clearinghouse (NAC)—(0920–0255)—Extension—This is a request to extend this project for three years. NAC will mail the Resource Organization Questionnaire along with a cover letter once an organization is identified as providing AIDS-related services. Each organization will also receive a stamped, self-addressed envelope for the return of the questionnaire. If there is no response a follow-up letter will be sent along with another questionnaire and return envelope. A telephone call will be made to those organizations who respond but whose responses need clarification. Approximately one third of the entire Resources and Services Database is verified each year. As part of this process, 40 percent of these organizations will receive a copy of their current database entry by mail, including a cover letter, a list of instructions, and a stamped, self-addressed envelope. The remaining 60 percent will receive a telephone call to review their record.

The Centers for Disease Control and Prevention (CDC) National AIDS Clearinghouse (NAC), is a critical member of the network of government agencies, community organizations, businesses, health professionals, educators, and human services providers that educate the American public about Acquired immunodeficiency syndrome (AIDS) and provide services for persons infected with human immunodeficiency virus (HIV). NAC's Resources and Services Database contains records of

approximately 18,000 organizations and is the most comprehensive listing of AIDS resources and services available throughout the country.

NAC's reference staff rely on the Resources and Services Database to respond to more than 100,000 requests for information or referral each year. The Database is also the main information source for the CDC National AIDS Hotline which refers approximately 1.8 million callers from the general public each year to appropriate organizations for information, services, and treatment.

In its continuing efforts to maintain an up-to-date, comprehensive database, NAC is seeking renewal of approval of the survey instrument and proposed methods.

Respondents	Number of respondents	Number of responses/ respondent	Average burden/response (in hrs.)
Questionnaire	2,400	1	0.33
Clarification Follow-Up	360	1	0.17
Verification	10,636	1	0.33
Verif. Follow-Up	993	1	0.17

The total burden hours is 3771. Send comments to Desk Officer, CDC; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503.

2. The National Ambulatory Medical Care Survey (NAMCS)—(0920–0234)—Extension—The National Ambulatory Medical Care Survey (NAMCS) was conducted annually from 1973 to 1981, again in 1985, and resumed as an annual survey in 1989 by the National Center for Health Statistics, CDC. The NAMCS samples from all office visits within the United States made by ambulatory patients to non-Federal office-based physicians engaged in direct patient care. More than 70 percent of all direct ambulatory medical care visits occur in physicians' offices. To complement these data, in 1992 NCHS initiated the separate National Hospital Ambulatory Medical Care Survey (NHAMCS). These two surveys constitute the ambulatory care component of the National Health Care Survey (NHCS), and provide coverage of more than 90 percent of U. S. ambulatory medical care. NAMCS data include patients' demographic characteristics and medical problems, and the physicians' diagnostic services, therapeutic prescriptions and disposition decisions. These annual data may be used to monitor change and its effects and stimulate further improvements to the use, organization, and delivery of ambulatory care. Users of NAMCS data include Congress and federal agencies (e.g. NIMH, NIAAA, NCI, HRSA), state and local governments, medical schools, schools of public health, colleges and universities, private businesses, nonprofit, and individual practitioners and administrators.

Respondents	Number of respondents	Number of responses/ respondents	Average burden/response (in hrs.)
Private, Office-based Physicians Forms:.			
Induction	3000	1	0.250
Patient Record	3000	30	0.033

The total burden hours is 3,720. Send comments to Desk Officer, CDC; Human Resources and Housing Branch, New Executive Office Building, Room 10236; Washington, DC 20503.

3. Complications Associated with Home Infusion Therapy: The Nature and Frequency of Blood Contacts Among Health Care Workers New-Occupational blood contact and the potential for transmission of blood borne pathogens is a serious concern for health care workers (HCWs) who provide care to patients. There are no data on the frequency of occupational percutaneous injuries and mucocutaneous blood contact among HCWs who provide home infusion therapy.

The Hospital Infections Program, National Center for Infectious Diseases, will conduct prospective, active surveillance of HCWs who provide home infusion therapy. The objectives of the surveillance project are to (1) estimate the procedure-specific frequency of and assess risk factors for percutaneous, mucous membrane, or cutaneous blood contacts sustained by HCWS during the delivery of home infusion therapy and the performance of related procedures, such as phlebotomy and blood culture collection; (2) describe and evaluate the effectiveness of infection control precautions and safety devices to prevent blood contacts; and (3) evaluate the impact of HCWs' knowledge of universal precautions on the use of protective equipment, safety devices, and the frequency of blood contacts.

The population under surveillance will be nurses and phlebotomists from three home health care agencies. Before beginning data collection, HCWs will complete a background questionnaire to provide basic demographic information as well as information about previous blood contacts. HCWs will then complete an exposure questionnaire after each home visit for a two-four week data collection period. This questionnaire will include information about the reason for the visit, the types of procedures performed, the length of the visit, the number and types of blood contacts sustained, and the use of infection control precautions and any safety devices. At the end of their individual data collection period, each HCW will complete an infection control questionnaire to assess knowledge and attitudes related to blood contacts and the use of universal precautions.

Respondents (HCWs)	Number of respondents	Number of responses/respondent	Average burden/response (in hrs.)
Background Questionnaire	1337	1	.083
Exposure Questionnaire	1337	41	.0167
Infection Control Questionnaire	1337	1	.083

The total burden hours is 1137. Send comments to Desk Officer, CDC; Human Resources and Housing Branch, New Executive Office Building, Room 10236; Washington, DC 20503.

4. Evaluation of a Training Curriculum for Hemophilia Nurses Who Teach Home Infusion and Infection Control-New-The Hematologic Disorders Branch at CDC has plans to develop, pilot, and evaluate training curricula for hemophilia health care providers to improve their knowledge and skills in teaching home infusion of Factors VII and IX (coagulating agents which reduce the bleeding resulting from a deficiency of natural clotting agents in the blood of people with hemophilia) and infection control related to the infusion. CDC has initiated the development of a self-learning manual for nurses with responsibility of teaching hemophilia patients and their families about home infusion and infection control (HI/IC). The goals of the manual are 1) to facilitate nurses' understanding of content that should be covered when teaching HI/IC techniques, and 2) to assist nurses in determining how they can best teach HI/IC to patients and their families. The purpose of the proposed data collection is to assess the efficacy of the manual in achieving those goals.

An experimental design will be employed in this study in which 100 randomly sampled nurses will be assigned to either an experimental condition (n=50) or to a control group (n=50). Nurses in the experimental condition will be asked to use the manual, while those in the control condition will continue their current practices and engage in any naturally-occurring learning experiences related to HI/IC. Baseline and follow-up surveys administered to both groups will yield data that will be used to determined the difference in knowledge, attitudes, and skills that can be attributed to use of the self-learning guide.

Respondents	No. of respondents	No. of responses/respondent	Average burden/response (in hrs.)
Nurses in experimental condition	50	2	0.50
Nurses in control condition	50	2	0.50

The total burden is 100. Send comments to Desk Officer, CDC; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503.

5. The National Hospital Ambulatory Medical Care Survey (NHAMCS)—(0920–0278)—Extension—The National Hospital Ambulatory Medical Care Survey (NHAMCS) has been conducted annually since 1992 by the National Center for Health Statistics, CDC. The NHAMCS is the principal source of data on the 153 million visits to hospital emergency and outpatient departments. It is the only source of nationally representative estimates of outpatient demographics, diagnoses, diagnostic services, medication therapy, and the patterns of use of care in hospitals which differ in size, location, and ownership. NHAMCS is also the only source of national estimates on causes of non-fatal injury for visits to emergency and outpatient departments.

These data complement those from the National Ambulatory Medical Care Survey (NAMCS), on visits to non-Federal physicians in office-based practices. NHAMCS data are essential for planning health services, improving medical education, determining health care work force needs, and assessing health. Users of NHAMCS data include Congress, Federal agencies such as NIH, private groups such as the American Heart Association, universities, and state offices of public health.

Respondents	No. of respondents	No. of responses/respondent	Average burden/response (in hrs.)
Noninstitutional, general and short stay, hospital outpatient and emergency departments forms:			
Hospital Induction	600	1	1.0
Ambulatory Unit Induction	600	1	1.2
Emergency Department Patient Record	600	50	0.06
Outpatient Department Patient Record	600	150	0.06

The total burden is 8,520. Send comments to Desk Officer, CDC; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503.

Dated: May 22, 1996.

Wilma G. Johnson,

Acting Associate Director for Policy Planning And Evalution, Center for Disease Control and Prevention (CDC).

[FR Doc. 96–13393 Filed 5–28–96; 8:45 am]

BILLING CODE 4163–18–P

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Plan for the Child Care and Development Block Grant.

OMB No.: 0970–0114.

Description: This legislatively-mandated plan serves as the agreement between the grantee and the Federal Government as to how CCDBG programs will be operated. The plans provide assurances that the funds will be administered in conformance with the legislative requirements, pertinent Federal Regulations, and other applicable instructions or guidelines issued by ACF.

Respondents: State governments.

Annual Burden Estimates:

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ACF–700	282	1	40	11,280

Estimated Total Annual Burden Hours: 11,280.

Additional Information: Copies of the proposed collection may be obtained by writing to The Administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the Federal Register. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, N.W., Washington, D.C. 20503, Attn: Ms. Wendy Taylor.

Dated: May 6, 1996.

Roberta Katson,

Director, Office of Information Resource Management Services.

[FR Doc. 96–13317 Filed 5–28–96; 8:45 am]

BILLING CODE 4184–01–M

Food and Drug Administration

[Docket No. 94N–0155]

Nutrient Values for the Voluntary Nutrition Labeling of Raw Fruits, Vegetables, and Fish; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of updated nutrition labeling values for the 20 most frequently consumed raw fruits, vegetables, and fish in the United States. The agency is making these values available to assist those food retailers who wish to update the voluntary nutrition labeling information that they make available to consumers before FDA's next survey of retail stores to determine whether there is substantial compliance with the voluntary nutrition labeling program.

ADDRESSES: Submit written requests for single copies of the nutrition labeling values to the Division of Technical Evaluation (HFS–165), Office of Food Labeling, Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St. SW., Washington, DC 20204. Requests should be identified with the docket number found in brackets in the heading of this document. Send a self-addressed adhesive label or fax number to assist that office in processing your requests.

FOR FURTHER INFORMATION CONTACT: Mary M. Bender, Center for Food Safety and Applied Nutrition (HFS–165), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5592, FAX 202–205–5532.

SUPPLEMENTARY INFORMATION: The Nutrition Labeling and Education Act of 1990 amended the Federal Food, Drug, and Cosmetic Act (the act) to require, among other things, that under section 403(q)(4) of the act (21 U.S.C. 343(q)(4)), FDA: (1) Identify the 20 most frequently consumed raw fruits, vegetables, and fish in the United States; (2) establish guidelines for the voluntary nutrition labeling of these raw fruits, vegetables, and fish; and (3) issue regulations that define ''substantial compliance'' with respect to the adherence by food retailers with those guidelines. In the Federal Register of July 2, 1991 (56 FR 30468 at 30479 through 30481), FDA responded to these requirements by issuing a proposal, and, in the Federal Register of November 27, 1991 (56 FR 60880), the agency published a final rule on the nutrition labeling of raw fruits, vegetables, and fish (corrected on March 6, 1992 (57 FR 8174)). In the Federal Register of July 18, 1994 (59 FR 36379) (corrected on July 21, 1994 (59 FR 37190)), FDA published a proposal to revise the guidelines and the labeling values for the 20 most frequently consumed raw fruits, vegetables, and fish. FDA plans to publish a final rule on that rulemaking in the near future.

Under the guidelines of the voluntary labeling program, nutrition labeling information should be provided in close proximity to the place in the retail establishment where raw fruits, vegetables, and fish are displayed for sale. Information may be made available in signs, posters, brochures, notebooks, or leaflets and may be supplemented by video, live demonstration, or other media. Nutrition labeling information may also be provided on the individual food package.

In § 101.43 (21 CFR 101.43), FDA defined substantial compliance to mean that at least 60 percent of the food retailers sampled in a representative survey provide nutrition labeling information (as specified in the guidelines) for at least 90 percent of the foods that they sell that are included on the listing of the most frequently consumed raw fruits, vegetables, and fish. Section 403(q)(4)(C)(ii) of the act states that if substantial compliance is achieved by food retailers, FDA is to reassess voluntary labeling compliance every 2 years. The act also states that, if substantial compliance is not achieved, FDA is to propose to require that nutrition information be provided by any person who offers raw fruits and vegetables or raw fish to consumers (section 403(q)(4)(D)(i)).

Because substantial compliance was achieved in 1993 and 1995, section 403(q)(4)(C)(ii) of the act requires that FDA reassess voluntary labeling compliance and issue a report in 1997. FDA will survey retail stores under contract in November and December of 1996 to determine whether substantial compliance in the voluntary provision of labeling information for raw fruits, vegetables, and fish continues to exist. If substantial compliance is not met, the agency will propose to modify § 101.43 to make the program mandatory.

The industry has informed the agency that many retailers need new posters, charts, or brochures, and rather than reprinting the old values, they would prefer to wait until they have the new values to print the necessary materials. The timeframe by which the agency intends to publish a final rule to update the voluntary labeling program, however, may not allow food retailers and trade associations adequate time to print, distribute, and post nutrition labeling information before the next compliance survey. Therefore, because FDA considers that both industry and consumers will benefit if the most current nutrition labeling values for the 20 most frequently consumed raw fruits, vegetables, and fish are made available for use in the voluntary program, FDA is publishing these values at this time, in advance of completion of work on the final rule. The agency encourages retailers to use these new values when they print their posters, charts, or brochures on raw fruits, vegetables, and fish. However, because of the short amount of time before the 1996 survey, FDA is allowing retailers who choose to participate in the voluntary nutrition labeling program to use the old 1991 values or these new values.

Therefore, firms interested in obtaining the nutrition labeling values for the 20 most frequently consumed raw fruits, vegetables, and fish should submit a written request, accompanied by a self-addressed adhesive label or a fax number, to the Division of Technical Evaluation (HFS–165), Office of Food Labeling, Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St. SW., Washington, DC 20204.

Dated: May 20, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–13309 Filed 5–28–96; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 96E–0045]

Determination of Regulatory Review Period for Purposes of Patent Extension; COREG®

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for COREG® and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product COREG® (carvedilol). COREG® is indicated for the management of essential hypertension. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for COREG® (U.S. Patent No. 4,503,067) from Boehringer Mannheim GmbH, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated February 22, 1996, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of COREG® represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for COREG® is 3,625 days. Of this time, 2,727 days occurred during the testing phase of the regulatory review period, while 898 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective*: October 13, 1985. FDA has verified the applicant claim that the day the investigational new drug application became effective was on October 13, 1985.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act*: March 31, 1993. FDA has verified the applicant's claim that the new drug application (NDA) for COREG® (NDA 20–297) was initially submitted on March 31, 1993.

3. *The date the application was approved*: September 14, 1995. FDA has verified the applicant's claim the NDA 20–297 was approved on September 14, 1995.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,825 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before July 29, 1996, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before November 25, 1996, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 13, 1996.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 96–13307 Filed 5–28–96; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 96E–0036]

Determination of Regulatory Review Period for Purposes of Patent Extension; FOSAMAX®

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for FOSAMAX® and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product FOSAMAX® (alendronate sodium). FOSAMAX® is indicated for the treatment of osteoporosis in postmenopausal women and Paget's disease of bone. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for FOSAMAX® (U.S. Patent No. 4,621,077) from Instituto Gentili S.p.A., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated March 1, 1996, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of FOSAMAX® represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for FOSAMAX® is 2,558 days. Of this time, 2,375 days occurred during the testing phase of the regulatory review period, while 183 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective*: September 29, 1988. FDA has verified the applicant's claim that the date that the investigational new drug application (IND) became effective was on September 29, 1988.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act*: March 31, 1995. FDA has verified the applicant's claim that the new drug application (NDA) for FOSAMAX® (NDA 20–560) was initially submitted on March 31, 1995.

3. *The date the application was approved*: September 29, 1995. FDA has verified the applicant's claim that NDA 20–560 was approved on September 29, 1995.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,369 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before July 29, 1996, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before November 25, 1996, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 16, 1996.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 96–13308 Filed 5–28–96; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 96E–0046]

Determination of Regulatory Review Period for Purposes of Patent Extension; ZYRTEC™

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for ZYRTEC™ and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product ZYRTEC™ (cetirizine hydrochloride). ZYRTEC™ is indicated for the relief of symptoms associated with seasonal allergic rhinitis due to allergens such as ragweed, grass and tree pollens in adults and children 12 years and older. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for ZYRTEC™ (U.S. Patent No. 4,525,358) from UCB PHARMA, INC., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated March 1, 1996, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of ZYRTEC™ represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for ZYRTEC™ is 4,210 days. Of this time, 1,493 days occurred during the testing phase of the regulatory review period, while 2,717 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective*: May 31, 1984. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on May 31, 1984.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act*: July 1, 1988. FDA has verified the applicant's claim that the new drug application (NDA) for ZYRTEC™ (NDA 19–835) was initially submitted on July 1, 1988.

3. *The date the application was approved*: December 8, 1995. FDA has verified the applicant's claim that NDA 19–835 was approved on December 8, 1995.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,826 days of patent term extension..

Anyone with knowledge that any of the dates as published is incorrect may, on or before July 29, 1996, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before November 25, 1996, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 16, 1996.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 96–13310 Filed 5–28–96; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 96E–0044]

Determination of Regulatory Review Period for Purposes of Patent Extension; AMARYL®

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for AMARYL® and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims human drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration,

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

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product AMARYL® (glimepiride). AMARYL® is indicated as an adjunct to diet and exercise to lower the blood glucose in patients with noninsulin-dependent (Type II) diabetes mellitus (NIDDM) whose hyperglycemia cannot be controlled by diet and exercise alone. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for AMARYL® (U.S. Patent No. 4,379,785) from Hoechst Atiengesellschaft, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated March 1, 1996, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of AMARYL® represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for AMARYL® is 2,683 days. Of this time, 2,225 days occurred during the testing phase of the regulatory review period, while 458 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective*: July 28, 1988. FDA has verified the applicant's claim that the date that the investigational new drug application (IND) became effective was on July 28, 1988.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act*: August 30, 1994. FDA has verified the applicant's claim that the new drug application (NDA) for AMARYL® (NDA 20–496) was initially submitted on August 30, 1994.

3. *The date the application was approved*: November 30, 1995. FDA has verified the applicant's claim that NDA 20–496 was approved on November 30, 1995.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,569 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before July 29, 1996, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before November 25, 1996, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 13, 1996.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 96–13311 Filed 5–28–96; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

[HCFA–2567–A]

Emergency Clearance: Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB)

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services (DHHS), has submitted to the Office of Management and Budget (OMB) the following request for Emergency review. We are requesting an emergency review because the collection of this information is needed prior to the expiration of the normal time limits under OMB's regulations at 5 C.F.R., Part 1320, in order to permit recertification of OPOs as required by statute. Failure to issue these rules in time for the 1996 redesignation process may result in the termination of OPO agreements. This means that persons in need of organs may not receive them. The Agency cannot reasonably comply with the normal clearance procedures because public harm is likely to result if normal clearance procedures are followed. Without this information, HCFA could not assure compliance with this Congressional mandate.

HCFA is requesting that OMB review this document on 5/31/96 and grant a 90-day approval. During this 90-day period HCFA will publish a separate Federal Register notice announcing the initiation of an extensive 60-day agency review and public comment period on these requirements. Then HCFA will submit the requirements for OMB review and an extension of this emergency approval.

Type of Information Collection Request: Revision of a currently approved collection; *Title of Information Collection:* Statement of Deficiencies and Plan of Correction; *Form No.:* HCFA–2567–A; *Use:* This Paperwork package provides information regarding deficiencies for

Organ Procurement Organizations (OPO) as well as deficiencies noted during periodic facility and laboratory certification surveys. This information is used to make decisions concerning OPO redesignation, certification/recertification of health care facilities participating in the Medicare/Medicaid Programs, and laboratories regulated by CLIA. *Frequency:* Annually and Biennially; *Affected Public:* State, Local or Tribal Governments, Business or other for-profit, Not-for-profit institutions, Federal Government; *Number of Respondents:* 49,200; *Total Annual Responses:* 98,400; *Total Annual Hours Requested:* 196,800.

To request copies of the proposed paperwork collections referenced above, call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections should be sent by 5/31/96 to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: May 22, 1996.

Kathleen B. Larson,

Director, Management Planning and Analysis Staff, Office of Financial and Human Resources, Health Care Financing Administration.

[FR Doc. 96–13519 Filed 5–28–96; 8:45 am]

BILLING CODE 4120–03–P–M

National Institutes of Health

National Cancer Institute: Opportunity for a Cooperative Research and Development Agreement (CRADA) for the Scientific and Commercial Development of Hydroxylated Aromatic Protein Cross-Linking Compounds for the Treatment of Hyperproliferative Epithelial Lesions

AGENCY: National Institutes of Health, PHS, DHHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (DHHS) seeks a company that can collaboratively pursue the pre-clinical and clinical development of Hydroxylated Aromatic Protein Cross-Linking Compounds for the treatment of hyperproliferative epithelial lesions including skin neoplasia, warts and other hyperproliferative skin disorders. The National Cancer Institute, Laboratory of Cellular Carcinogenesis and Tumor Promotion (LCCTP) has established that this class of compounds (cinnamic acid derivatives) may be effective in treating hyperproliferative skin disorders. The selected sponsor will be awarded a CRADA for the co-development of this agent with the National Cancer Institute.

ADDRESS: Questions about this opportunity may be addressed to Jeremy A. Cubert, M.S., J.D., Office of Technology Development, NCI, 6120 Executive Blvd., MSC 7182, Bethesda MD 20892–7182, Phone: (301) 496–0477, Facsimile: (301) 402–2117, from whom further information may be obtained.

DATE: In view of the important priority of developing new agents for the treatment or prevention of cancer, interested parties should notify this office in writing no later than July 12, 1996. Respondents will then be provided an additional 30 days for the filing of formal proposals.

SUPPLEMENTARY INFORMATION: ''Cooperative Research Development Agreement'' or ''CRADA'' means the anticipated joint agreement to be entered into by NCI pursaunt to the Federal Technology Transfer Act of 1986 and amendments (including 104 P.L. 113) and Executive Order 12591 of October 10, 1987 to collaborate on the specific research project described below.

The Government is seeking a pharmaceutical company which, in accordance with the requirements of the regulations governing the transfer of agents in which the Government has taken an active role in developing (37 CFR 404.8), can further develop the subject compounds through Federal Food and Drug Administration approval and to a commercially available status to meet the needs of the public and with the best terms for the Government. The government has applied for a patent application directed to methods for the treatment for Hyperproliferative Epithelial Lesions by Topical Application of Hydroxylated Aromatic Protein Cross-Linking-Compounds.

Methyl 2,5-dihydroxycinnamate (MC), a cinnamic acid derivative, has been shown to both inhibit cell growth and chemically cross-link proteins. The growth inhibitory and protein cross-linking activity of MC are independent and complementary. The cross-linking effect of the compounds is rapid and leads to programmed cell death for many cell types. At lower concentrations, the compounds inhibit tyrosine kinases and cell growth. The compounds have been shown to be effective in many cell types indicating potential for topical treatment of a wide range of localized hyperproliferative epithelial disorders.

The LCCTP, Division of Basic Sciences, NCI is interested is establishing a CRADA with a company to assist in the continuing development of these compounds. The Government will provide all available expertise and information to date and will jointly pursue pre-clinical and clinical studies as required, giving the company full access to existing data and data developed pursuant to the CRADA. The successful company will provide the necessary scientific, financial and organizational support to establish clinical efficacy and possible commercial status of the subject compounds.

The expected duration of the CRADA will be two (2) to five (5) years.

The role of the National Cancer Institute, includes the following:

1. Selection of appropriate compounds for *in vitro* screening.
2. Selection of appropriate compounds for *in vivo* screening.
3. Conduct *in vitro* screening of appropriate compounds.
4. Identify chemical basis of activity for class of compounds.
5. Conduct *in vivo* testing of appropriate compounds.
6. Evaluation of test results.
7. Preparation of manuscripts for publication.
8. Relevant Government intellectual property rights are available for licensing through the Office of Technology Transfer, National Institutes of Health. For further information contact Allan Kiang, J.D., NIH Office of Technology Transfer, 6011 Executive Blvd., Suite 325, Rockville, MD 20852, Phone: (301) 496–7735 (ext. 270); Facsimile: (301) 402–0220.

The role of the collaborator company, includes the following:

1. Conduct *in vitro* screening of appropriate compounds.
2. Identify chemical basis of activity for class of compounds.
3. Conduct *in vivo* testing of appropriate compounds.
4. Evaluation of test results.
5. Develop vehicle for delivery of compounds to patients.
6. Conduct pre-clinical and clinical trials of appropriate candidate compounds.

Criteria for choosing the company include its demonstrated experience and commitment to the following:

1. Scientific expertise in and demonstraterd commitment to the treatment of skin related disorders.
2. Scientific expertise in and demonstrated commitment to the development of drug delivery systems.
3. Experience in preclinical and clinical drug development.
4. Experience and ability to produce, package, market and distribute pharmaceutical products.
5. Experience in the monitoring, evaluation and interpretation of the data from

investigational agent clinical studies under an IND.

6. A willingness to cooperate with the NCI in the collection, evaluation, publication and maintaining of data from pre-clinical studies and clinical trials regarding the subject compounds.

7. Provide defined financial and personnel support for the CRADA to be mutually agreed upon.

8. An agreement to be bound by the DHHS rules involving human and animal subjects.

9. The aggressiveness of the development plan, including the appropriateness of milestones and deadlines for preclinical and clinical development.

10. Provisions for equitable distribution of patent rights to any CRADA inventions. Generally the rights of ownership are retained by the organization which is the employer of the inventor, with (1) an irrevocable, nonexclusive, royalty-free license to the Government and (2) an option for the collaborator to elect an exclusive or nonexclusive license to Government owned rights under terms that comply with the appropriate licensing statutes and regulations.

Dated: May 1, 1996.

Thomas D. Mays,

Director, Office of Technology Development, OD, NCI.

[FR Doc. 96–13375 Filed 5–28–96; 8:45 am]

BILLING CODE 4140–01–M

Notice of Meeting of the Advisory Committee to the Director, NIH

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Advisory Committee to the Director, NIH, June 17, 1996, Conference Room 10, Building 31, National Institutes of Health, Bethesda, Maryland 20892.

The entire meeting will be open to the public from 9:00 a.m. to adjournment. The topics proposed for discussion include (1) Report from the NIH AIDS Research Program Evaluation Group; (2) Report on Intramural Research Program; (3) Discussion of Misconduct in Science; (4) Discussion of Issues Related to Co-Funding with other Organizations; and (5) Status of Reinvention Activities. Attendance by the public will be limited to space available.

Ms. Janice Ramsden, Program Assistant, Office of the Deputy Director, National Institutes of Health, 1 Center Drive MSC 0159, Bethesda, Maryland 20892–0159, telephone (301) 496–0959, fax (301) 496–7451, will furnish the meeting agenda, roster of committee members, and substantive program information upon request. Any individual who requires special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Ramsden no later than June 12, 1996.

Dated: May 22, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–13364 Filed 5–28–96; 8:45 am]

BILLING CODE 4140–01–M

National Institutes of Health (NIH)

Meeting; Alternative Medicine Program Advisory Council

Pursuant to sec. 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the meeting of the Alternative Medicine Program Advisory Council on June 13, 1996, from 8 a.m. to 5 p.m. and on June 14, 1996, from 8 a.m. to 11 a.m. in Conference Room 6, Building 31C, the National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland.

The entire meeting will be open to the public. The purpose of the meeting will be to update the Council on the activities of the Office of Alternative Medicine and to seek the Council's advice on strategic planning for alternative medicine research.

The Council will discuss the priorities voted upon at the February Council meeting and how the Office of Alternative Medicine might implement these activities. Attendance by the public will be limited to space available.

Ms. Beth Clay, Committee Management Officer, Office of Alternative Medicine, NIH, 9000 Rockville Pike, Building 31, Room 5B37 Mail Stop 2182, Bethesda, Maryland 20892, phone (301) 594–1990, fax (301) 402–4741, E-Mail: bethclay@helix.nih.gov, will furnish the meeting agenda, roster of committee members, and substantive program information upon request.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Clay at the above location no later than June 3, 1996.

Dated: May 22, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–13373 Filed 5–28–96; 8:45 am]

BILLING CODE 4140–01–M

Workshop on the Role of Dietary Supplements for Physically Active People

Notice is hereby given of the NIH Workshop on ''The Role of Dietary Supplements For Physically Active People,'' which will be held June 3–4, 1996, in the Natcher Conference Center of the National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892. The conference begins at 8 a.m. on both days.

Scientific research linking dietary supplements to health over the life span can be viewed as a relatively new area of research. In the early part of this century, nutrition sciences and dietary recommendations were focused on the identification and treatment of nutritional deficiency diseases. Although the American people have been consuming vitamin and mineral supplements for decades, the direct relationship between diet and health and, therefore, the potential role for nutrients beyond the minimum levels required to avoid deficiencies, has become apparent only within the last 15 years. The possible roles of other food components and derivatives of natural products in promoting health and preventing disease are also now being recognized. The publication of the Surgeon General's Report on Nutrition and Health and the Diet and Health report from the National Academy of Sciences further highlighted the breadth of understanding of the diet-health relationship. Scientific research on the characterization of the potential roles of individual nutrients and compounds as dietary supplements has grown dramatically in the 1990s.

Dietary supplements in the United States are usually defined as comprising plant extracts, enzymes, vitamins, minerals, and hormonal products that are available without prescription and may be consumed in addition to the regular diet. Considerable research on the effects of dietary supplements has been conducted in Asia and Europe, where plant products have a long tradition of use. The overwhelming majority of supplements have not been studied scientifically, and therefore, it is important to conduct research to determine the benefits and risks of the use of promising dietary supplements and to interpret available scientific information so that the public may understand its contents. One strong and continuing public health message to the American people, based on such scientific information, is that moderate exercise should become a part of their daily lives. Physical activity has been shown to reduce the risk of cardiovascular disease through its effects on high blood pressure, high blood cholesterol, diabetes mellitus/insulin resistance, and obesity. Americans should heed the advice of health professionals and adopt a more physically active lifestyle that includes a planned exercise component. This scientific workshop will focus on the role of dietary supplements for

physically active people who are interested in health promotion, in improving their personal performance in recreational sports, or in reduction of general fatigue. The goal of the meeting is to develop a research agenda that will identify key areas warranting further investigation.

The workshop will bring together specialists in aging, human anatomical configurations, child development, clinical nutrition, cognitive science, dietary supplements, dietetics, endocrinology, exercise physiology, exercise science, growth and development, kinesiology, medicine, nutrition, nutritional biochemistry, pediatrics, physiology, sports medicine, and women's health issues. These scientists will present reviews of the current state of scientific knowledge regarding selected dietary supplements and physical activity. Although scientific studies in many of the areas to be addressed in this workshop have often necessarily included primarily studies of elite athletes, the focus of this workshop is on the more typical healthy person who is physically active.

Primary sponsors of this workshop are the Office of Dietary Supplements, NIH, in conjunction with the American Society for Clinical Nutrition and the American Institute of Nutrition. The workshop will be cosponsored by the NIH Office of Alternative Medicine; the National Heart, Lung, and Blood Institute; the National Institute on Aging; the National Institute of Arthritis and Musculoskeletal and Skin Diseases; the National Institute of Child Health and Human Development; the National Institute on Deafness and Other Communication Disorders; the National Institute of Dental Research; the National Institute of Diabetes and Digestive and Kidney Diseases; and the National Institute of Mental Health.

Advance information on the conference program and conference registration materials may be obtained from: Annette Besignano, Technical Resources International, Inc., 3202 Tower Oaks Blvd., Suite 200, Rockville, Maryland 20852, (301) 770–3153, confdept@tech-res.com.

The proceedings of this workshop will be published as a supplement to the American Journal of Nutrition.

Dated: May 14, 1996.

Ruth L. Kirschstein,

Deputy Director, NIH.

[FR Doc. 96–13376 Filed 5–28–96; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Notice of Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the following Heart, Lung, and Blood Special Emphasis Panel.

The meeting will be open to the public to provide concept review of proposed contract or grant solicitations.

Individuals who plan to attend and need special assistance such as sign language interpretation or other reasonable accommodations, should inform the Contact Person listed below in advance of the meeting.

Name of Panel: Use of Cardiac Electron Beam Computed Tomography (EBCT) and Magnetic Resonance Imaging (MRI) in Epidemiologic Studies of Cardiovascular Disease.

Dates of Meeting: June 28, 1996.

Time of Meeting: 8:30 a.m.

Place of Meeting: Two Rockledge Center, 6701 Rockledge Drive, Conference Room 9A2, Bethesda, Maryland 20892.

Agenda: To evaluate the use of EBCT and MRI of the heart in population-based studies for future initiatives.

Contact Person: Diane Bild, M.D./Ph.D., NHLBI/DECA, Two Rockledge Center, 6701 Rockledge Drive, Rm. 8150, MSC 7934, Bethesda, Maryland 20892. (301) 435–0457.

(Catalog of Federal Domestic Assistance Programs Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health.)

Dated: May 22, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–13369 Filed 5–28–96; 8:45 am]

BILLING CODE 4140–91–M

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Heart, Lung, and Blood Special Emphasis Panel (SEP) meetings:

Name of SEP: Phased Readiness Testing of Implantable Total Artificial Hearts—Phase II.

Date: June 17, 1996.

Time: 8:30 a.m.

Place: Two Rockledge Center, 6701 Rockledge Drive, Rm. 7111, Bethesda, Maryland 20892.

Contact Person: C. James Scheirer, Ph.D., Two Rockledge Center, Room 7220, 6701 Rockledge Drive, Bethesda, MD 20892–7924, (301) 435–0266.

Purpose/Agenda: To review and evaluate contract proposals.

Name of SEP: Review of the Institutional National Research Service Awards (T32s), Independent Scientist Award (K02s) and the Mentored Clinical Scientist Development Award (K08s).

Date: June 24, 1996.

Time: 8:00 a.m.

Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, Maryland 20814.

Contact Person: S. Charles Selden, Ph.D., Two Rockledge Center, Room 7196, 6701 Rockledge Drive, Bethesda, MD 20892–7924, (301) 435–0266.

Purpose/Agenda: To review and evaluate grant applications.

These meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. Applications and/or proposals and discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Programs Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health.)

Dated: May 22, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–13371 Filed 5–28–96; 8:45 am]

BILLING CODE 1140–01–M

National Heart, Lung, and Blood Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Sickle Cell Disease Advisory Committee, National Heart, Lung, and Blood Institute, June 7, 1996, which was published in the Federal Register on April 24, 1996 (61 FR 18397).

The meeting date is changed to July 22, 1996 at 8:30 a.m. The meeting will be held at the National Institutes of Health, Two Rockledge Center, Room 9A, 6701 Rockledge Drive, Bethesda, Maryland. As previously advertised, the meeting is open to the public.

Dated: May 22, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–13374 Filed 5–28–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings of the National Institute on Alcohol Abuse and Alcoholism Initial Review Group:

Purpose/Agenda: To review and evaluate grant applications.

Name of Committee: Biochemistry, Physiology, and Medicine Subcommittee.

Dates of Meeting: June 19, 1996.

Time: 8:00 a.m.

Place of Meeting: Bethesda Marriott, 5151 Pooks Hill Rd., Bethesda, MD 20814.

Contact Person: Ronald Suddendorf, Ph.D., 6000 Executive Blvd, Suite 409, Bethesda, MD 20892–7003, 301–443–6107.

Name of Committee: Epidemiology and Prevention Subcommittee.

Dates of Meeting: June 20, 1996.

Time: 8:30 a.m.

Place of Meeting: River Inn, 924 25th Street, NW., Washington, DC 20037.

Contact Person: Thomas D. Sevy, M.S.W., 6000 Executive Blvd, Suite 409, Bethesda, MD 20892–7003, 301–443–6106.

Name of Committee: Neuroscience and Behavior Subcommittee.

Dates of Meeting: June 21, 1996.

Time: 9:00 a.m.

Place of Meeting: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Antonio Noronha, Ph.D., 6000 Executive Blvd, Suite 409, Bethesda, MD 20892–7003, 301–443–9419.

Name of Committee: Clinical and Treatment Subcommittee.

Dates of Meeting: June 27–28, 1996.

Time: 11:00 a.m.

Place of Meeting: Grand Hyatt Hotel, 1000 H Street, NW., Washington, DC 20001.

Contact Person: Elsie D. Taylor, 6000 Executive Blvd, Suite 409, Bethesda, MD 20892–7003, 301–443–9787.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants; National Institutes of Health).

Dated: May 22, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–13365 Filed 5–28–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting:

Committee Name: Minority Biomedical Research Support Review Subcommittee, Minority Programs Review Committee.

Date: July 10, 1996.

Time: 8:30 a.m.–5 p.m.

Place: Holiday Inn—Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Michael A. Sesma, Ph.D., Scientific Review Administrator, NIGMS, 45 Center Drive, Room 1AS–19, Bethesda, MD 20892–6200, Telephone: 301–594–2048.

Agenda/Purpose: Review and evaluation of grant applications.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. The discussions of these applications could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.821, Biophysics and Physiological Sciences; 93.859, Pharmacological Sciences; 93.862, Genetics Research; 93.863, Cellular and Molecular Basis of Disease Research; 93.880, Minority Access Research Careers [MARC]; and 93.375, Minority Biomedical Research Support [MBRS].)

Dated: May 22, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–13367 Filed 5–28–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting:

Committee Name: Special Emphasis Panel—NIGMS Initiative for Minority Student Development.

Date: July 11–12, 1996.

Time: 8:30 a.m.–5 p.m.

Place: Holiday Inn—Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Michael A. Sesma, Ph.D., Scientific Review Administrator, NIGMS, 45 Center Drive, Room 1AS–19, Bethesda, MD 20892–6200, Telephone: 301–594–2048.

Agenda/Purpose: Review and evaluation of grant applications received in response to PAR–96–006.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. The discussions of these applications could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.821, Biophysics and Physiological Sciences; 93.859, Pharmacological Sciences; 93.862, Genetics Research; 93.863, Cellular and Molecular Basis of Disease Research; 93.880, Minority Access Research Careers [MARC]; and 93.375, Minority Biomedical Research Support [MBRS].)

Dated: May 22, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–13368 Filed 5–28–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Allergy and Infectious Diseases Special Emphasis Panel (SEP) meeting:

Name of SEP: Unsolicited P01s.

Date: June 27, 1996.

Time: 8:30 a.m.

Place: Solar Bldg., Rm. 1A03, 6003 Executive Boulevard, Bethesda, MD 20892–7610, (301) 496–2550.

Contact Person: Dr. Sayeed Quraishi, Scientific Review Adm., 6003 Executive Boulevard, Solar Bldg., Room 4C22, Bethesda, MD 20892–7610, (301) 496–7465.

Purpose/Agenda: To evaluate grant applications.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal property.

(Catalog of Federal Domestic Assistance Programs Nos. 93.855, Immunology, Allergic and Immunologic Diseases Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health.)

Dated: May 22, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–13370 Filed 5–28–96; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMANS SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Ac, as amended (5 U.S.C. Appendix 2), notice

is hereby given of the following meetings:

Name of Committee: National Diabetes and Digestive and Kidney Diseases Special Grants Review Committee, Subcommittee B.

Date: June 3–4, 1996.

Time: 7:30 p.m.—adjournment on June 4.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, Maryland 20814.

Contact Person: Ned Feder, Ph.D., Natcher Building, Room 6AS–25S, National Institutes of Health, Bethesda, Maryland 20892–6600; Phone: (301) 594–8890.

Purpose/Agenda: To review and evaluate research grant applications.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Special Grants Review Committee, Subcommittee C.

Date: June 6–7, 1996.

Time: 8:30 a.m.—adjournment on June 7.

Place: Omni Shoreham Hotel, 2500 Calvert St., NW., Washington, DC 20008.

Contact Person: Daniel Matsumoto, Ph.D., Natcher Building, Room 6AS–37B, National Institutes of Health, Bethesda, Maryland 20892–6600. Phone: (301) 594–8894.

Purpose/Agenda: To review and evaluate research grant applications.

This notice is being published less than 15 days prior to the above meetings due to the urgent need to meet timing limitations imposed by the review and funding cycle.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Special Grants Review Committee, Subcommittee D.

Date: June 14, 1996.

Time: 8 a.m.—adjournment.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, Maryland 20852.

Contact Person: Ann A. Hagan, Ph.D., Natcher Building, Room 6AS–43G, National Institutes of Health, Bethesda, Maryland 20892–6600; Phone: (301) 594–8891.

Purpose/Agenda: To review and evaluate research grant applications.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.847–849, Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology and Hematology Research, National Institutes of Health.)

Dated: May 22, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–13372 Filed 5–28–96; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Division of Research Grants; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting that is being held to review grant applications:

NEUROLOGICAL SCIENCES INITIAL REVIEW GROUP

Study section/contact person	June 1996 meeting	Time	Location
Neurology A:			
Dr. Joe Marwah, 301–435–1253	June 20–22	8:30 a.m.	Windom Bristol Hotel, Washington, DC.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 22, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–13366 Filed 5–28–96; 8:45 am]

BILLING CODE 4140–01–M

Substance Abuse and Mental Health Services Administration

Center for Substance Abuse Prevention National Advisory Council Meeting in May

AGENCY: Substance Abuse and Mental Health Services Administration (SAMHSA).

ACTION: Correction of Meeting Notice.

SUMMARY: Public notice was given in the Federal Register on May 13, 1996 (Vol. 61, No.93, page 22068) that the Center for Substance Abuse Prevention National Advisory Council meeting on May 30, 1996 would be open to the public. However, this meeting will now include the presentation and discussion of information about the agency's procurement plans. Therefore, a portion of the meeting, from 1:30 p.m. to 2:30 p.m., will be closed to the public as determined by the Administrator, SAMHSA, in accordance with 5 U.S.C. 552b(c)(3) and 5 U.S.C. app. 2, § 10(d).

The agenda, location, hours of the open session of the meeting, and the contact for additional information remain as announced.

Dated: May 22, 1996

Peggy Cockrill,

Acting Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 96–13301 Filed 5–28–96; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner; Congregate Housing Services Program; Announcement of Funding Awards for FY 1995

[Docket No. FR–3839–N–03]

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in a competition for funding under the Notice of Funding Availability (NOFA) for the Congregate Housing Services Program (CHSP). This announcement contains the names and addresses of the awardees and the amount of the awards.

FOR FURTHER INFORMATION CONTACT: Carissa Janis, Office of Multifamily Housing Asset Management and Disposition, Department of Housing and Urban Development, room 6176, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–3291 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number by calling the Federal Information Relay Service TTY at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The CHSP is authorized by section 802 of the National Affordable Housing Act of 1990 (Pub. L. 101–625) (42 U.S.C. 8011), as amended by the Housing and Community Development Act of 1992 (Pub. L. 102–550).

The Fiscal Year 1995 competition was announced in a NOFA published in the Federal Register on May 10, 1995 (60 FR 25092). The NOFA announced the availability of $38,480,150 to provide assistance to States, Indian Tribes, units of general local government, public housing and Indian housing agencies, and local nonprofit housing sponsors to fund congregate supportive services for frail elderly persons, persons with disabilities, and temporarily disabled individuals living in eligible housing for the elderly. Applications were scored and selected for funding based on criteria contained in the Notice.

Congress, however, rescinded $37 million of the above dollar amount in the 1995 Emergency Supplemental Appropriations for Additional Disaster Assistance, for Anti-Terrorism Initiative, for Assistance in Recovery from the Tragedy That Occurred at Oklahoma City, and Rescissions Act (Pub. L. 104–19), approved July 27, 1995. Therefore, HUD and the Rural Housing Service had only $1,480,150 available for new grants. This amount was left to the Rural Housing Service, who awarded one grant in the amount of $292,595.

In accordance with section 102 (a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235, approved December 15, 1989), the Department is hereby publishing the names and addresses of the awardees that received funding under the NOFA, and the amount of funds awarded to each. This information is provided in Appendix A to this document.

Dated: May 22, 1996.

Nicolas P. Retsinas,

Assistant Secretary for Housing—Federal Housing Commissioner.

Appendix A—Fiscal Year 1995, Office of Housing

Program Name: Congregate Housing Services Program.

Statute: Public Law 101–625, November 28, 1990 and Public Law 102–550, October 28, 1992.

Nofa Date: May 10, 1995.

Funding recipient (name and address) applicant name contact	Award amount
Grantee: Opportunities for the Retarded, Inc., 64–1510 Kamehameha Highway, Wahiawa, HI 96786 ..... Project: Helemano Plantation Village, 64–1510 Kamehameha Highway, Wahiawa, HI 96786	$292,595.00

[FR Doc. 96–13332 Filed 5–28–96; 8:45 am]

BILLING CODE 4210–27–P

Office of the Assistant Secretary for Housing—Federal Housing Commissioner; Congregate Housing Services Program Announcement of Funding Awards for FY 1994

[Docket No. FR–3630–N–04]

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in a competition for funding under the Notice of Funding Availability (NOFA) for the Congregate Housing Services Program (CHSP). This announcement contains the names and addresses of the awardees and the amount of the awards.

FOR FURTHER INFORMATION CONTACT: Carissa Janis, Office of Multifamily Housing Asset Management and Disposition, Department of Housing and Urban Development, room 6176, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–3291 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number by calling the Federal Information Relay Service TTY at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The CHSP is authorized by section 802 of the National Affordable Housing Act of 1990 (Pub. L. 101–625) (42 U.S.C. 8011), as amended by the Housing and Community Development Act of 1992 (Pub. L. 102–550).

The Fiscal Year 1994 competition was announced in a NOFA published in the Federal Register on April 29, 1994 (59 FR 22236). The NOFA announced the availability of $39.5 million to provide assistance to States, Indian Tribes, units of general local government, public housing and Indian housing agencies, and local nonprofit housing sponsors to fund congregate supportive services for frail elderly persons, persons with disabilities, and temporarily disabled individuals living in eligible housing for the elderly. Applications were scored and selected for funding based on criteria contained in the Notice.

In accordance with section 102 (a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235, approved December 15, 1989), the Department is hereby publishing the names and addresses of the awardees that received funding under the NOFA, and the amount of funds awarded to each. This information is provided in Appendix A to this document.

Dated: May 22, 1996.

Nicolas P. Retsinas,

Assistant Secretary for Housing—Federal Housing Commissioner.

Appendix A—Fiscal Year 1994 Office of Housing

Program Name: Congregate Housing Services Program.

Statute: Public Law 101–625, November 28, 1990 and Public Law 102–550, October 28, 1992.

Nofa Dates: April 29, 1994.

Funding recipient (name and address) applicant name contact	Dollar amount
Region 01	
New Hampshire State Office:	
Keene Housing Authority:	
Bennett Block, 32 Washington St., Keene, NH 03431	$80,018
Harper Acres, 105 Castle St., Keene, NH 03431	125,799
Somersworth Housing Authority: Carpenter Apts, 28 Franklin Street, Somersworth, NH 03878	221,201
Nashua Housing Authority: Sullivan Terr. So., 57 Tyler Street, Nashua, NH 03060	225,812

Funding recipient (name and address) applicant name contact	Dollar amount
Manchester Housing Authority: Kalivas High Rise, 175 Chestnut Street, Manchester, NH 03103	283,200
Region 03	
Maryland State Office:	
Housing Authority of Baltimore: Brentwood, 401 East 25th St., Baltimore, MD 21218	368,105
Pittsburgh Area Office:	
Mid ACV Housing Corp., East Brady Heights, P.O. Box 367, East Brady, PA 16028	187,652
Region 04	
North Carolina State Office:	
High Point Housing Authority: Elm Towers, 301 South Elm St., High Point, NC 27261	442,312
Region 05	
Michigan State Office:	
Detroit Int. Stake Audit Hsg. Restoration Towers, 16651 Lahser Road, Detroit, MI 48219	170,658
Grand Rapids Area Office:	
Potential Dev. Homes, I: Hope House I, 1706 Second Street, Jackson, MI 49204	68,245
Potential Dev. Homes, II: Hope House II, 400 Van Buren, Jackson, MI 49201	68,245
Indiana State Office:	
Muncie Housing Authority: Gillespie Tower, Apartments, 701 West Jackson, Muncie, IN 47305	237,912
Minnesota State Office:	
St. Paul Public Housing Agency:	
Edgerton Hi-rise, 1000 Edgerton St., St. Paul, MN 55101	479,812
Montreal Hi-rise, 1085 Montreal Ave., St. Paul, MN 55116	360,711
Iowa Hi-rise, 1743 East Iowa Ave., St. Paul, MN 55106	359,592
Region 06	
Arkansas State Office:	
North Arkansas Human Service: Homestead House, 3210 East Moore St., Searcy, AR 72143	289,977
Louisana State Office:	
Evangaline Council Housing f/t: Village de Memoire I, 250 W. 6th Street, Dubuque, IA 52001	95,689
Region 07	
Iowa State Office:	
Ecumenical Housing, Inc.: Ecumenical Tower, 250 W. 6th St., Dubuque, IA 52001	184,153
Alverno Apartments, Inc.: Alverno Apts, Inc., 3525 Windsor Avenue, Dubuque, IA 52201	148,006
Charles City Hous. Comm.:	
Cedar Terrace North, 624 North Main, Charles City, IA 50616	276,937
Cedar Terrace South, 501 Court, Charles City, IA 50616	559,557
Kansas/Missouri State Office	
H.A. of the City of Atchison: The Mail Towers Hi-rise, Atchison, KS 66002	154,056
Nebraska State Office:	
Lincoln Area Agency on Aging:	
Mahoney Manor, 4241 N 61st St., Lincoln, NE 68507	238,571
Burke Plaza, 6721 "L" St., Lincoln, NE 68505	155,121
St. Louis Area Office:	
Community Housing Association: CHAI Apartments, #10 Millstone Campus, St. Louis, MO 63164	98,540
B'nai B'rith Covenant House, I: Covenant House I, 10 Millstone Campus,St. Louis, MO 63146	113,428
Region 08	
Colorado State Office:	
Northern Cheyenne Hous. Auth.: Shoulderblade Complex, Lame Deer, MT 59043	361,710
Colorado State Office/Rural Housing Service:	
Senior Meals and Serv., Inc.: Park Place I, Devils Lake, MD 58330	97,887

[FR Doc. 96–13334 Filed 5–28–96; 8:45 am]

BILLING CODE 4210–27–P

[Docket No. FR–3353–N–04]

Office of the Assistant Secretary for Housing—Federal Housing Commissioner; HOPE 2—Homeownership of Multifamily Units Program; Announcement of Funding Awards; Fiscal Year 1993

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding awards made by the Department under a Federal Register notice for the HOPE 2—Homeownership of Multifamily Units Program. This announcement contains the names and addresses of the HOPE 2 grantees and the amount of the awards.

FOR FURTHER INFORMATION CONTACT: Michael Diggs, Office of Multifamily Housing Asset Management and Disposition, Department of Housing and Urban Development, room 6176, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–0558 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number by calling the Federal Information Relay. Service TTY at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: HOPE 2—Homeownership of Multifamily Units Program is authorized by title IV of the Cranston-Gonzales National Affordable Housing Act of 1990 (Pub. L. 101–625) (42 U.S.C. 8011), enacted November 28, 1990. Program Guidelines were published on January 14, 1992 (57 FR 1558). Program changes were made by the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 23, 1992) and other changes made by the Department as a result of the first funding round.

Fiscal Year 1993 funds were announced in a Federal Register Notice of Funding Availability (NOFA) published on July 16, 1993 (58 FR 38466). The NOFA announced the availability of $102.2 million for HOPE 2 Implementation Grants to provide for homeownership of Multifamily units. The purpose of the HOPE 2 Implementation Grant program is to provide funding for carrying out homeownership programs in accordance with Section 415 of the guidelines. Applications are awarded funding if they meet the eligibility criteria indicated in the NOFA.

In accordance with section 102 (a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235, approved December 15, 1989), the Department is hereby publishing the names and addresses of the HOPE 2 awardees that received funding under this NOFA, and the amount of funds awarded to each. The total amount awarded during this period was $33,549,795 to 10 projects. This information is provided in Appendix A to this document.

Dated: May 22, 1996.

Nicolas P. Retsinas,

Assistant Secretary for Housing—Federal Housing Commissioner.

FISCAL YEAR 1993 MULTIFAMILY HOUSING (HOPE 2)

PROGRAM NAME: HOPE FOR HOMEOWNERSHIP OF MULTIFAMILY UNITS (HOPE 2)

STATUTE: PUBLIC LAW 101–625, NOVEMBER 28, 1990.

NOFA DATE: July 16, 1993.

Funding Recipient (name and address) applicant name contact	Amount Awarded
Larry Kluetsch, Mutual Housing SW CT, 800 Summer St. Suite 330, Stamford, CT. 06457, (203) 359–6940	$3,332,700
Sandra Abramson, The City of New York, 100 Gold Street, New York, NY. 10029, (212) 978–6100	6,750,000

Funding Recipient (name and address) applicant name contact	Amount Awarded
Barbara Barnes, VMH, Inc., 109 Holly Road, Suite 101, Virginia Beach, VA. 23451, (804) 425–6231	726,475
Charles Pharr, Pritchard Housing Authority, P.O. Box 10307, Pritchard, AL. 35209, (334) 456–3324	3,033,747
Gordon Ellingson, SR Habitat/Humanity, P.O. Box 488, Pascagoula, MS. 39701, (601) 497–4495	878,691
P. Gilbertson Barno, Buckeye Community Hope Foundation, 947 E. Johnstown RD. Suite 221, Gahanna, OH. 43230, (614) 337–9718	2,157,000
P. Gilbertson Barno, Buckeye Community Hope Foundation, 947 E. Johnstown Rd. Suite 221, Gahanna, OH. 43230, (614) 337–9718	2,810,880
Walter Dumas, Shiloh Bapt. Church, 185 Eddie Robinson Sr. Drive, Baton Rouge, LA. 70806, (504) 383–7436	6,858,751
Jim Willett, Indian Center, Inc., 1100 Military Road, Lincoln, NE. 68154 (402) 438–5231	1,908,904
Steven Barbier, GDMHA, 1776 SO. Jackson St. Ste. 811, Enver, CO. 80202, (303) 762–7274	5,092,647

[FR Doc. 96–13333 Filed 5–28–96; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection Request for Renewal/Reinstatement

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This notice announces that the Fish and Wildlife Service (Service) is planning to submit the following proposal for the collection of information listed below to the Office of Management and Budget (OMB), for renewal under the provisions of the Paperwork Reduction Act. This proposal for renewal includes existing information collection requirements and adds information collection requirements for likely respondents to recently enacted regulations that implement the Wild Bird Conservation Act. Copies of the information collection requirement and related forms and explanatory material may be obtained by contacting the Service's Clearance Officer at the telephone number listed below. The Service is soliciting comments and suggestions on the requirement as described as below.

DATES: Comments must be submitted on or before July 29, 1996.

ADDRESSES: Information Collection Clearance Officer, U.S. Fish and Wildlife Service, Mail Stop 224-Arlington Square, 1849 C Street, NW, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Phyllis H. Cook, Service Information Collection Clearance Officer, 703/358–1943.

SUPPLEMENTARY INFORMATION:

Title: Wild Exotic Bird Import Application.

OMB Approval Number: 1018–0084.

Abstract: The Wild Bird Conservation Act of 1992 (WBCA) authorizes the Service to issue permits for the importation of individual exotic birds from otherwise prohibited species for the following purposes (after a finding that such imports are not detrimental to the species' survival): scientific research; personally owned pets of individuals returning to the United States after being out of the country for a least one year; zoological breeding or display programs; and cooperative breeding programs designed to promote the conservation of the species in the wild, that are developed and administered by organizations meeting certain standards. The information required on the application is used by the Service to determine if an applicant should be granted a permit to import an exotic bird under the provisions of the WBCA. This proposed amendment will change this requirement by providing for applications that will be submitted by foreign governments and foreign breeding facilities, in accordance with recently enacted regulations to implement the WBCA. This proposed amendment does not affect existing information collection requirements for scientific research, personal pets, zoological breeding or display, or cooperative breeding, in any way.

Service Form Number(s): 3–200.

Frequency: On occasion.

Description of respondents: Individuals and households; businesses or other for profit organizations; non-profit institutions and small businesses or organizations, foreign governments.

Completion Time: The reporting burden is estimated to average 4 hours per respondent for all permits except those for personally owned pets. For permits for personally owned pets, it is estimated that completion time will average 1 hour per application. Applications for species approval from foreign governments and foreign breeding facilities will require an average of 8 hours to complete. The average completion time for all applicants is estimated at 3.42 hours per response.

Annual Responses: Service experience indicates that approximately 600 applicants will apply each year for permits other than for personally owned pets. Approximately 200 applicants will apply for permits for personally owned pets. The Service anticipates that 10 or less foreign governments and approximately 20 foreign breeding facilities will apply. Total annual responses will be 830.

Annual Burden Hours: Total annual burden hours will be 2,480.

Kenneth Stansell,

Acting Assistant Director—International Affairs.

[FR Doc. 96–13358 Filed 5–28–96; 8:45 am]

BILLING CODE 4310–55–M

Bureau of Indian Affairs

Supplemental Final Determination for Federal Acknowledgment of the Samish Tribal Organization as an Indian Tribe

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Supplemental Notice of Final Determination.

SUMMARY: The Assistant Secretary—Indian Affairs has determined that the Samish Tribal Organization (STO) exists as an Indian tribe within the meaning of Federal law pursuant to the acknowledgment regulations, 25 CFR Part 83, that became effective October 2, 1978. The Secretary has directed that the determination be made final and effective immediately.

DATES: This supplemental notice of determination is final and effective immediately.

FOR FURTHER INFORMATION CONTACT: Office of the Assistant Secretary—Indian Affairs, (202) 208–7163.

SUPPLEMENTARY INFORMATION: This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

On March 29, 1996, the Assistant Secretary—Indian Affairs issued a notice of her determination pursuant to 25 CFR Part 83 that the Samish Tribal Organization existed as an Indian tribe. The notice instructed the Director, Portland Area Office, Bureau of Indian

Affairs, to verify the membership list and to develop with the tribe a plan and budget for the implementation of the Assistant Secretary's decision and the provision of services to the members of the Samish Tribal Organization. The notice was published in the Federal Register on April 9, 1996 (61 FR 15825).

The notice indicated that two tribes had requested that the Secretary direct the Assistant Secretary to reconsider her decision and that the Secretary was considering whether he had authority to direct the Assistant Secretary to reconsider and, if he had that authority, whether he should direct her to reconsider. The notice also indicated that the Samish Tribal Organization has not requested administrative reconsideration of the Assistant Secretary's determination to acknowledge its existence as an Indian tribe but had filed suit seeking to require a reinstatement verbatim of the Administrative Law Judge's recommended decision and findings of fact. Lastly, the notice stated that the determination would be effective 60 days after the date on which the notice appeared in the Federal Register, or June 8, unless the Secretary of the Interior requested a reconsideration by the Assistant Secretary—Indian Affairs pursuant to 25 CFR § 83.10(a)-(c).

On April 26, 1996, the Secretary responded in writing to the two requests for reconsideration. He concluded that there were significant questions as to his authority to grant the requests because of the unique terms and circumstances of the remand from the District Court which governed the Assistant Secretary's determination. The Secretary noted that, in accordance with the district court's remand to the Department, the Assistant Secretary's determination did not resolve the nature and extent of the treaty rights, if any, of the Samish Tribal Organization so the treaty rights of the tribes requesting reconsideration were not affected by the determination. The Secretary concluded that the Assistant Secretary's determination should be deemed final agency action and effective April 26, 1996. Accordingly, he directed that this notice be published.

Dated: May 20, 1996.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 96–13438 Filed 5–23–96; 2:47 pm]

BILLING CODE 4310–02–P

Bureau of Land Management

[WO–310–1310–02–24 1A]

OMB Approval Number 1004–0162

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposed renewal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). On March 5, 1996, the Bureau of Land Management (BLM) published a notice in the Federal Register (61 FR 8638) requesting comments on the collection. The comment period ended May 5, 1996. No comments were received. Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's Clearance Officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau Clearance Officer and to the Office of Management and Budget, Paperwork Reduction Project (1004–0162), Washington, DC 20503, telephone (202) 395–7340.

Title: Oil and Gas Geophysical Exploration Operations (43 CFR 3151).

OMB Approval Number: 1004–0162.

Abstract: Respondents supply information which will be used to determine procedures for conducting oil and gas geophysical exploration operations on public lands. The information supplied allows the Bureau of Land Management to determine that geophysical exploration operation activities are conducted in a manner consistent with the regulations, local use plans and environmental assessments in compliance with the provisions of the National Environmental Policy Act of 1969 as amended.

Form Numbers: 3150–4, 3150–5.

Frequency: On occasion.

Description of Respondents: Oil and gas exploration and drilling companies.

Estimated Completion Time: Form 3150–4—1 hour; Form 3150–5—1/3 hour.

Annual Responses: 1200.

Annual Burden Hours: 800.

Bureau Clearance Officer: Wendy Spencer (303) 236–6642.

Dated: May 10, 1996.

Patrick W. Boyd,

Acting Chief, Regulatory Management Team.

[FR Doc. 96–13342 Filed 5–28–96; 8:45 am]

BILLING CODE 4310–84–P

[WO–320–4130–02–24 1A]

OMB Approval Number 1004–0169

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) On February 14, 1996, BLM published a notice in the Federal Register (61 FR 5797) requesting comment on this proposed collection. The comment period ended on April 15, 1996. BLM received one comment from the public in response to that notice. Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the BLM clearance officer at the telephone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the BLM clearance officer and to the Office of Management and Budget, Interior Department Desk Officer (1004–0169), Washington, D.C., 20503, telephone (202) 395–7340.

Title: Use and Occupancy and under the Mining Laws (43 CFR 3715).

OMB approval number: 1004–0169.

Abstract: The Bureau of Land Management is proposing to renew the approval of an information collection for a new rule at 43 CFR 3715. That rule will manage use and occupancy on unpatented mining claims. It sets out the restrictions on use and occupancy of unpatented mining claims and mill sites on Federal lands and to provide field managers with the tools necessary to manage occupancy and use. The final rule would define those activities that are related to prospecting, mining, or processing operations and uses reasonably incident thereto. The rule would establish conditions for determining whether these criteria are met, procedures for initiation of occupancy, standards for the use or occupancy, prohibited acts, procedures for inspection and enforcement, and procedures for recognizing and managing existing occupancies. It would also provide for penalties and appeals procedures. The rules only apply to public land under the administration of the Bureau of Land Management.

Bureau Form Number: None.

Frequency: Once.

Description of respondents: Respondents may range from an

individual to multi-national corporations.

Estimated completion time: 2.0 hours.

Annual responses: 780.

Annual burden hours: 1560.

Collection Clearance Officer: Wendy Spencer, 303–236–6642.

Dated: May 7, 1996.

Annetta L. Cheek.

Chief, Regulatory Management Team.

[FR Doc. 96–13343 Filed 5–28–96; 8:45 am]

BILLING CODE 4130–84–P

[CA–010–1430–00; CACA 7870]

Order Providing for Opening of Lands Subject to Section 24 of the Federal Power Act; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This order opens, subject to section 24 of the Federal Power Act (FPA), approximately 87.6 acres of public lands withdrawn by two Federal Power Commission (FPC) orders, dated June 27, 1963 and February 17, 1971, for Power Project Number 2179. This action will permit consummation of a pending land exchange and retain the power rights to the United States of America. The Federal Energy Regulatory Commission (FERC) has determined that the power value of the subject lands will not be injured or destroyed by their exchange, if the land exchange is subject to section 24 of FPA. FERC concurred with this action in a letter, DVCA–1237, dated March 29, 1996. Although the lands have been and will remain closed to mining, they have been and will remain open to mineral leasing.

DATES: August 28, 1996.

FOR FURTHER INFORMATION CONTACT: Duane Marti, BLM California State Office (CA–931.4), 2800 Cottage Way, Sacramento, CA 95825–1889, 916–979–2858.

SUPPLEMENTARY INFORMATION: By virtue of the authority vested in the Secretary of the Interior by the Act of June 10, 1920, Section 24, as amended, 41 Stat. 1075; 49 Stat. 846; 62 Stat. 275; 16 U.S.C. 818, and pursuant to the determination by the Federal Energy Regulatory Commission in DVCA–1237, it is ordered as follows:

1. At 8:30 a.m. on August 28, 1996, the following described lands withdrawn by two Federal Power Commission (FPC) orders, dated June 27, 1963 and February 17, 1971, for Power Project Number 2179, will be opened to disposal by land exchange subject to the provisions of Section 24 of the Federal Power Act as specified by the Federal Energy Regulatory Commission in determination DVCA–1237, and subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law:

Mount Diablo Meridian

T. 4 S., R. 15 E.,
Sec. 14, E½SE¼SE¼;
Sec. 23, NE¼SE¼.
T. 5 S., R. 15 E.,
Sec. 2, that portion of lot 1 lying inside of the project boundary for Power Project Number 2179;
Sec. 3, lots 7 through 15 (formerly described as lot 2).

The areas described aggregate approximately 87.6 acres in Mariposa County.

2. The State of California has a preference right for public highway rights-of-way or material sites for a period of 90 days from the date of publication of this order, and any location, entry, selection, or subsequent patent shall be subject to any rights granted the State as provided by the Act of June 10, 1920, Section 24, as amended, 41 Stat. 1075; 49 Stat. 846; 62 Stat. 275; 16 U.S.C. 818.

Dated: May 15, 1996.

David McIlnay,

Chief, Branch of Lands.

[FR Doc. 96–13359 Filed 5–28–96; 8:45 am]

BILLING CODE 4310–40–P

[MT–034–1430–01]

Notice of Realty Action—Non-Competitive Sale in Lawrence County, South Dakota (SDM–084985)

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The following described public surface has been determined suitable for disposal by direct sale, at not less than fair market value of $500 to Kathleen Farstad pursuant to 43 CFR 2710 and under the authority of Section 203 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716). The public surface land to be acquired by Kathleen Farstad in Lawrence County, South Dakota:

Black Hills Meridian

T. 4 N., R. 3 E.,
Sec. 17, lot 7.

Containing approximately 00.01 acres

DATES: Interested parties may submit comments to the District Manager, Bureau of Land Management, Dakotas District Office, 2933 Third Avenue West, Dickinson, North Dakota 58601–2619. Comments shall be submitted by July 15, 1996. Any adverse comments will be evaluated by the BLM Montana State Director who may sustain, vacate or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

FOR FURTHER INFORMATION: Information related to this sale including the environmental assessment is available for review at the Bureau of Land Management, South Dakota Resource Area Office, 310 Roundup Street, Belle Fourche, SD 57717, or the Dakotas District Office, 2933 Third Avenue West, Dickinson, North Dakota 58601–2619.

SUPPLEMENTARY INFORMATION: The public lands and mineral described above are segregated from settlement, location and entry under the public land laws, including the mining laws, but not from the mineral leasing laws nor from sale pursuant to section 203 of the Federal Land Policy and Management Act of 1976, for a period of 270 days from the date of publication of this notice. The sale will be made subject to:

1. A reservation to the United States of a right-of-way for ditches or canals in accordance with U.S.C. 945.

2. The reservation to the United States of all minerals in the Federal lands being transferred.

3. All valid existing rights of record.

4. Any other applicable terms and conditions.

This sale is consistent with BLM policies and the South Dakota Resource Management Plan, dated 1985, and has been discussed with state and local officials. The public interest will be served by completion of this direct sale to the surrounding landowner because it will enable the BLM to sell a potential problem parcel and will increase management efficiency of public lands in the area.

Dated: May 21, 1996.

Douglas J. Burger,

District Manager.

[FR Doc. 96–13391 Filed 5–28–96; 8:45 am]

BILLING CODE 4310–WN–M

[UT–040–06–1610–00]

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability.

SUMMARY: The Bureau of Land Management, Cedar City District, Escalante Resource Area, has completed an Environmental Analysis (EA)/ Finding of No Significant Impact

(FONSI) of the Proposed Plan Amendment to the Cedar/Beaver/Garfield/Antimony Resource Management Plan and the Escalante & Paria Management Framework Plans. The Proposed Amendment allows land tenure adjustments and adds five (5) criteria elements by which land disposals and exchanges (adjustments) will be evaluated.

DATES: The protest period for this Proposed Plan Amendment will commence with the date of publication of this notice and last for 30 days. Protests must be received on or before June 28, 1996.

ADDRESSES: Protests must be addressed to the Director (480), Bureau of Land Management, Resource Planning Team, 1849 C Street, N.W. Washington, D.C. 20240 within 30 days after the date of publication of this Notice of Availability.

FOR FURTHER INFORMATION CONTACT: Gregg Christensen, Acting Area Manager, Escalante Resource Area, P. O. Box 225, Escalante, Utah 84726, (801) 826–4291. Copies of the proposed Plan Amendment are available for review at the Escalante Resource Area.

SUPPLEMENTARY INFORMATION: This action is announced pursuant to Section 202(a) of the Federal Land Management Act (1976) and 43 CFR Part 1610. This Proposed Amendment is subject to protests by any party who has participated in the planning process. Protest must be specific and contain the following information:

—The name, mailing address, phone number, and interest of the person filing the protest.

—A statement of the part(s) of the proposed amendment being protested and citing pages, paragraphs, maps, etc., of the proposed Plan Amendment.

—A copy of all documents addressing the issue(s) submitted by the protestor during the planning process or a reference to the date when the protester discussed the issue(s) for the record.

—A concise statement as to why the protester believes the BLM State Director is incorrect.

David E. Little,

Associate State Director.

[FR Doc. 96–13411 Filed 5–28–96; 8:45 am]

BILLING CODE 4310–DQ–P

Minerals Management Service

Outer Continental Shelf; Operations, Current List of Notice to Lessees and Operators (NTL) Issued by Each OCS Region and the National Office

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice.

SUMMARY: The MMS issues NTL's to lessees and operators and guidelines for oil, gas, and sulphur operations in the OCS. This notice informs the public, industry, and other Government agencies of NTL's that are in effect as of April 3, 1996, in each OCS Region and the National Office, This notice is also on MMS's worldwide website at HTTP://WWW.MMS.GOV.

ADDRESSES: To obtain copies of NTL's, write or telephone the OCS Region or the National Office that issued the NTL at the following addresses:

Alaska OCS Region, Minerals Management Service, 949 East 36th Avenue, Room 110, Anchorage, AK 99508–4302, (907) 271–6065, Attention: Regional Supervisor, Field Operations

Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Blvd., New Orleans, LA 70123–2394, (5047) 736–2519

Pacific OCS Region, Minerals Management Service, 770 Paseo Camarillo, Camarillo, CA 93010–6064, (805) 389–7550, Attention: Ms. Freddie Mason

Engineering and Standards Branch, Minerals Management Service, 381 Elden Street, Herndon, VA 22070–4817, (703) 787–1600, Attention: Mr. Vincent Brown

FOR FURTHER INFORMATION CONTACT:

Minerals Management Service, Vincent Brown, Engineering and Standards Branch, 381 Elden St., Herndon, VA 22070–4817 Telephone: (703) 787–1600.

SUPPLEMENTARY INFORMATION: The MMS has responsibility for oil, gas, and sulphur operations in the OCS to ensure operational and environmental safety. NTL's give lessees and operators guidance concerning policies and procedures. If an NTL issued before April 3, 1996, is not listed, it is cancelled and no longer in effect. The current NTL's for each OCS Region and the National Office are as follows:

BILLING CODE 4310–MR–M

The Following Notices to Lessees and Operators Were Released by the Regional Offices		
Alaska OCS Region		
1980		
80-2	June 13	Guidelines For Preparing Outer Continental Shelf Environmental Reports
1984		
84-04	August 1	Preliminary Activities Conducted on Leased Areas-Gulf of Alaska/Cook Inlet
1985		
85-02	August 9	Preliminary Activities Conducted on Leased Areas--Bering Sea
1986		
86-02	January 15	Preliminary and Other Activities Conducted on Leased Areas--Beaufort Sea
1987		
87-01	November 30	Preliminary and Other Activities Conducted on Leased Areas--Chukchi Sea
1989		
89-01	December 1	Minimizing Potential for Incidental Taking of Polar Bear and Walrus During Preliminary and Other Activities Conducted on Leased Areas in the Beaufort and Chukchi Seas
89-02	December 1	Shallow Hazards Geophysical Surveys and Geotechnical Evaluations
1990		
90-01	April 2	Submission of Digitized Well Log Data on Magnetic Tape
1991		
91-01	October 25	Updated Form for Designation of Operator
91-03	November 21	Furnishing Food, Quarters, and Transportation to Minerals Management Service (MMS) Personnel
91-04	November 21	District Office Hours and Contact Procedures
Gulf of Mexico OCS Region		
1972		
72-9	September 22	OCS Operations Safety Alert Notice No. 1, Flash Fire from Liquid Phase Heat Transfer Unit
1973		
73-3	February 16	The Use of Polychlorinated Biphenyls (PCB's)
1983		
83-3	September 7	OCS Shallow Hazards Requirements for the Gulf of Mexico OCS Region (Cancels NTL's Nos. 75-8 and 80-5)

1985		
85-2	February 4	Effect of Drilling "Window" Approvals
85-8	November 26	Minimizing Oil and Gas Structures in the Gulf of Mexico
1986		
86-5	June 18	New Forms for Designation of Operator
86-9	October 13	Outer Continental Shelf Environmental Report/Information Guidelines for Plans Submitted in the Gulf of Mexico OCS Region (Supersedes NTL 80-6)
86-11	November 17	Guidelines for Reducing or Eliminating Trash and Debris in the Gulf of Mexico.
1988		
88-2	June 10	Submission of List of Safety and Pollution Prevention Equipment
88-3	June 29	Information to be Made Available on the Reports Required in Subpart of 30 CFR part 250
88-7	September 15	Reorganization of Office of Field Operations and Realignment of New District Boundaries
88-11	February 1	Implementation of Measures to Detect and Protect Deepwater Chemosynthetic Communities
1989		
89-1	August 1	Implementation of Consistent Biological Stipulation Measures in Central and Western Gulf of Mexico
89-2	March 30	Special Security Handling of Well Logs and Data Generated from Oil and Gas Leases
89-05	September 29	Timelapse in Exploratory Drilling Operations Not to Exceed 180 Days for Deepwater (400 meters of deeper) Leases
89-06	November 30	Requirements for Submittal of Documents Under 30 CFR part 250, subpart I, Platforms and Structures
89-07	December 15	Supplemental Bonds
	June 27	Memorandum on Removal of All Abandoned Casing Stubs
1990		
90-09	November 8	Temporary Abandonment of Wells and Maintenance, Protection and Removal of Underwater Casing Stubs
1991		
91-01	April 15	Submittal of Electric, Radioactive, and Other Well Bore Surveys
91-02	December 20	OCS Archaeological Resource Requirements for the Gulf of Mexico OCS Region
91-04	July 30	Rate Control Section Address, Office Hours, and Phone Call Procedures
91-06	September 11	Notice to Designated Operators of Liquid Royalty Measurement Facilities

1992		
92-02	May 28	Minimum Interim Requirements for Site Clearance (and Verification) of Abandoned Oil and Gas Structures in the Gulf of Mexico
92-04	July 1	Interim Requirements for Oil Spill Contingency Plans and Oil Spill Response Training Drills
1993		
93-04	September 30	Outer Continental Shelf Functional Responsibility of New Regulations
93-05	October 14	Procedures and Policies Concerning Transition Period for Use of the New Semiannual Well Test Report Form
1994		
94-02	February 2	Air Emissions Reporting Requirements
94-03	March 1	Interim Requirement for Design, Fabrication, Etc.
94-04	May 6	Best Available Control Technology
94-06	August 24	New Orleans District Office Hours and Phone Call Procedures
94-07	December 9	Lafayette District Office Hours and Phone Call Procedures
1995		
95-01	April 25	Interim Reporting Requirements for 30 CFR 250, Subpart K (PD)
95-02	June 12	Rate Control Section Address, Office Hours, and Phone Call Procedures
95-05	September 1	Pipeline Unit Office Hours and Notification Procedures
95-06	September 1	Lafayette District Address, Office Hours and Phone Call Procedures
95-07	November 27	New Orleans District Office Hours and Phone Call Procedures
1996		
96-01	January 1	Houma District Office Hours and Phone Call Procedures
96-02	February 1	Lake Jackson District Address, Office Hours and Phone Call Procedures
Pacific OCS Region		
1977		
77-03	March 1	Minimum Cultural Survey Requirements, OCS Exploratory Drilling
1978		
78-01	October 23	Minimum Requirements for Biological Surveys
1980		
80-02	March 20	Minimum Requirements for Environmental Reports
1988		
88-05	May 5	Requirements for Exploratory Operations
88-06	May 5	Guidelines for Shallow Hazards Survey for OCS Exploratory Operations

88-07	May 5	Guidelines for Shallow Hazards Survey for OCS Development Platforms
88-08	May 5	Guidelines for Shallow Hazards Survey for OCS Pipeline Routes
88-09	May 5	Submission of Digitized Well Log Data on Magnetic Tape
1991		
91-01	November 8	Notice to Designated Operators of Liquid Royalty Measurement Facilities
1992		
92-01	March 24	Warning Signs: Pipeline and Power Cables
1993		
93-01	September 30	Helideck Closures
1995		
95-01	June 8	Camarillo District Office Hours and Phone Call Procedures
95-02	June 8	Santa Maria District Office Hours and Phone Call Procedures

The Following Notices to Lessees and Operators Were Released by the National Office

1992		
92-IN	September 11	Guidelines for an Application for Suspension of Production Due to Uneconomical Market Conditions
1993		
93-IN	April 16	Guidelines for an Application for Certificate of Oil Spill Financial Responsibility for Offshore Facilities
93-2N	October 6	Liability for Plugging Wells and Removal of Property
1994		
94-1N	December 1	Decentralization of the Lessee Training Program (Subpart O)
1995		
95-IN	August 1	Suspension of Requirements for Updating Safety and Pollution Prevention Equipment Inventory Lists
1996		
96-1N	January 1	Determination of Pollution Inspection Frequencies for Unmanned Facilities

Dated: May 20, 1996.

Kumkum Ray,

Acting Associate Director, Offshore Minerals Management.

[FR Doc. 96–13417 Filed 5–28–96; 8:45 am]

BILLING CODE 4310–MR–C

National Park Service

Submission of Study Package for Office of Management and Budget Review Opportunity for Public Comment

AGENCY: National Park Service, Guadalupe Mountains National Park, Interior

ACTION: Notice and request for comments.

ABSTRACT: The National Park Service and University of Texas at El Paso propose to conduct a survey of visitors to Guadalupe Mountains National Park. The goal is to learn visitor demographics and visitors' opinions about services and facilities in the park. Results will be used by managers to improve services, protect resources and better serve the visitors. The study package including the proposed survey questionnaire has been submitted to the Office of Management and Budget for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 and 5 CFR part 1320, Reporting and Record Keeping Requirements, the NPS invites public comment on a proposed information collection request (ICR).

Comments are invited on: (1) The need for the information including whether the information has practical utility; (2) the accuracy of the reporting burden estimate; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology.

The primary purpose of the proposed ICR is to compare and contrast any significant differences between park users from three apparently different visitor use seasons of spring, summer, and fall. This proposed collection of information will be accomplished using a mail-back questionnaire focusing on information that is not readily available from registers at visitor centers, trailheads, or camping permits. The range of issues in the questionnaire will assess (1) visitor information sources inside and outside the park, (2) visitor travel flow within the park, (3) visitor evaluation of existing and desired facilities, programs or activities, and (4) visitor perceptions of crowding or solitude in wilderness and developed areas. This data is needed to plan for future management actions that would protect park resources and provide visitor services.

SEND COMMENTS TO: Superintendent, Guadalupe Mountains National Park, HC 60 Box 400, Salt Flat, TX 79847–9801.

FOR FURTHER INFORMATION OR A COPY OF THE QUESTIONNAIRE SUBMITTED FOR OMB REVIEW, CONTACT: Fred Armstrong, Resource Management Specialist, at (915) 828–3251 ext. 132, or Jacqueline Bergdahl, Department of Sociology, UTEP AT (915) 747–6812.

There were no public comments received or submitted to OMB for review as a result of publishing a 60 day notice of intention to request clearance of information collection.

SUPPLEMENTARY INFORMATION:

Title: Visitor Survey—Guadalupe Mountains National Park.

Form: Not applicable.

OMB Number: To be assigned.

Expiration Date: To be assigned.

Type of Request: Request for new clearance.

Description of Need: To evaluate significant differences in visitor activities and visitor perceptions during three apparently different visitor use seasons of spring, summer and fall. The proposed information to be collected is not available from existing records, sources, or observations.

Description of Respondents: Individuals or groups of park visitors.

Estimated Annual Reporting Burden: 800 hours.

Estimated Average Burden Hours Per Response: 12 minutes.

Estimated Average Number of Respondents: 4,000.

Estimated Frequency of Response: For a 7 day period each during the visitor use seasons of spring, summer, and fall, for a total of 21 days of survey.

Terry N. Tesar,

Information Collection Clearance Officer, Management Services Division, National Park Service.

[FR Doc. 96–13362 Filed 5–28–96; 8:45 am]

BILLING CODE 4310–70–M

Commercial Services Management Plan, Environmental Impact Statement, Yellowstone National Park, Wyoming

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of intent to prepare an environmental impact statement for the Commercial Services Management Plan, Yellowstone National Park.

SUMMARY: Under the provisions of the National Environmental Policy Act, the National Park Service is preparing an environmental impact statement for a Commercial Services Management Plan for Yellowstone National Park.

The effort will result in a plan that will determine the levels and types of commercial visitor services appropriate for Yellowstone National Park (Yellowstone). The plan is intended to provide the park with long-term strategic guidance for management of commercial services.

The plan will provide a framework or broad, general direction and guidance. Individual commercial service proposals may also require further site specific plans and compliance, when implemented in the future.

This plan will assimilate decisions made in previous planning documents and amend some elements of plans that are no longer consistent with management objectives of the park. The plan will provide the basis for development of prospectuses for new concession contracts when existing contracts expire.

For the purposes of this planning process, commercial services include anything offered to the public or private individuals, in which park resources are used, and which results in compensation of any kind to an individual, organization, or corporation. Compensation may be ''for profit'' or ''non-profit'' under local, state, or federal law.

Major issues which will be addressed by the plan, include:

(1) What types of services and facilities are appropriate for Yellowstone as we enter the next century?

(2) What levels of services and facilities are essential to serve Yellowstone visitors?

(3) What types of support facilities (e.g., employee housing, warehouses, storage, transportation) are necessary?

(4) What are the appropriate areas for facilities which serve visitors and provide support services?

A general information brochure has been prepared that lists the issues identified to date. Copies of that information can be obtained by contacting: Commercial Services Plan, P.O. Box 168, Yellowstone National Park, Wyoming 82190.

Dated: May 20, 1996.

John E. Cook,

Director, Intermountain Field Area.

[FR Doc. 96–13363 Filed 5–28–96; 8:45 am]

BILLING CODE 4310–70–M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before

MAY 18, 1996. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, D.C. 20013-7127. Written comments should be submitted by June 13, 1996.

Carol D. Shull,

Keeper of the National Register.

MONTANA

Flathead County

Wurtz Homestead, N. Fork Rd., 2 mi. N of Ford, Flathead National Forest, Polebridge vicinity, 96000661

Ravalli County

McCart Fire Lookout, Approximately 4 mi. S of E. Fork Forest Service Station, Bitterroot National Forest, Sula vicinity, 96000660

NEVADA

Humboldt County

Paradise Valley Ranger Station, 355 S. Main St., Humboldt National Forest, Paradise Valley, 96000662

NEW YORK

Jefferson County

Buttermilk Flat Schoolhouse No. 22 (Orleans MPS) S side of Buttermilk Flat Rd., E of jct. with Carter St. Rd., Orleans, 96000671

Carter Street Schoolhouse No. 21 (Orleans MPS) Jct. of Vaadi and Dog Hill Rds., SW corner, Orleans, 96000665

Horr, Elijah, House (Orleans MPS) E side of NY 180, N of jct. with Woodard Rd., Hamlet of Stone Mills, Orleans, 96000666

La Farge Land Office (Orleans MPS) Jct. of Main and Mill Sts., SW corner, Hamlet of La Fargeville, Orleans, 96000668

La Fargeville United Methodist Church (Orleans MPS) W side of Main St., S. of jct. with Co. Rt. 181, Hamlet of La Fargeville, Orleans, 96000670

Methodist Episcopal Church (Orleans MPS) S side of NY 180, W of jct. with Gore Rd., Hamlet of Omar, Orleans, 96000663

Methodist—Protestant Church at Fisher's Landing (Orleans MPS) Reed Point Rd., near jct. with Co. Rd. 195, Hamlet of Fisher's Landing, Orleans, 96000667

St. Paul's Episcopal (Orleans MPS) E side of Main St., S of jct. with Co. Rt. 181, Hamlet of La Fargeville, Orleans, 96000669

Thousand Island Grange Hall (Orleans MPS) E side of Gore Rd., N of jct. with NY 180, Hamlet of Omar, Orleans, 96000664

Seneca County

Burton, William H., House, 35 E. Main St., Waterloo, 96000675

Waterloo Library, 31 Williams St., Waterloo, 96000676

OHIO

Athens County

Nelsonville Historic District, Roughly bounded by Canal, Jefferson, Scott, and Madison Sts., Nelsonville, 96000672

Cuyahoga County

Park Building, 140 Public Sq., Cleveland, 96000674

Greene County

McDonald Farm, 1446 Stone Rd., Xenia vicinity, 96000673

TENNESSEE

Davidson County

Tennessee State University Historic District, 3500 John A. Merritt Blvd., Nashville, 96000677

UTAH

Sanpete County

Great Basin Research Station Historic District, UT 29, approximately 8 mi. E of Ephraim, Manti—Lasal National Forest, Ephraim vicinity, 96000678

[FR Doc. 96–13427 Filed 5–28–96; 8:45 am]

BILLING CODE 4310–70–P

Bureau of Reclamation

Central Valley Project Improvement Act, Criteria for Evaluating Water Conservation Plans

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of draft decision of evaluation of water conservation plans.

SUMMARY: To meet the requirements of the Central Valley Project Improvement Act (CVPIA), the Bureau of Reclamation (Reclamation) developed and published the Criteria for Evaluating Water Conservation Plans (Criteria) dated April 30, 1993. These Criteria were developed based on information provided during public scoping and public review sessions held throughout Reclamation's Mid-Pacific (MP) Region. Reclamation uses these Criteria to evaluate the adequacy of all water conservation plans developed by project contractors in the MP Region, including those required by the Reclamation Reform Act of 1982. The Criteria were developed and the plans evaluated for the purpose of promoting the most efficient water use reasonably achievable by all MP Region's contractors. Reclamation made a commitment (stated within the Criteria) to publish a notice of its draft determination on the adequacy of each contractor's water conservation plan in the Federal Register and to allow the public a minimum of 30 days to comment on its preliminary determinations. This program is on-going; an updated list will be published to recognize districts as plans are revised to meet the Criteria.

DATES: All public comments must be received by Reclamation by June 28, 1996.

ADDRESSES: Please mail comments to the address provided below.

FOR FURTHER INFORMATION CONTACT: Betsy Reifsnider, Bureau of Reclamation, 2800 Cottage Way, MP–402, Sacramento, CA 95825. To be placed on a mailing list for any subsequent information, please write Ms. Reifsnider or telephone at (916) 979–2388.

SUPPLEMENTARY INFORMATION: Under provisions of section 3405(e) of the CVPIA (Title 34 of Pub. L. 102–575), ''The Secretary (of the Interior) shall establish and administer an office on Central Valley Project water conservation best management practices that shall * * * develop criteria for evaluating the adequacy of all water conservation plans developed by project contractors, including those plans required by section 210 of the Reclamation Reform Act of 1982.'' Also, according to section 3405(e)(1), these criteria will be developed '' * * * with the purpose of promoting the highest level of water use efficiency reasonably achievable by project contractors using best available cost-effective technology and best management practices.''

The MP Criteria states that all parties (districts) that contract with Reclamation for water supplies (municipal and industrial contracts greater than 2,000 acre feet and agricultural contracts over 2,000 irrigable acres) will prepare water conservation plans which will be evaluated by Reclamation based on the following required information detailed in the steps listed below to develop, implement, monitor and update their water conservation plans. The steps are:

1. Coordinate with other agencies and the public.
2. Describe the district.
3. Inventory water resources.
4. Review the past water conservation plan and activities
5. Identify best management practices to be implmented
6. Develop schedules, budgets and projected results
7. Review, evaluate, and adopt the water conservation plan
8. Implement, monitor and update the water conservation plan

The MP contractors listed below have developed water conservation plans which Reclamation has evaluated and preliminarily determined meet the requirements of the Criteria.

- Goleta Water District
- Kern-Tulare Water District
- Rag Gulch Water District

Public comment on Reclamation's preliminary (i.e., draft) determinations at this time is invited. Copies of the plans listed above will be available for review at Reclamation's MP Regional Office and MP's area offices. If you wish to review a copy of the plans, please contact Ms. Goodman to find the office nearest you.

Dated: May 16, 1996.

Roger K. Patterson,

Regional Director.

[FR Doc. 96–13274 Filed 5–28–96; 8:45 am]

BILLING CODE 4310–94–M

DEPARTMENT OF JUSTICE

Notice of Lodging a Settlement by Consent Pursuant to the Comprehensive Environmental Response Compensation and Liability Act (CERCLA)

Notice is hereby given that on May 8, 1996, a proposed consent decree in *United States* v. *Fidelcor Business Credit Corp., et al.,* Civ. A. No. 93–CV–0233, was lodged with the United States District Court for the Eastern District of Pennsylvania. This settlement is with Fidelcor Business Credit Corporation, and three of its officers, Gerald Blum, Bruce Hilowitz and Steven Freidberg, who are alleged to have arranged for the disposal of hazardous substances at the Eddystone Avenue Superfund Site, located in Eddystone, Pennyslvania and the Thompson Street Trailer Superfund Site located in Philadelphia, Pennsylvania. The settlement in this matter is pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), as amended, 42 U.S.C. 9601 *et seq.*, and requires the Settlors to pay $720,000.00 in past response costs to the United States. The Decree reserves the right of the United States to seek further injunctive relief or response costs should new information or new conditions be discovered indicating that further response actions are necessary, and to seek recovery of costs associated with damage to natural resources.

The consent decree includes a covenant not to sue by the United States under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607, and under Section 7003 of the Resource Conservation and Recovery Act (''RCRA''), 42 U.S.C. § 6973, for past response costs.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty days from the date of publication of this notice. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC, 20044, and should refer to *United States* v. *Fidelcor Business Credit Corp., et al.,* DOJ Reference No. 90–11–3–956. Commentors may request an opportunity for a public meeting in the affected area, in accordance with Section 7003(d) of RCRA.

The proposed consent decree may be examined at the Office of the United States Attorney for the Eastern District of Pennsylvania, 651 Chestnut Street, Philadelphia, Pa., Region III Office of the Environmental Protection Agency, 841 Chestnut Street, Philadelphia, Pa.; and at the Consent Decree Library, 1120 ''G'' Street NW., 4th Floor, Washington, DC, 20005, (202) 624–0892. A copy of the proposed decree may be obtained in person or by mail from the Consent Decree Library at the address listed above. In requesting a copy, please refer to the referenced case and number, and enclose a check in the amount of $4.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 96–13360 Filed 5–28–96; 8:45 am]

BILLING CODE 4410–01–M

Immigration and Naturalization Service

Agency Information Collection Activities: Extension of Existing Collection; Comment Request

ACTION: Notice of information collection under review; nonimmigrant checkout letter.

The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' from the date listed at the top of this page in the Federal Register.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan, 202–616–7600, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

Overview of this information collection:

(1) Type of Information Collection: *Extension of a currently approved collection.*

(2) Title of the Form/Collection: Nonimmigrant Checkout Letter.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form G–146. Detention and Deportation, Immigration and Naturalization Service.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals or Households. This collection of information is used in making inquiries of persons in the United States or abroad concerning the whereabouts of aliens, and also requests departure information by the Immigration and Naturalization Service, when initial investigation to locate the alien or verify his or her departure is unsuccessful.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 20,000 respondents at 10 minutes (.166) per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 3,320 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management

Division, Suite 850, Washington Center, 1001 G Street NW., Washington, DC 20530.

Dated: May 22, 1996.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 96–13312 Filed 5–28–96; 8:45 am]

BILLING CODE 4410–18–M

Agency Information Collection Activities: New Collection; Comment Request

ACTION: Notice of information collection under review; joint employment verification pilot (JEVP).

The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' from the date listed at the top of this page in the Federal Register.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan, 202–616–7600, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

Overview of this information collection:

(1) Type of Information Collection: *New Collection.*

(2) Title of the Form/Collection: Joint Employment Verification Pilot (JEVP).

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: None. Office of Management, SAVE, Immigration and Naturalization Service.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Business or other for-profit. The information collection will be used by the Immigration and Naturalization Service and the Social Security Administration to verify employment authorization for all new employees regardless of citizenship for those companies participating in the Joint Employment Verification Pilot.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 1,000 respondents at 3.5 hours per response, and 400,000 responses at 5 minutes (.083) per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 36,700 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street NW., Washington, DC 20530.

Dated: May 22, 1996.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 96–13313 Filed 5–28–96; 8:45 am]

BILLING CODE 4410–18–M

Agency Information Collection Activities: Extension of Existing Collection; Comment Request

ACTION: Notice of information collection under review; applicant survey.

The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' from the date listed at the top of this page in the Federal Register.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–616–7600, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

Overview of this information collection:

(1) Type of Information Collection: *Extension of a currently approved collection.*

(2) Title of the Form/Collection: Applicant Survey.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form G–942. Human Resources Branch, Immigration and Naturalization Service.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals or Households. This form is required to ensure compliance with Federal laws and regulations which mandates equal opportunity in the recruitment of applicants for Federal employment.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 75,000 respondents at 4 minutes (.066) per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 4,950 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: May 22, 1996.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 96–13314 Filed 5–28–96; 8:45 am]

BILLING CODE 4410–18–M

LEGAL SERVICES CORPORATION

Suggested List of Priorities for LSC Recipients

AGENCY: Legal Services Corporation.

ACTION: Notice.

SUMMARY: This notice sets out a suggested list of priorities adopted by the Legal Services Corporation's (''LSC'' or ''Corporation'') Board of Directors on May 20, 1996, pursuant to a Fiscal Year (''FY'') 1996 appropriations act requirement. The list is intended to be considered by LSC recipients when setting their own priorities for the provision of legal assistance.

FOR FURTHER INFORMATION CONTACT: Victor M. Fortuno, General Counsel, (202) 336–8810.

SUPPLEMENTARY INFORMATION: Public Law 104–134, the omnibus legislation that includes the FY 1996 appropriation for the Legal Services Corporation, contains two modifications of current law relating to grantees' allocation of priorities in the use of resources. The governing boards of grantees are directed to set specific priorities in writing, pursuant to the Legal Services Corporation Act and the Corporation's priority-setting regulation, of the types of matters and cases to which they will devote time and resources, and their staffs must sign written agreements not to undertake cases or matters other than in accordance with these specific priorities except in emergency situations [Section 504 (a)(9)]. The Corporation itself is directed to promulgate a suggested list of priorities that local boards of directors may use in setting their local priorities [Section 504 (c)]. Accordingly, the following suggested list of priorities has been adopted by the Board at its meeting on May 20, 1996.

A one-third reduction in funding for the Legal Services Corporation for FY 1996 requires that the Corporation's grantees exercise the utmost care in making the difficult and, at times, painful decisions as to the types of cases they can accept and the nature of the service they will provide. While the ultimate decision in these matters rests with the local program—which must develop its own priorities within the context of the circumstances in its own community, in consultation with the client community, subject to applicable legislative and regulatory restrictions—the Corporation expects each program to respond to the most compelling and critical needs of its eligible clients and to leverage its resources in order to compensate to the greatest degree possible for the inevitable reduction in client service resulting from this cut in funding. In meeting this crisis, each program must continue to maintain a high level of professionalism and quality in the delivery of legal services and in the observance of ethical standards.

To this end, and in response to the direction of Congress, the Corporation's Board of Directors has identified the following suggested priorities to help guide local legal services programs as they strive to continue to provide high quality, effective legal services to members of their communities. It has formulated this response in the context of the existing pattern of individual cases being handled nationwide, the largest category of which involves family matters, in which the client base is disproportionately comprised of women and children. Hence, a principal focus by the Board of Directors is in the context of the family. Recognition is given, however, to other critical case needs comprising the everyday problems encountered by our eligible clients.

Suggested List of Priorities

Support for Families: The cohesiveness of the family is not only a time-honored value fundamental to our American way of life, but also the undergirding of the stability of our American society. Programs should take cognizance of the vulnerability of American families to problems requiring legal assistance for their resolution. The Corporation suggests that programs place a high priority on those cases in which legal assistance supports the integrity, safety, and well-being of the family.

Preserving the Home: Preservation of the home is essential to the well-being of every person. The loss of housing through uninhabitability, eviction, or foreclosure can precipitate exposure to physical and medical risks in crowded shelters or the streets, disruption of the schooling of young children, loss of employment, and the splintering of families whose members may be dispersed in seeking alternate shelter. Enabling families to avoid loss of their home should be an important priority for grantees, as should assistance to those families or individuals who have become homeless.

Of equal importance is the assurance that families can be safe and secure in their places of residence. This is of particular concern in public housing complexes where crime and violent behavior put many families at risk. Legal assistance to tenant associations or other groups of eligible clients seeking to ameliorate the condition of a dangerous environment contributes to family well-being and should be a priority where appropriate. The Corporation also encourages grantees to give a high priority to representation of individual families threatened by unsafe or unhealthy conditions in both public and private rental housing.

Help may also be needed when physical harm to family living quarters is caused by natural disaster, such as flood, earthquake, fire, and hurricane. Programs are urged to respond to the needs of clients in such emergencies and, when appropriate, to cooperate in joint endeavors with the Federal Emergency Management Agency. Funds may be available through special appropriations, which programs can use to provide emergency services to clients in matters such as relocation, repair of housing, filing for benefits, and dealing with insurance, contractors, and creditors.

Maintaining Economic Stability: Families must be economically viable in order to survive. The Corporation encourages programs to give high priority to cases in which the family's source of income is at risk.

For the working poor, those seeking to avoid dependency and find a route out of poverty, the loss of a job may trigger a plummet into abject poverty, possibly leading to the loss of housing and access to health care, and even to the breakup of the family. The prevention of unemployment may obviate a sequence of far greater legal activity, and should therefore be a high priority for legal services programs. In addition to matters directly involving employment law, other cases may fall into the category of potentially preventing joblessness, for example, consumer cases relating to the tools of a worker's trade or to an automobile which is needed to transport the worker to the

site of the job. A category of the working poor whose legal needs should not be overlooked in setting priorities are family farmers, who are especially vulnerable to the vagaries of weather and markets.

The Corporation also suggests that programs accord a high priority to cases involving parental responsibility for the support of their children. In light of recent legislative attention to this issue, the rate of success in obtaining child support from absent parents makes such representation an ever more efficient and cost-effective use of legal time.

For workers who have lost their jobs or become disabled or those who are otherwise unable to obtain employment, representation in cases involving eligibility for benefits to which they have a claim may be the only way to preserve a source of income for the family.

Other legal matters may threaten basic economic stability and therefore merit high priority. For example, a family entrapped by a fraudulent scheme may be forced into bankruptcy if it has no recourse to legal assistance.

Safety, Stability and Health: Domestic violence threatens the security and stability of families at all economic levels. The physical abuse of women, frequently mothers of children in the household, as well as neglect and harm to children themselves, calls for heightened awareness and a fast response by, the justice system. The intervention of legal service lawyers in obtaining judicial remedies, such as orders of protection, can be life-saving. Every program should endeavor to offer that vital assistance.

Representation in legal separation or divorce may also be essential to sustain what remains of a viable family structure, especially as it relates to regularization or clarification of the custody of children. Programs should also consider representation where dissolution of the marital relationship is the result of abandonment or other compelling circumstances, applying their own assessment of priorities to take cognizance of the exigencies of each situation.

Representation in cases involving access to health care may also be essential to preserve the security and stability of families, and should be accorded an appropriate priority.

Populations with Special Vulnerabilities: While the Corporation encourages programs to focus prime attention on providing support for families, this cannot and should not be to the exclusion of assistance to individuals living outside a family context. This is particularly true with respect to the growing numbers of elderly individuals in our population who are among the most vulnerable, particularly as their capacity to make independent and informed judgments diminishes. In addition to assurance of access to basic needs of life—food, shelter and medical care—they often require remedies against the unscrupulous who take unfair advantage in their dealings with them.

Programs should also pay particular attention to other similarly vulnerable individuals within their service areas who, in addition to being in a marginal economic status, are less capable of fending for themselves by reason of difference in language, cultural and educational backgrounds, disability, or other special problems of access to legal assistance or special legal needs.

The Delivery of Legal Services: Apart from the focus on substantive issues or client populations, the Corporation expects its grantees to give attention to matters relating to the nature or method of delivery of legal services. The sharp reduction in funding will necessarily cause programs to turn away an increasing number of eligible clients needing assistance. Before the FY 1996 reduction, it had been estimated that only a fraction of the legal needs of low-income clients were being met, perhaps as little as twenty percent. In some of our programs, the turn-away rate of those who sought assistance was over fifty percent. The Corporation understands that a one-third budgetary cut may well, in a given program, translate into a reduction in service capability greater than one-third, as staff and fixed commitments do not yield to simple proportionate reductions. It is therefore essential that each program consider methods by which it can stretch its resources in an effort to compensate in part for the substantial loss in capacity.

To this end, the Corporation urges programs to make maximum use of available technology in screening, researching and responding to client needs. Because the Corporation can offer no assistance with acquisition of equipment, we suggest programs consider discrete fundraising projects for this purpose. Centralized intake through hotlines and computerized networks can facilitate referrals and brief service and result in more efficient use of lawyer time. Similarly, community legal education, *pro se* representation and other forms of self-help can reduce the need for legal intervention, enabling programs to conserve their resources for matters most requiring a lawyer's help.

The Corporation recommends that programs place a high priority on activities designed to involve the entire community in sharing the responsibility for facilitating access to justice. Special attention should be accorded to the involvement of the private bar in the provision of *pro bono* client representation. Although increased *pro bono* services will not make up for the effects of the current cutbacks in funding for the Corporation, involvement of the private bar represents an important supplement to direct service by Corporation grantees. In addition to *pro bono* representation, the private bar can provide assistance in relevant substantive areas of law, training for staff and volunteers, and both direct financial support and assistance with fundraising. Law schools and other law-related entities can also make unique contributions. The community at large, including clients, religious and civic groups, community service agencies, and business enterprises and organizations should also be included in efforts to broaden each program's outreach effort.

Conclusion: The Legal Services Corporation recognizes that different communities have different needs and will respect the autonomy of every grantee to make decisions that reflect the resources available to it and the demographics and particular circumstances of its client populations. In some communities, issues not touched upon here may be of grave concern to clients and worthy of being accorded a high priority. Nevertheless, we expect that each grantee will give careful consideration to the issues that have been identified here as priorities from the Corporation's nationwide perspective.

Dated: May 23, 1996.

Victor M. Fortuno,

General Counsel.

[FR Doc. 96–13413 Filed 5–28–96; 8:45 am]

BILLING CODE 7050–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 96–052]

NASA Advisory Council, Life and Micorgravity Sciences and Applications Advisory Committee, Space Station Utilization Advisory Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act. Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Life and Microgravity Sciences and Application Advisory Committee, Space Station Utilization Advisory Subcommittee.

DATES: June 24, 1996, 8 a.m. to 5 p.m.; June 25, 1996, 8 a.m. to 5 p.m.; June 26, 1996, 8 a.m. to 5 p.m.; June 27, 1996, 8 a.m. to 5 p.m.; June 28, 1996, 8 a.m. to 2 p.m.

ADDRESSES: Woods Hole Oceanographic Institute Quissett Campus, Clark Lab, Fifth Floor, Room 507, Woods Hole, MA.

FOR FURTHER INFORMATION CONTACT:

Dr. Edmond M. Reeves, Code US, National Aeronautics and Space Administration, Washington, DC, 20546, 202/358–2560.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. Advance notice of attendance to the Executive Secretary is requested. The agenda for the meeting is as follows:

—Station program update

—Science and technology utilization research plans and station capability requirements

—International sub-rack standards payload interfaces

—International research campaign mode of operation planning

—Plans for OLMSA advisory committee reorganization

—Plans for advanced life support systems

—Other topics related to the scientific, technologies and commercial utilization of the space station may be included in the meeting discussions.

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: May 21, 1996.

Leslie M. Nolan,

Advisory Committee Management Officer National Aeronautics and Space Administration.

[FR Doc. 96–13382 Filed 5–28–96; 8:45 am]

BILLING CODE 7510–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–498 and 50–499]

Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company, City of Austin, Texas; 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. NPF–76 and NPF–80 issued to Houston Lighting & Power Company, et. al., (the licensee) for operation of the South Texas Project, Units 1 and 2, located in Matagorda County, Texas.

The proposed amendment would modify Technical Specification (TS) Section 3/4.4.5, Steam Generators, 3/4.4.6, Reactor Coolant System Leakage, and associate Bases to allow the installation of tube sleeves as an alternative to plugging to repair defective steam generator tubes.

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.

The Commission has made a proposed determination 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. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The laser welded sleeve has been designed and analyzed in accordance with the requirements of the ASME [American Society of Mechanical Engineers] Code. The applied stresses and fatigue usage for the sleeve are bounded by the limits established in the ASME Code. ASME Code minimum material property values are used for the structural and plugging limit analysis. Ultrasonic inspection is used to verify that minimum weld fusion zone thicknesses are produced. Mechanical testing has shown that the structural strength of Alloy 690 laser welded sleeves, under normal, upset, and faulted conditions provides margin to the acceptance limits. Leakage testing for ¾-inch and ⅞-inch tube sleeves has demonstrated no unacceptable levels of primary-to-secondary leakage are expected during any plant condition, including the case where the seal weld is not produced in the lower joint of the tubesheet.

The sleeve nominal wall thickness (used for developing the depth-based plugging limit for the sleeve) is determined using the guidance of Regulatory Guide 1.121 and the pressure stress equation of Section III of the ASME Code. The limiting requirement of Regulatory Guide 1.121, which applies to part throughwall degradation, is the minimum acceptable wall to maintain a factor of safety of three against tube failure under normal operating (design) conditions. A bounding set of design and transient loading input conditions was used for the minimum wall thickness evaluation in the generic evaluation. Evaluation of the minimum acceptable wall thickness for normal, upset, and postulated accident condition loading per the ASME Code indicates these conditions are bounded by the design condition required minimum wall thickness.

A bounding tube wall degradation growth rate per cycle and an eddy current uncertainty has been assumed for determining the sleeve Technical Specification plugging limit. The sleeve wall degradation extent determined by eddy current, which would require plugging sleeved tubes, is developed using the guidance of Regulatory Guide 1.121 and is defined in Westinghouse Letter Report NSD–JLH–6146 to be 42% throughwall. Conservatively, South Texas will plug 40% sleeve wall degradation as determined by eddy current.

The effect of sleeving and plugging will remain below the plugging limit assumed in [the] Chapter 15 accident analysis of the South Texas Project Safety Analysis Report. The proposed change will not increase the consequences of these accidents.

The results of the analyses and testing demonstrate the laser welded sleeve is an acceptable means of maintaining tube integrity. Further, per Regulatory Guide 1.83 recommendations, the sleeved tube can be monitored through periodic inspections with present non-destructive examination techniques.

These measures demonstrate installation of sleeves spanning degraded areas of the tube will restore the tube to a condition consistent with its original design basis.

Conformance of the sleeve design with the applicable sections of the ASME Code and results of the leakage and mechanical tests, support the conclusion that installation of laser welded sleeves does not increase the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

Sleeving will not adversely affect any plant component. Stress and fatigue analysis of the repair has shown the ASME Code and Regulatory Guide 1.121 criteria are not exceeded. Implementation of laser welded sleeving maintains overall tube bundle structural and leakage integrity at a level consistent with that of the original tubing during all plant conditions. Leak and mechanical testing of sleeves support the conclusions of the calculations that each sleeve joint retains both structural and leakage integrity during all conditions. Sleeving of tubes does not provide a mechanism resulting in an accident outside of the area affected by the sleeves. Any accident as a result of potential tube or sleeve degradation in the repaired portion of the tube is bounded by the existing tube rupture accident analysis.

Implementation of laser welded sleeving will reduce the potential for primary-to-secondary leakage during a postulated steam line break while not significantly impacting available primary coolant flow area in the event of a LOCA [loss of coolant accident]. By effectively isolating degraded areas of the tube through repair, the potential for steam line break leakage is reduced. These degraded intersections are returned to a condition consistent with the Design Basis. While the installation of a sleeve reduces primary coolant flow, the reduction is far below that caused by plugging. Therefore, far greater primary coolant flow area is maintained through sleeving versus plugging.

Therefore, the possibility of a new or different kind of accident from any accident previously evaluated is not created.

3. Does the change involve a significant reduction in a margin of safety?

The laser welded sleeve repair of degraded steam generator tubes has shown by analysis to restore the integrity of the tube bundle consistent with its original design basis condition (i.e., tube/sleeve operational and faulted condition stresses are bounded by the ASME Code requirements and the repaired tubes are essentially leaktight). The safety factors used in the design of the sleeves for the repair of degraded tubes are consistent with the safety factors in the ASME Code used in steam generator design. The portions of the installed sleeve assembly which represent the reactor coolant pressure boundary can be monitored for the initiation and progression of sleeve/tube wall degradation, thus satisfying the requirements of Regulatory Guide 1.83. The portion of the tube bridged by the sleeve is effectively removed from the pressure boundary, and the sleeve then forms the new pressure boundary. The areas of the sleeved tube assembly which require inspection are defined in WCAP–13698, Revision 2 and Westinghouse Letter Report NSD–JLH–6146.

The effect of sleeving and plugging will remain below the plugging limit assumed in [the] Chapter 15 accident analysis of the South Texas Project Safety Analysis. The change will not reduce the margin of safety for these accidents.

Provisional requirements cited in other Nuclear Regulatory Commission Safety Evaluation Reports addressing the implementation of sleeving have required the reduction of the individual steam generator normal operation primary-to-secondary leakage limit from 500 to 150 gpd [gallons per day]. Consistent with these evaluations, the South Texas Project will reduce the per steam generator leak rate limit of 500 gpd in Technical Specification 3.4.6.2.c to 150 gpd. The establishment of this leakage limit at 150 gpd provides additional safety margin.

Therefore, it is concluded that the proposed license amendment request does not result in a significant reduction in the margin of safety as defined in the South Texas Project Final Safety Analysis Report or Technical Specifications.

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 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the Federal Register a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, 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 June 28, 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 Wharton County Junior College, J.M. Hodges Learning Center, 911 Boling Highway, Wharton, TX. 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 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 basis of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, 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 W. D. Beckner: 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 20555–0001, and to Jack R. Newman, Esq., Morgan, Lewis & Bockius, 1800 M Street, NW., Washington, DC 20036–5869, 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 May 17, 1996, 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 Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, TX.

Dated at Rockville, Maryland, this 22nd day of May 1996.

For the Nuclear Regulatory Commission.

Janet L. Kennedy,

Project Manager, Project Directorate IV–1, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 96–13385 Filed 5–28–96; 8:45 am]

BILLING CODE 7590–01–P

Sunshine Act Meeting

DATE: Weeks of May 27, June 3, 10, and 17, 1996.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of May 27

Thursday, May 30

2:00 p.m.—Briefing on Status of Dry Cask Storage Issues (Public Meeting) (Contact: William Travers, 301–415–8500).

Friday, May 31

10:00 a.m.—Briefing on NRC Inspection Activities (Public Meeting) (Contact: Bill Borchardt, 301–415–1257).

11:30 a.m.—Affirmation Session (Public Meeting) (if needed).

Week of June 3—Tentative

Monday, June 3

10:00 a.m.—Briefing on Part 100 Final Rule on Reactor Site Criteria (Public Meeting) (Contact: Charles Ader, 301–415–5622).

Thursday, June 6

3:30 p.m.—Affirmation Session (Public Meeting) (if needed).

Week of June 10—Tentative

Tuesday, June 11

3:30 p.m.—Affirmation Session (Public Meeting) (if needed).

Week of June 17—Tentative

Tuesday, June 18

10:00 a.m.—Briefing on Status of NRC Operator Licensing Initial Examination Pilot Process (Public Meeting).

11:30 a.m.—Affirmation Session (Public Meeting) (if needed).

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (Recording)—(301) 415–1292.

CONTACT PERSON FOR MORE INFORMATION: Bill Hill, (301) 415–1661.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, DC 20555 (301–415–1963).

In addition, distribution of this meeting notice over the internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to alb@nrc.gov or gkt@nrc.gov.

William M. Hill, Jr.,

Secy Tracking Officer, Office of the Secretary.

[FR Doc. 96–13510 Filed 5–24–96; 11:35 am]

BILLING CODE 7590–01–M

OFFICE OF MANAGEMENT AND BUDGET

Issuance of Transmittal Memorandum No. 16, Amending OMB Circular No. A–76, ''Performance of Commercial Activities''

AGENCY: Office of Management and Budget.

SUMMARY: This notice contains Transmittal No. 16, to OMB Circular No. A–76, ''Performance of Commercial Activities.''

This Transmittal Memorandum updates the Federal pay raise assumptions and inflation factors used for computing the Government's in-house personnel and non-pay costs for Fiscal Years 1996 through 2002. The Federal pay raise assumptions and the non-pay category rates are, generally, contained in the President's Budget for Fiscal Year 1997. The factors contained in OMB Circular No. A–76, Transmittal Memorandum No. 14 are outdated.

The revision does not require any agency to (1) create or maintain a duplicate control/monitoring/reporting system or (2) adopt any additional controls, not presently in compliance with Federal Acquisition Regulations (FAR).

Agencies are reminded that OMB Circular No. A–76, Transmittal Memoranda 1 through 14 are canceled. Transmittal Memorandum No. 15 provided the Revised Supplemental Handbook, dated March 1996 (Federal Register, April 1, 1996, pages 14338–14346).

DATES: As with previous OMB Circular A–76 Transmittals, the provisions of Transmittal Memorandum No. 16 are effective immediately and shall apply to all cost comparisons in progress that have not yet undergone bid opening or where the in-house bid has not yet otherwise been revealed.

FOR FURTHER INFORMATION CONTACT: Mr. David Childs, Budget Analysis and Systems Division, NEOB Room 6104, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Telephone Number: (202) 395–6104, FAX Number (202) 395–7230.

Alice M. Rivlin,

Director.

EXECUTIVE OFFICE OF THE PRESIDENT

Office of Management and Budget

Washington, D.C. 20503

May 23, 1996.

Circular No. A–76 (Revised)
Transmittal Memorandum No. 16

To the Heads of Executive Departments and Agencies

Subject: Performance of Commercial Activities

This Transmittal Memorandum updates the Federal pay raise assumptions and inflation factors used for computing the Government's in-house personnel and non-pay costs, as generally provided in the President's Budget for Fiscal Year 1997. However, because the 1997 Budget did not specify 1998–2002 pay raises for civilians, *for purposes of A–76 cost comparison determinations only*, the civilian pay raise percentages for 1998–2002 shall be assumed to be the same as the military pay raise assumptions for the corresponding years as shown below. Similarly, the non-pay inflation factors are for purposes of A–76 cost comparison determinations only. They reflect the generic non-pay inflation assumptions used to develop the FY 1997 budget baseline estimates required by law. The law requires that a specific inflation factor (GNP fixed-weight FY/FY index) be used for this purpose. These inflation factors should not be viewed as estimates of expected inflation rates for major long-term procurement items or as an estimate of inflation for only particular agency's non-pay purchases mix.

The following factors should be applied per paragraph B, pages 19–21 of the OMB Circular A–76 Revised Supplemental Handbook (March 1996).

Federal pay raise assumptions effective date	Military/civilian
January 1997	3.0
January 1998	3.1
January 1999	3.1
January 2000	3.1
January 2001	3.1
January 2002	3.1

Non-Pay Categories (Supplies and Equipment, etc.)

FY 1995	2.9
FY 1996	2.6
FY 1997	2.7
FY 1998	2.7
FY 1999	2.7
FY 2000	2.7
FY 2001	2.7
FY 2002	2.7

Geographic pay differentials received in 1996 shall be included for the development of in-house personnel costs. The above pay raise factors shall be applied after consideration is given to the geographic pay differentials. The pay raise factors provided for 1997 and beyond shall be applied to all employees, with no assumption being made as to how they will be distributed between possible locality and ECI-based increases.

These updates are effective as follows: all changes in the Transmittal Memorandum are effective immediately and shall apply to all cost comparisons in process where the government's in-house cost estimate has not been publicly revealed before this date.

Agencies are reminded that OMB No. A–76, Transmittal Memorandum 1 through Transmittal Memorandum 14 are canceled. Transmittal Memorandum No. 15 provided the Revised Supplemental Handbook, dated March 1996 (Federal Register, April 1, 1996, pages 14338–14346).

Sincerely,

Alice M. Rivin,

Director.

[FR Doc. 96–13405 Filed 5–28–96; 8:45 am]

BILLING CODE 3110–01–M

POSTAL RATE COMMISSION

[Order No. 1112; Docket No. A96–16]

Salem, NE; Appeal and Procedural Schedule

Before Commissioners: Edward J. Gleiman, Chairman; W.H. ''Trey'' LeBlanc III, Vice-Chairman; George W. Haley; H. Edward Quick, Jr. In the Matter of: Salem, Nebraska 68433 (Roseanne Sittler, et al., Petitioner); Docket No. A96–16; Order No. 1112; Notice and Order Accepting Appeal and Establishing Procedural Schedule Under 39 U.S.C. 404(b)(5).

(Issued May 23, 1996).

Docket Number: A96–16.

Name of Affected Post Office: Salem, Nebraska 68433.

Name(s) of Petitioner(s): Roseanne Sittler, et al.

Type of Determination: Consolidation.

Date of Filing of Appeal Papers: May 20, 1996.

Categories of Issues Apparently Raised:

1. Effect on postal services [39 U.S.C. 404(b)(2)(C)].

2. Effect on the community [39 U.S.C. 404(b)(2)(A)].

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than those set forth above. Or, the Commission may find that the Postal Service's determination disposes of one or more of those issues.

Docket No. A96–16.

The Postal Reorganization Act requires that the Commission issue its decision within 120 days from the date this appeal was filed (39 U.S.C. 404(b)(5)). In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service to submit memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request and the Postal Service shall serve a copy of its memoranda on the petitioners. The Postal Service may incorporate by reference in its briefs or motions, any arguments presented in memoranda it previously filed in this docket. If necessary, the Commission also may ask petitioners or the Postal Service for more information.

The Commission orders:

(a) The Postal Service shall file the record in this appeal by June 4, 1996.

(b) The Secretary of the Postal Rate Commission shall publish this Notice and Order and Procedural Schedule in the Federal Register.

By the Commission.

Margaret P. Crenshaw,

Secretary.

May 20, 1996—Filing of Appeal letter

May 23, 1996—Commission Notice and Order of Filing of Appeal

June 14, 1996—Last day of filing of petitions to intervene [*see* 39 CFR 3001.111(b)]

June 24, 1996—Petitioner's Participant Statement or Initial Brief [*see* 39 CFR 3001.115(a) and (b)]

July 15, 1996—Postal Service's Answering Brief [*see* 39 CFR 3001.115(c)]

July 30, 1996—Petitioner's Reply Brief should Petitioner choose to file one [*see* 39 CFR 3001.115(d)]

August 6, 1996—Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings [*see* 39 CFR 3001.116]

September 17, 1996—Expiration of the Commission's 120-day decisional schedule [*see* 39 U.S.C. 404(b)(5)]

[FR Doc. 96–13389 Filed 5–28–96; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 33–7297; 34–3736; File No. 265–20]

Advisory Committee on the Capital Formation and Regulatory Processes; Meeting

AGENCY: Securities and Exchange Commission.

ACTION: Notice of meeting.

SUMMARY: This is to give notice that the Securities and Exchange Commission Advisory Committee on the Capital Formation and Regulatory Processes will meet on June 10, 1996 in room 1C30 at the Commission's main offices, 450 Fifth Street NW., Washington, D.C., beginning at 1:30 p.m. The meeting will be open to the public, and the public is invited to submit written comments to the Committee.

ADDRESSES: Written comments should be submitted in triplicate and should refer to File No. 265–20. Comments should be submitted to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: David A. Sirignano, Committee Staff Director, at 202–942–2870; Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: In accordance with section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App. 10a, notice is hereby given that the Committee will meet on June 10, 1996 in room 1C30 at the Commission's main offices, 450 Fifth Street NW., Washington, D.C., beginning at 1:30 p.m. The meeting will be open to the public.

The Committee was formed in February 1995, and its responsibilities include advising the Commission regarding the informational needs of investors and the regulatory costs imposed on the U.S. securities markets. The purpose of this meeting will be to discuss progress of the Committee's work and draft report, and possibly vote on the Committee's report.

Dated: May 22, 1996.

Jonathan G. Katz,

Secretary.

[FR Doc. 96–13330 Filed 5–28–96; 8:45 am]

BILLING CODE 8010–01–M

Sunshine Act, Agency Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of May 27, 1996.

An open meeting will be held on Wednesday, May 29, 1996, at 3:00 p.m. Commissioner Wallman, as duty officer, determined that no earlier notice was possible.

The subject matter of the open meeting scheduled for Wednesday, May 29, 1996:

In the Matter of A.R. Baron & Co., Inc., Andrew Bressman and Roman Okin, File No. 3-9010. The Commission will hear arguments on an application by the Division of Enforcement to determine whether the respondents have violated or threaten to violate Section 17(a) of the Securities Act of 1933 and Section 10(b) of the Securities Exchange Act of 1934 and rule 10b–5 promulgated thereunder, and if so, whether to issue a temporary Cease and Desist Order and Other relief. For information, contact Barry Goldsmith, (202) 942–4622 or Mark Kreitman, (202) 942–4677.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary (202) 942–7070.

Dated: May 24, 1996.

Jonathan G. Katz,

Secretary.

[FR Doc. 96–13619 Filed 5–24–96; 3:52 pm]

BILLING CODE 8010–01–M

[Release No. 34–37228; International Series Release No. 981; File No. SR–CHX–96–14]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change, by the Chicago Stock Exchange, Inc., Relating to Trading of Particular Investment Company Units

May 20, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') 15 U.S.C. 78s(b)(1), notice is hereby given that on April 23, 1996, the Chicago Stock Exchange, Inc. (''CHX'' or

''Exchange'') filed with the Securities and Exchange Commission (''Commission'' of ''SEC'') the proposed rule change, as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. 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 Article XXVIII of the CHS's Rules governing the listing requirements of securities on the CHX.

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.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In SR–CHX–96–12, the Exchange requested approval of proposed rule changes allowing listing and/or trading of units representing an interest in a registered investment company (''Units'').[1] In that rule filing, the Exchange also stated its intent to trade CountryBasket securities, pursuant to a request for unlisted trading privileges. CountryBasket securities are Units designed to track the performance of specific foreign indices, more fully described in SR–CHX–96–12 and SR–NYSE–95–23.[2]

The American Stock Exchange (''Amex''), in SR–Amex–95–43, requested and received approval of rules allowing listing and/or trading of Units.[3] The Amex also requested specific approval for the listing and trading of World Equity Benchmark Securities (''WEBS''), securities similar to CountryBaskets.

The CHX is proposing to adopt listing standards to permit its members to trade WEBS pursuant to unlisted trading privileges (''UTP''). If at a later time CHX desires to list WEBS, rather than only trade the Amex-approved WEBS pursuant to UTP, the Exchange will request SEC approval for that listing in a separate proposed rule change filed pursuant to Section 19(b) of the Act.

WEBS

The remainder of this filing discusses the structure of WEBS, the details of which are taken from SR–Amex–95–43 and its Amendments Nos. 1, 2, and 3. The information provided here is significantly condensed from the Amex's filing. CHX notes that the Amex has represented that customers who purchase WEBS will receive a detailed prospectus from the issuer.

Structure of WEBS

WEBS are issued by Foreign Fund, Inc., and based on seventeen Morgan Stanley Capital International (''MSCI'') Indices (each individually an ''MSCI Index'' or ''Index'' and collectively ''MSCI Indices'' or ''Indices''). The countries whose markets are represented by those indices are: Australia, Austria, Belgium, Canada, France, Germany, Hong Kong, Italy, Japan, Malaysia, Mexico, Netherlands, Singapore, Spain, Sweden, Switzerland, and the United Kingdom.

The investment objective of each WEBS series is to seek to provide investment results that correspond generally to the price and yield performance of public securities traded in the aggregate in particular foreign markets, as represented by specific MSCI Indices. Each WEBS series will use a ''passive'' or indexing investment approach which attempts to approximate the investment performance of its benchmark index through quantitative analytical procedures.

A WEBS series normally will invest at least 95% of its total assets in stocks that are represented in the relevant MSCI Index and will at all times invest at least 90% of its total assets in such stocks. A WEBS series will not hold all of the issues that comprise the subject MSCI Index, but will attempt to hold a representative sample of the securities in the Index in a technique known as ''portfolio sampling.''

Foreign Fund, Inc., will issue and redeem WEBS of each Index Series only in aggregations of shares specified for each Index Series (each aggregation a ''Creation Unit''). The number of shares per Creation Unit will range from 40,000 to 600,000. The Amex anticipates that the value of a Creation Unit at the start of trading will range from $450,000 to $10,000,000 and the net asset value (''NAV'') of an individual WEBS will range from $10 to $20.

The MSCI Indices

MSCI generally seeks to have 60% of the capitalization of a country's stock market index reflected in the MSCI Index for such country. Thus, the MSCI Indices seek to balance the inclusiveness of an ''all share'' index against the replicability of a ''blue chip'' index. MSCI applies the same criteria and calculation methodology across all markets for all indices, developed and emerging.

All single-country MSCI Indices are market capitalization weighted. For countries that restrict foreign ownership, MSCI calculates two Indices. The additional Indices are called ''free'' Indices, and they exclude companies and share classes not purchasable by foreigners. Free Indices are currently calculated for Singapore, Mexico, the Philippines, and Venezuela, and for those regional and international Indices which include such markets. The Mexico and Singapore WEBS series will be based on the free Indices for those countries. There are no WEBS series corresponding to the Philippines and Venezuela MSCI Indices.

All MSCI Indexes are calculated daily. The calculation method weights stocks in an index by their beginning-of-period market capitalization. Share prices are ''swept clean'' daily and adjusted for any rights issues, stock dividends or splits. The MSCI Indices currently are calculated in local currency and in U.S. dollars, without dividends and with gross dividends reinvested.

Prices used to calculate the MSCI Indices are the official exchange closing prices. All prices are taken from the dominant exchange in each market. To calculate the applicable foreign currency exchange rate, MSCI uses WM/Reuters Closing Spot Rates for all developed and emerging markets except those in Latin America. Because of the high volatility of currencies in some Latin American countries, MSCI continues to calculate its own rates for those countries. Under exceptional circumstances MSCI may elect to use an alternative exchange rate for any country if the WM/Reuters rate is believed not to be representative for a given currency on a particular day.

Each MSCI Index on which a WEBS series is based is calculated by MSCI for

[1] *See* Securities Exchange Act Release No. 37121 (April 17, 1996), 61 FR 17932 (notice of File No. SR–CHX–96–12).

[2] *Id. See also* Securities Exchange Act Release No. 36923 (March 5, 1996), 61 FR 10410 (order approving File No. SR–NYSE–95–23).

[3] *See* Securities Exchange Act Release No. 36947 (March 14, 1996), 61 FR 10606 (order approving File No. SR–AMEX–95–43 as amended).

each trading day in the applicable foreign exchange market based on official closing prices in such exchange market.

For each trading day, MSCI publicly disseminates each Index value for the previous day's close. MSCI Indices are reported periodically in major financial publications and also are available through vendors of financial information.

Foreign Fund, Inc., will cause to be made available daily the names and required number of shares of each of the securities to be deposited in connection with the issuance of WEBS in Creation Unit size aggregations for each WEBS series, as well as information relating to the required cash payment representing, in part, the amount of accrued dividends applicable to such WEBS series. This information will be made available by the Fund Advisor to any National Securities Clearing Corporation (''NSCC'') participant requesting such information. In addition, other investors can request such information directly from the Fund distributor. The NAV for each WEBS series will be calculated directly by the Fund administrator, PFPC Inc. NAVs will be made available to the public from the Fund distributor by means of a toll-free number, and also will be available to NSCC participants through data made available from NSCC.

To provide current WEBS pricing information, the Amex has represented that it anticipates it will disseminate through the facilities of the Consolidated Tape Association an ''indicative optimized portfolio value'' (''Value'') for each WEBS series as calculated by Bloomberg, L.P. (''Bloomberg''). The Value will be disseminated on a per WEBS basis every fifteen seconds during regular Amex trading hours of 9:30 a.m. to 4:00 p.m. New York time.

The Value likely will not reflect the value of all securities included in the applicable benchmark MSCI Index. In addition, the Value will not necessarily reflect the precise composition of the current portfolio of securities held by the Fund for each WEBS series at a particular moment. Therefore, the Value on a per WEBS basis disseminated during Amex trading hours should not be viewed as a real-time update of the net asset value of the Fund, which is calculated only once a day. It is expected, however, that during the trading day the Value will closely approximate the value per WEBS share of the portfolio of securities for each WEBS series except under unusual circumstances.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(5) of the Act in that the proposal fosters cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, removes impediments to and perfects the mechanism of a free and open market and a national market system and protects investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

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

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549. Copies of the submissions, 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, D.C. 20549. Copies of such filing will also be available at the principal office of the CHX. All submissions should refer to File No. SR–CHX–96–14 and should be submitted by [insert date 21 days from date of publication].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–13388 Filed 5–28–96; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–37235; File No. SR–DCC–96–06]

Self Regulatory Organizations; Delta Clearing Corp.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Authorization of Tradition (Government Securities) Inc. To Participate as an Interdealer Broker for U.S. Treasury Repurchase and Reverse Repurchase Agreement Trades

May 20, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on April 24, 1996, Delta Clearing Corp. (''DCC'') 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 DCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regualtory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to notify the Commission that Tradition (Government Securities) Inc. (''Tradition'') has been authorized to act as an interdealer broker in DCC's clearance and settlement system for repurchase and reverse repurchase agreement transactions in U.S. Treasury securities.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DCC included statements concerning

[1] 15 U.S.C. 78s(b)(1) (1988).

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. DCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

DCC's repo clearance system clears transactions in repurchase agreements that have been agreed to through the facilities of interdealer brokers that have been authorized by DCC (''Authorized Brokers'') to offer their services to DCC participants.[3] Currently, Liberty Brokerage, Inc., RMJ Special Brokerage, Inc., Euro Brokers Maxcor Inc., and Prebon Securities (USA) Inc. are Authorized Brokers. The purpose of the proposed rule change is to notify the Commission that Tradition has been added as an Authorized Broker in DCC's clearance and settlement system for repo trades.

Tradition is a wholly owned subsidiary of Tradition (North America) Inc. and is registered as a broker-dealer with the Commission under Rule 15(b) of the Act. Tradition (North America) Inc. is a subsidiary of Compagnie Financiere Tradition of Switzerland, which is an institutional broker of money market and debt market instruments and derivatives.

The proposed rule change will facilitate the prompt and accurate clearance and settlement of securities transactions, and therefore, the proposed rule change is consistent with the requirements of the Act, specifically Section 17A of the Act, and the rules and regulations thereunder.[4]

(B) Selff-Regulatory Organization's Statement on Burden on Competition

DCC does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received.

[2] The Commission has modified parts of these statements.

[3] For a complete description of the DCC's repo clearance system, see Securities Exchange Act Release No. 36367 (October 13, 1995), 60 FR 54095.

[4] 15 U.S.C. 78q–1 (1988).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[5] and Rule 19b–4(e)(4)[6] in that the proposal effects a change in an existing service of a registered clearing agency that does not adversely affect the safeguarding of securities or funds in the custody or control of the clearing agency or for which it is responsible and does not significantly affect the respective rights or obligations of the clearing agency or persons using the service. At any time within sixty days of the filing of the 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 communciation 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 also will be available for inspection and copying at DCC. All submissions should refer to File No. SR–DCC–96–06 and should be submitted by June 19, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret M. McFarland,

Deputy Secretary.

[FR Doc. 96–13331 Filed 5–28–96; 8:45 am]

BILLING CODE 8010–01–M

[5] 15 U.S.C. 78s(b)(3)(A)(iii) (1988).

[6] 17 CFR 240.19b–4(e)(4) (1995).

[7] 17 CFR 200.30–3(a)(12) (1995).

[Release No. 34–37237; File No. SR–NYSE–96–11]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Procedures for Public Release of Information by its Listed Companies

May 22, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. § 78s(b)(1), notice is hereby given that on May 7, 1996, the New York Stock Exchange, Inc. (''NYSE'' 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 self-regulatory organization. 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 NYSE is proposing amendments to its rules governing the procedures followed by its listed companies for disseminating material news or information to the public. These requirements are contained in Section 202.06(B) and Section 202.06(C) of its Listed Company Manual. The amendments would require the Exchange's listed companies to disseminate news or information which might reasonably be expected to materially affect the market for their securities to Bloomberg Business News (''Bloomberg'').

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's timely disclosure procedures require listed companies to

release to the public any news or information which might reasonably be expected to materially affect the market for their securities. Listed companies are currently required to disseminate material news to Dow Jones & Company, Inc. (''Dow Jones'') and Reuters Economic Services (''Reuters''). They are also encouraged, though not required, to promptly distribute news releases to Bloomberg. Bloomberg's news network has dramatically expanded in recent years and reaches a broad base of equity participants and related subscribers. It is common practice today among many listed companies to disseminate material news to Dow Jones, Reuters and Bloomberg. The proposed amendment will require listed companies to disseminate news or information which might reasonably be expected to materially affect the market for their securities to Bloomberg, in addition to Dow Jones and Reuters.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any 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 either solicited or received.

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 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 will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–NYSE–96–11 and should be submitted by **[INSERT DATE 21 DAYS FROM DATE OF PUBLICATION].**

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–13387 Filed 5–28–96; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2852]

Illinois; Declaration of Disaster Loan Area (Amendment #2)

In accordance with notices from the Federal Emergency Management Agency dated May 20, 1996, the above-numbered declaration is hereby amended to include Cass, Douglas, Jackson, Sangamon, White, and Williamson Counties in the State of Illinois as a disaster area due to damages caused by severe storms and flooding. This declaration is further amended to establish the incident period for this disaster as beginning on April 28, 1996 and continuing through May 17, 1996.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the previously designated location: Brown, Champaign, Christian, Coles, Edgar, Edwards, Gallatin, Johnson, Logan, Macon, Mason, Menard, Morgan, Moultrie, Piatt, Pope, Schuyler, Union, Vermilion, and Wayne Counties in Illinois; Perry County, Missouri; and Gibson and Posey Counties in Indiana.

All other information remains the same, i.e., the termination date for filing applications for physical damage is July 5, 1996, and for loans for economic injury the deadline is February 6, 1997.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: May 22, 1996.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 96–13395 Filed 5–28–96; 8:45 am]

BILLING CODE 8025–01–P

Hartford District Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration, Hartford District Advisory Council will hold a public meeting on Monday, June 17, 1996 at 8:30 a.m. at 2 Science Park, New Haven, Connecticut 06511, to discuss matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Ms. Jo-Ann Van Vechten, District Director, U.S. Small Business Administration, 330 Main Street, Hartford, Connecticut, (860) 240–4670.

Dated: May 22, 1996.

Michael P. Novelli,

Director, Office of Advisory Council.

[FR Doc. 96–13396 Filed 5–28–96; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Representative Payment Advisory Committee; Meeting

AGENCY: Social Security Administration (SSA).

ACTION: Notice.

DATES: June 5–6, 1996, 8:30 a.m.–4:30 p.m.; June 7, 1996, 8:30 a.m.–3:30 p.m.

ADDRESSES: Social Security Administration Headquarters, Altmeyer Multi-Purpose Auditorium, 6401 Security Blvd., Baltimore, MD 21235.

SUPPLEMENTARY INFORMATION:

Type of meeting: The meeting is open to the public.

Purpose: In accordance with section 10(a)(2) of the Federal Advisory

Committee Act, the Social Security Administration (SSA) announces the sixth meeting of the Representative Payment Advisory Committee. The Committee will discuss the following broad categories of representative payment policy: (1) Beneficiary (in)capability; (2) payee selection; (3) payee recruitment and retention; (4) standards for payee performance; and (5) payee oversight.

This is the second of two deliberative meetings at which no public testimony will be heard. However, interested parties are invited to attend the meeting. The Committee will use this time to continue discussing and concluding its findings.

Agenda: The Committee will meet commencing at 8:30 a.m. to 4:30 p.m. on Wednesday and Thursday, June 5–6, 1996, and 8:30 a.m. to 3:30 p.m. on Friday, June 7, 1996. Discussion items will include a discussion of beneficiary (in)capability; payee selection; payee recruitment and retention; standards for payee performance; and payee oversight.

Persons interested in attending this meeting should call the Representative Payment Advisory Committee at (410) 966–4688 so that arrangements for entrance into the meeting can be made. Individuals not making advance arrangements should report to the main lobby of the Altmeyer Building. Arrangements for entrance can be made at that time. The Committee welcomes written comments. To be given consideration, all written comments must be received by May 30, 1996. They may be sent to the Representative Payment Advisory Committee at P.O. Box 17763, Baltimore, MD 21203–7763.

Records are being kept of all Committee proceedings, and are available for public inspection by appointment at the office of the Representative Payment Advisory Committee, Room 2–N–24, Operations Building, 6401 Security Boulevard, Baltimore, MD 21235 between the hours of 9:00 a.m. and 4:00 p.m. on regular business days. Anyone requiring information regarding the Committee should contact the Representative Payment Advisory Committee at P.O. Box 17763, Baltimore, MD 21203–7763; Telephone: (410) 966–4688; FAX (410) 966–0980; Internet: adcom@ssa.gov.

Dated: May 20, 1996.

Reba Andrew,

Staff Director, Representative Payment Advisory Committee.

[FR Doc. 96–13315 Filed 5–28–96; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF STATE

[Public Notice 2392]

Office of Protocol; Information Collection Under Review

Office of Management and Budget (OMB) approval is being sought for the information collection listed below. This proposed information collection was previously published in the Federal Register and allowed 60 days for public comment.

The purpose of this notice is to allow an additional 30 days for public comments from the date listed at the top of this page in the Federal Register. This process is conducted in accordance with 5 Code of Federal Regulation, Part 1320.10.

1. Summary: The Office of Protocol of the Department of State, (S/CPR) in order to extend privileges and immunities under the Vienna Convention on Diplomatic Relations, 1961 and the Vienna Convention on Consular Relations, 1963 and to issue official identification cards, must obtain information from foreign government representatives concerning the appointment and termination of assignment of diplomatic and career and honorary consular offices, foreign government employees and their dependents in the United States. The following summarizes the information collection proposal submitted to OMB:

Type of request—Reinstatement.

Originating office—Office of Protocol.

Title of information collection—Notification of Appointment of Foreign Diplomatic and Career Consular Officer.

Frequency—On occasion.

Form Number—DSP–110.

Respondents—Foreign government representatives.

Estimated number of respondents—2,000.

Average hours per response—0.30.

Total estimated burden hours—1,000.

Title of information collection—Notification of Appointment of Foreign Government Employee.

Frequency—On occasion.

Form Number—DSP–111.

Respondents—Foreign government representatives.

Estimated number of respondents—5,000.

Average hours per response—0.30.

Total estimated burden hours—2,500.

Title of information collection—Notification of Appointment of Honorary Consular Officer.

Frequency—On occasion.

Form Number—DSP–112.

Respondents—Foreign government representatives.

Estimated number of respondents—200.

Average hours per response—0.30.

Total estimated burden hours—100.

Title of information collection—Notification of Change, Identification Card Request.

Frequency—On occasion.

Form Number—DSP–113.

Respondents—Foreign government representatives.

Estimated number of respondents—5,000.

Average hours per response—0.10.

Total estimated burden hours—600.

Title of information collection—Notification of Dependents of Diplomatic, Consular and Foreign Government Employees (Continuation Sheet).

Frequency—On occasion.

Form Number—DSP–114.

Respondents—Foreign government representatives.

Estimated number of respondents—7,000.

Average hours per response—0.10.

Total estimated burden hours—840.

Title of information collection—Notification of Termination of Diplomatic, Consular or Foreign Government Employment.

Frequency—On occasion.

Form Number—DSP–115.

Respondents—Foreign government representatives.

Estimated number of respondents—6,000.

Average hours per response—0.10.

Total estimated burden hours—720.

44 U.S.C. 3504(h) does not apply.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the proposed forms and supporting documents may be obtained from Charles S. Cunningham (202) 647–0596. Comments and questions should be directed to (OMB) Jefferson Hill (202) 395–3176.

Dated: May 21, 1996.

Patrick F. Kennedy,

Assistant Secretary for Administration.

[FR Doc. 96–13401 Filed 5–28–96; 8:45 am]

BILLING CODE 4710–20–M

[Public Notice 2397]

Office of the Under Secretary for Economic and Agricultural Affairs; Notice of Receipt of Application for a Permit for Pipeline Facilities Constructed and Maintained on the Borders of the United States of America

DATES: Interested parties are invited to submit, in duplicate, comments relative to this proposal no later than 30 days

after publication of this notice in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Stephen Gallogly, Chief, Division of Energy Producer Country Affairs, Office of International Energy Policy, Department of State, Washington, DC 20520. (202) 647–1476.

The Department of State has received an application from Rio Grande Pipeline Company for a Presidential permit, pursuant to Executive Order 11423 of August 16, 1988, as amended by Executive Order 12847 of May 17, 1993 to construct a new liquid petroleum gas (LPG) pipeline that will originate in Hudspeth County, Texas and terminate in Ciudad Juarez, Mexico. The pipeline will cross the U.S.-Mexico International Border in El Paso County, south of the town of San Elizario at Latitude 31 degrees, 33 minutes, 2 seconds and Longitude 106 degrees, 15 minutes and 40 seconds.

Rio Grande Pipeline Company is a partnership having its principal office in Tulsa, Oklahoma. Applicant is a Texas General Partnership of Juarez Pipeline Company (Juarez), Amoco Rio Grande Pipeline Company (AMOCO), and Navajo Southern, Inc. (Navajo).

Dated: May 23, 1996.

Glen R. Rase,

Director, Office of International Energy and Commodities Policy.

[FR Doc. 96–13400 Filed 5–28–96; 8:45 am]

BILLING CODE 4710–07–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[AC No. 43.13–1A]

Proposed Revision B to Advisory Circular (AC) on Acceptable Methods, Techniques, and Practices—Aircraft Inspection and Repair

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Availability of the Proposed Revision B to AC 43.13–1A, and request for comments.

SUMMARY: This notice announces the availability of and requests comments on proposed revision B to AC 43.13–1A, Acceptable Methods, Techniques, and Practices—Aircraft Inspection and Repair, which provides guidance on acceptable methods, techniques, and practices associated with inspection and repairs to small, nonpressurized, older aircraft of 12,500 pounds or less. This notice is necessary to give all interested persons an opportunity to present their views on the proposed revision to the AC. Any comments, corrections, or suggestions should reflect the applicable AC chapter, page, and paragraph number. If new data are suggested, a copy of these data, repair methods, inspection procedures, or new techniques should be enclosed with the comments.

DATES: Comments must be received on or before July 15, 1996.

ADDRESSES: Send all comments on the proposed AC to: FAA, Manufacturing Standards Section, AFS–613, 6500 S. MacArthur Boulevard, ARB Room 304, Oklahoma City, Oklahoma 73125. Requests for copies of the proposed AC can be facsimiled to AFS–613 at (405) 954–4104. Comments may be inspected at the above address between 9 a.m. and 4 p.m. weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. William F. O'Brien, General Aviation and Commercial Branch, AFS–340, FAA, 800 Independence Avenue SW., Washington, DC 20591, telephone: (202) 267–3796, facsimile (202) 267–5115.

Issued in Washington, DC on April 22, 1996.

William J. White,

Deputy Director, Flight Standards Service.

[FR Doc. 96–13420 Filed 5–28–96; 8:45 am]

BILLING CODE 4910–13–M

Acceptance of Updated Noise Exposure Maps for San Francisco International Airport, San Francisco, CA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the updated noise exposure maps submitted by the city of San Francisco, California for San Francisco International Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Public Law 96–193) and 14 CFR Part 150 are in compliance with applicable requirements.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps is May 17, 1996.

FOR FURTHER INFORMATION CONTACT: Joseph R. Rodriguez, Federal Aviation Administration, San Francisco Airports District Office, 831 Mitten Road, Burlingame, California 94010, Telephone: 415/876–2805. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the updated noise exposure maps submitted for San Francisco International Airport are in compliance with applicable requirements of Part 150, May 17, 1996.

Under section 103 of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as ''the Act''), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by the city of San Francisco, California. The specific maps under consideration are Figures 2 and 3 in the submission. The FAA has determined that these maps for San Francisco International Airport are in compliance with applicable requirements. This determination is effective on May 17, 1996. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise

exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under section 150.16 of FAR Part 150, that the statutorily required consultation has been accomplished.

Copies of the updated noise exposure maps and of the FAA's evaluation of the maps are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue SW., Room 621, Washington, D.C. 20591

Federal Aviation Administration, Western-Pacific Region, Airports Division, AWP–600, 15000 Aviation Boulevard, Room 3012, Hawthorne, California 90261

Federal Aviation Administration, San Francisco Airports District Office, 831 Mitten Road, Burlingame, California 94010–1303

Mr. John Martin, Director of Airports, San Francisco International Airport, San Francisco, California 94128.

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Hawthorne, California on May 17, 1996

Robert C. Bloom,

Acting Manager, Airports Division, AWP–600, Western-Pacific Region.

[FR Doc. 96–13425 Filed 5–28–96; 8:45 am]

BILLING CODE 1410–13–M

Notice of Airport Capital Improvement Program National Priority System; Opportunity To Comment

AGENCY: Federal Aviation Administration (FAA), (DOT).

SUMMARY: The FAA is clarifying details of the ACIP National Priority System. Comments and recommendations for improving the effectiveness of the ACIP National Priority System are solicited.

DATES: Comments and/or recommendations must be submitted on or before July 29, 1996.

ADDRESSES: Comments may be delivered or mailed to the FAA, Airports Financial Assistance Division, Programming Branch, APP–520, Room 615, 800 Independence Avenue SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Mr. Stan Lou, Manager, Programming Branch, Airports Financial Assistance Division, Office of Airport Planning and Programming, APP–520, on (202) 267–8809.

SUPPLEMENTARY INFORMATION: FAA Order 5100.39, ''Airport Capital Improvement Plan'' describes procedures that are intended to guide the distribution of Airport Improvement Program (AIP) funds to the highest priority projects nationally. In order to implement the ACIP Order, a standard database has been established. This database (NPIAS–CIP) provides a common data structure to compile and analyze airport development needs. A key element of this process is the determination of objective priority ratings for items of work.

The National Priority is a numerical, computer-generated system for prioritizing work items in accordance with agency goals. The ACIP is used as a vehicle to evaluate requests for AIP funded airport development in an airport's five year Capital Improvement Program (CIP).

The ACIP uses a national priority calculation as prescribed by Order 5100.39. Priority numbers are calculated based on the size and type of airport (service level) and the type of project (as described by the NPIAS–CIP project codes). The national priority calculation:

- Provides a standard means to sort projects from high to low priority.
- Is used to measure how well funding plans (the ACIP) address the highest priority needs.
- Imitates the existing AIP priority system.
- Is not intended to be the sole gauge for project approval.

The national priority calculation is as follows: (P*(APT+C+1)+T)*10+APT

Where:

P=Purpose Points (0 to 5 pts)

Safety/Security=0 pt.
Reconstruction=1 pt.
Standards=2 pts.
Environment=1 pt.
Upgrade=3 pts.
Capacity=3 pts.
New Airport (Community)=5 pts.
New Airport (Capacity)=3 pts.
Planning=1 pt.

C=Component Points (1 to 6 pts)

Land=3 pts.
Runway=1 pt.
Taxiway=3 pts.
Apron=4 pts.
Lighting=3 pts.
Approach Aids=2 pts.
Terminal=5 pts.
Access=5 pts.
Planning=1 pt.
Equipment=3 pts.
Other=3 pts.

T=Type Points (1 to 3 points), and

Access=2 pts.
Acquire Airport=2 pts.
Terminal Building Bond=2 pts.
Runway Centerline Lights=1 pt.
Construction=2 pts.
Land for Development=2 pts.
Extension/Expansion=2 pts.
Runway Friction=1 pt.
Gates=2 pts.
Grooving=1 pt.
Helicopter Landing=2 pts.
High Intensity Runway Lights=1 pt.
Improvements=1 pt.
Mass Transit/Master Plan=2 pts.
Metropolitan Planning=2 pts.
Medium Intensity Runway Lights=1 pt.
Miscellaneous=3 pts.
Noise Barrier=2 pts.
Landscaping For Noise=2 pts.
Noise Plan/Suppression=2 pts.
Soundproofing=2 pts.
Obstruction Removal=2 pts.
Parking=3 pts.
Partial Instrument=2 pts.
Relocation Assistance (Non-Noise)=2 pts.
ARFF Vehicle=1 pt.
Relocation Assistance (Noise)=2 pts.
Rehab Runway Lights=1 pt.
Rehab Taxiway Lights=2 pts.
Safety Related Building=2 pts.
Sealcoat=2 pts.
Security Improvement=1 pt.
Runway Safety Area=1 pt.
Service Road Improvement=3 pts.
Snow Removal Equipment=2 pts.
Runway Sensors=2 pts.
Safety Zone=1 pt.
Terminal=2 pts.
Visual Approach Aids=2 pts.
Construct V/TOL Runway/Vertical Plan=2 pts.
Weather Reporting=2 pts.
Runway/Taxiway Signs=1 pt.
Taxiway Sensors/State Planning=2 pts.
Air Navigation Facilities=2 pts.
Deicing Facilities=1 pt.
Fuel Farm Development=3 pts.
Utility Development=3 pts.

APT=Airport Points (1, 2, 3, or 6 pt). Airport Points are calculated as follows:

Primary and Reliever Airports

Large and Medium Hub=1 pt.

Small and Non Hub=2 pts.
Commercial Service Airports=3 pts.

General Aviation Airports Aircraft/ Operations

100 or 50,000=1 pt.
50 or 20,000=2 pts.
20 or 8,000=3 pts.
≤20 or ≤8,000=6 pts.

The ACIP is used to help make AIP fund allotment decisions for each airport/development type. Funds are allotted to regions through two mechanisms: Commitments and Priorities. Commitments are projects that are believed to merit funding regardless of their relative priority calculation. These projects typically include Letters of Intend (LOI) and ''phased'' projects where it is important to complete a development program to derive an acceptable level of benefit for both the airport and the national system. Funds for Commitment projects are ''set aside'' for each airport/development category. The remainder of the available discretionary funds are distributed to the highest priority projects which remain unfunded in the ACIP. Priority distribution uses a priority ''cut-off'' for each airport/development category.

Issued in Washington, DC on May 2, 1996.

Stan Lou,

Manager, Programming Branch.

[FR Doc. 96–13422 Filed 5–28–96; 8:45 am]

BILLING CODE 4910–13–M

National Highway Traffic Safety Administration

Discretionary Cooperative Agreements To Support the Demonstration and Evaluation of the Patterns for Life Program

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Announcement of discretionary cooperative agreements to support the demonstration and evaluation of the Patterns for Life Program.

SUMMARY: The National Highway Traffic Safety Administration (NHTSA) announces the availability of FY 1996 discretionary cooperative agreements to demonstrate the effectiveness of using health/medical organizations to establish an infrastructure of credible program efforts pertaining to child passenger safety, child pedestrian safety and bicycle helmet safety. This notice solicits applications from national health and medical related organizations that are interested in developing and implementing community partnerships with local law enforcement, fire and rescue, child care providers, state and local governments, educational institutions, local child safety seat distributors and trainers to establish an infrastructure of knowledgeable and skilled partners at the state and local level.

DATES: Applications must be received at the office designated below on or before July 10, 1996.

ADDRESSES: Applications must be submitted to the National Highway Traffic Safety Administration, Office of Contracts and Procurement (NAD–30), Attention: Karen S. Brockmeier, 400 7th Street SW., Room 5301, Washington DC 20590. All applications submitted must include a reference to NHTSA Cooperative Agreement Program Number DTNH22–96–H–05194, and identify the program approach for which the application is submitted. Interested applicants are advised that no separate application package exists beyond the contents of this announcement.

FOR FURTHER INFORMATION CONTACT: General administrative questions may be directed to Karen S. Brockmeier, Office of Contracts and Procurement, at (202) 366–9567. Programmatic questions relating to this cooperative agreement program should be directed to Ms. Cheryl Neverman, National Organizations Division, Office of Occupant Protection, (NTS–11) NHTSA, 400 7th Street SW., Room 5118, Washington, DC 20590 (202) 366–2696.

SUPPLEMENTARY INFORMATION:

Background

The need to establish a community infrastructure that can accommodate on-going training needs as child transportation technology and issues change has emerged as a priority for the nation. The Department of Transportation, NHTSA, is initiating a new program effort, Patterns for Life, in FY 1996 to provide outreach to state and local communities on issues focused on child passenger, pedestrian, and bicycle helmet safety. The goal of this program effort is to establish lifelong safety habits that set a pattern of safety for children. The health/medical community is often the first and most continuous contact that new or expectant parents have when pregnant and during the first formative years of a child's life. It is at this time that ''patterns'' of behavior are established which may have lasting impact on a child's lifetime safety habits.

Under this cooperative agreement program, the effectiveness of using health and medical organizations to conduct child traffic safety initiatives shall be demonstrated and evaluated to determine the impact on reducing motor vehicle injuries and associated costs to the community. Specific objectives for this cooperative agreement are as follows:

- Increasing the public's awareness of the importance of child passenger, child pedestrian and helmet safety through community partnerships;
- Performing aggressive community outreach service through dedicated support (e.g. paid advertising) and earned media (e.g. articles in newspaper, story on evening news);
- Maintaining partnerships in order to preserve existing child safety programs;
- Increasing the correct use of child restraints, safety belts, and bicycle helmets;
- Providing comprehensive education and outreach to high-risk, underserved, and culturally diverse populations using updated educational materials and new publications;
- Encouraging vigorous enforcement of existing child passenger safety, safety belt, and bicycle helmet use laws;
- Encouraging the enactment of bicycle helmet laws and upgrades of existing laws to cover children in all vehicle seating positions with correct restraint use;
- Increasing public awareness and education of the benefits and the dangers of air bags; especially as they interact with children who are unrestrained, improperly restrained, or in rear-facing child seats;
- Measuring program effectiveness and sharing success stories to encourage public use and support; and
- Establishing and maintaining a health/medical infrastructure at the community level which can serve as an on-going resource for the community and contact for future educational and technological messages.

As the result of high visibility in the media about issues such as child seat misuse and increased distribution of safety products, such as the free child seat distribution made possible through the settlement between General Motors and the Department of Transportation, the public is seeking more answers to questions about these safety issues. Similar programs exist for the distribution of free or reduced-price bicycle helmets. Hundreds of state and local programs have become distribution sites for these efforts, but little effort has been made to assure that those involved in the distribution have easy access to updated training and are able to maintain a source of future information. Additionally, the strong enforcement of traffic safety laws and the need to upgrade existing laws or

implement new laws demands an infrastructure which can provide the outreach, advocacy and knowledge necessary for success and strong public support. The health/medical community has been and continues to be one of the most effective national and community-level leaders in supporting new legislative efforts. It is also the group that is most likely to have access to the largest variety of populations, from low-income to special needs children, especially those considered at high risk in traffic crashes.

The area of child passenger safety has some unique considerations. Research has demonstrated that child safety seats, when correctly used, can reduce fatalities among children less than 5 years of age by 71 percent. This makes child safety seats one of the most effective safety innovations ever developed. As a result of improvements in the convenience of the seats, increased availability of free or reduced-price seats, upgrades and increased enforcement of child passenger safety laws and public education, the use of child safety seats has increased dramatically over the past ten years. However, the use rate for children involved in fatal crashes shows that as many as 40 percent of these children are still totally unrestrained. Recent studies confirm the fact that as a child's age increases, the use of any occupant restraint decreases, as does the use of an occupant restraint appropriate for a given height and weight. A number of national program efforts are making child safety seats more available to low-income and special needs families. Under an agreement with the Department of Transportation, General Motors will donate a total of eight million dollars to qualified and selected national organizations to purchase and distribute child safety seats and ensure that proper use information is provided to the family recipients. Other community-based programs featuring free or reduced price child seats offered by business partners in the local community include the Midas Project Safe Baby program and Operation Baby Buckle through the SAFE America Foundation.

In the area of misuse, the degree of compatibility between use of child restraints and motor vehicles and improper installation are important in determining the level of effectiveness of the child safety seat in providing optimum protection in a crash. Even though a child restraint may perform adequately during compliance testing, if it is not used properly in or is not compatible with the vehicle seat belts or seat, its effectiveness in a real crash may be reduced. As technology changes, the need for maintaining current training for educators of the public and the media continues to increase. Educational materials produced just a few years ago may need updating. The Blue Ribbon Panel on Child Restraint and Vehicle Compatibility, a group made up of child seat, auto, and equipment manufacturers and child safety practitioners and advocates, was named by NHTSA Administrator Ricardo Martinez in 1995 to review child restraint misuse and compatibility concerns. The Panel announced twenty-seven major recommendations in June of 1995 including the need to conduct an intensive educational campaign on correct use and installation of child safety seats and to make the public aware of emerging incompatibility issues such as air bags and rear-facing child seats and other common misuses and compatibility problems. The report encouraged the government to work collaboratively with groups such as health care and emergency medical service providers. The efforts are to emphasize training for child safety professionals who are in a position to reach out to populations less likely to be reached by a more generic public information approach.

Public information and education efforts are offered on an on-going basis through long-time partners such as the American Academy of Pediatrics. Newer partners, such as Morton, International, an air bag supplier, have made great strides in developing new educational materials. New curricula have been developed and training efforts have been implemented with law enforcement, emergency medical service providers, child care providers, and child safety advocates such as local SAFE KIDS coalitions. However, despite many such efforts, the need remains high to reach out to the local infrastructure and provide a lasting means of maintaining a network of trainers and educators who can reach the people who still don't provide proper occupant protection for their children. In part because of non-use and incorrect use, child safety seats are not currently saving as many lives as they could save.

Current issues and concerns about safe transportation for children can be summarized as follows:

—Approximately 40 percent of young children are not protected by child restraints, with the use rate dropping dramatically as the child grows older.
—New technology, such as air bags, and compatibility issues resulting from design changes in vehicle belt and seat systems demand updated training for those who interact with children and their families.
—Recent studies in patterns of misuse of child seats conform anecdotal information from advocates conducting child seat clinics and checkpoints showing misuse rates to be as high as 80 percent. (The studies did not provide a national misuse rate, nor did they rank the misuse modes as they would relate to seriousness of potential injury.)
—While all states have primary child passenger safety laws, a number of states have significant gaps in their child passenger safety and safety belt laws, allowing children to ride unprotected without threat of citation.
—As more new vehicles with dual air bags enter the market, there are increased concerns about children who are riding unrestrained, incorrectly restrained, or in rear-facing child seats in the front seat of passenger-side air bag equipped vehicles.

The importance of pedestrian and bicycle safety issues must not be overlooked when developing community traffic safety initiatives. Children become pedestrians with their very first step, and their first mode of transportation is usually a bicycle.

In 1994, 5,472 pedestrians were killed in traffic crashes in the United States. Of these deaths, 1,082 were young people under the age of twenty. On average, pedestrians are killed in traffic crashes every ninety-six minutes. Furthermore, the fatality rate for bicyclists is just as tragic. More than one-third of the bicyclists killed in traffic crashes were children between five and fifteen years old.

Educating young people about pedestrian and bicycle safety rules, including always using a certified bicycle helmet, could prevent some of these tragedies. Few schools provide quality pedestrian safety and street crossing training, even though the material is readily available. Increasing age-specific bicycle helmet laws can also prevent needless deaths and injuries. In fact, as of July 1995, thirteen states and more than twenty jurisdictions had enacted age-specific bicycle helmet laws. The stage is set. It is up to those working within the community infrastructure to establish an outreach system that incorporates education and training to help young people set a lifelong pattern of healthy traffic safety habits. This is one of the agency's greatest concerns.

Community outreach centers were identified and the first training and

community outreach materials were provided. Each community center was provided with basic instruction to enable it to effectively perform its role as a community child safety seat educator and distribution point. Concurrent training and outreach programs were conducted among the national networks of law enforcement, fire and rescue, and health and safety advocates to prepare local affiliates of these groups to become partners in community child safety coalitions. Peer-to-peer outreach programs were established within the law enforcement and fire and rescue communities to promote participation in Patterns for Life training and outreach activities. Linkages between these community partners and the child seat distribution points were initiated.

As these training and outreach efforts were being implemented, new and updated educational materials were developed. New training materials include an updated comprehensive child safety seat technical manual and a complete set of manufacturers' instructions for correct use of child safety seats. New public information materials include information on child pedestrian safety and bicycle helmet safety.

Community outreach was further enhanced through cooperative agreements with several national health and medical organizations. These agreements provided additional community partnerships and resources by mobilizing the organizations' state and community affiliates to directly support local child safety program efforts or to contribute indirect support, such as endorsement of strong traffic laws and aggressive law enforcement.

FY 1996 Program

In FY 1996, NHTSA intends to establish cooperative agreements with national health and medical organizations that have mechanisms to reach constituencies that can address the program approaches described below. One cooperative agreement will be awarded for each of these three (3) program approaches. An applicant organization could be awarded cooperative agreements for two program approaches, if qualified in both and based upon submitting two separate applications and budgets. More than one agreement could be awarded for a program approach if additional funding becomes available. Following is a description of the program approaches:

1. Economically Disadvantaged Populations

To achieve NHTSA's goal of educating all American consumers about the benefits of correctly using child safety seats and bicycle helmets, and teaching pedestrian safety, additional emphasis is being placed on reaching individuals who have been identified as being at higher than average risk of suffering the effects of non-use or incorrect use of protective devices. Death rates of motor vehicle occupants are greatest in geographic areas with lowest per capita income. Income, education and other variables form profiles called socio-economic status (SES). Recent surveys conducted by NHTSA support previous findings that individuals who fall into lower SES profiles are less likely to practice safe transportation habits, which in turn affects their children's use and misuse levels.

The goal of this program is to identify and develop community partnerships which can have a significant impact on effectively reaching these populations with traffic safety education and access to safe equipment. The program further seeks to explore the means to maintain this level of community education, awareness, and advocacy as an on-going effort. This includes identifying how child transportation safety issues can fit into a health/medical organization's overall mission, and exploring innovative and long lasting delivery mechanisms.

2. Community-Based Child Passenger Safety

The national promotion of child passenger safety presents unique program challenges. The rapid turnover of the child passenger safety audience and educators demands that public education efforts be intensive and consistent. Each day, new parents (and other child caretakers) enter the audience and need to be reached with the child passenger safety message. New technology and emerging issues require maintaining an on-going means of educating the trainers. It is essential that we reach each parent quickly and effectively to ensure that the child is best protected while traveling.

Parents (and other caretakers) need to understand risks and potential consequences of both non-use and misuse of child occupant protection. They need to receive education concerning proper seat selection and specific technical advice pertaining to child seat compatibility with vehicle belts and seats.

NHTSA has found that health care providers are among the most credible of educators for parents and the ones most likely to reach the new parent and to have continued contact through well-child contacts. Health care providers also serve well as prominent support for upgrading child passenger safety laws and supporting enhanced enforcement of these laws.

The goal of this program is to develop a community-based child passenger safety education and training campaign. The specific objectives include: Facilitating parent education in health/medical settings; providing training for patient educators; developing or adapting appropriate program materials for dissemination through the organizational network; designing a program effort which encourages the institutionalization of these educational activities; and providing for strong advocacy efforts which support legislative and enforcement goals.

3. Safe Communities Partnerships for Child Transportation Safety

Local community partnerships, formed by public and private sector groups under the strong leadership of the health/medical community, can be an effective means of establishing a lasting infrastructure which will provide on-going educational and advocacy efforts for child transportation safety issues. Other organizations in the community would benefit by the health/medical leadership in identifying needs at the community level and working together to fill gaps in education and in availability of proper safety devices at an affordable level, in showing solidarity in legislative and enforcement support, and in providing access to ongoing, current technological information.

The goal of this program approach is to form lasting community partnerships to work together to reduce injuries and deaths related to child passenger, bicycle and pedestrian safety. The specific objectives are: to establish or work to enhance a local coalition of community leaders who will collaborate on efforts to prevent child injuries and fatalities in motor vehicle crashes; to find innovative means at the local level to maintain the training needs of the local child safety educators; to develop effective child transportation safety campaigns that serve the individual needs of the community, to develop or modify existing materials as appropriate; to expand the outreach of health/medical professionals to incorporate traffic safety education and awareness programs; and to measure the

effectiveness of local efforts on reducing child injuries.

Innovative Approaches

Applicant organizations are encouraged to develop and propose innovative strategies within these program approaches that are appropriate for their constituencies. Some examples of activities follow that have been conducted in the past by national organizations and others involved in the occupant protection program. These examples are provided only to stimulate thinking and should not be viewed as required activities: identify members of the organization (and their family members) that qualify for ''Saved By the Child Seat/Helmet Club'' recognition and publicize these survivor stories in organizational publications; identify materials needed to conduct the project (this could include handbooks, manuals, brochures, posters, audio-visuals, etc.); publish articles in organizational newsletters, magazines, and/or journals; encourage and assist organizations in adopting a national policy resolution for child transportation safety.

NHTS Involvement

The National Highway Traffic Safety Administration (NHTSA), Office of Occupant Protection (OOP), will be involved in all activities undertaken as part of the cooperative agreement program and will:

1. Provide a Contracting Officer's Technical Representative (COTR) to participate in the planning and management of the cooperative agreement and to coordinate activities between the organization and OOP;
2. Provide information, educational materials and curricula, and technical assistance from government sources within available resources and as determined appropriate by the COTR;
3. Provide liaison with other government/private agencies as appropriate; and
4. Stimulate the exchange of ideas and information among cooperative agreement recipients through periodic meetings.

Period of Support

Subject to the availability of funds, satisfactory performance and continued demonstrated need, cooperative agreements may cover a total project period of up to two (2) years. An application should be submitted for an initial funding period of 12 months and should address what will be accomplished during that initial period. The application and budget for the initial project period should cover only the first 12 months of effort. To obtain funding after the initial 12 month period, an updated application must be submitted for approval for any subsequent year. The updated application will not be subjected to competitive review, but must demonstrate that the continuation effort will effectively and efficiently continue to fulfill program objectives.

Anticipated funding level for FY 1996 projects will be $66,000.00 for each of the three program approaches. Federal funds should be viewed as seed money to assist organizations in the development in traffic safety initiatives. Monies allocated for cooperative agreements are not intended to cover all of the costs that will be incurred in the process of completing the projects. Applicants should demonstrate a commitment of financial or in-kind resources to the support of proposed projects.

Eligibility Requirements

In order to be eligible to participate in this cooperative agreement program, a national health and medical organization must meet the following requirements:

- Have exclusive membership within the health and medical professional field; provide medical care and/or advice to patients and educate members.
- Have an established membership structure with state/local chapters in all regions of the country; and
- Have formal organizational communication mechanisms established for use in informing and motivating members and other constituents to become involved in child safety at the state and local levels. Such communication mechanisms may include organizational newsletters, journals, quarterly reports, and scheduled conferences/conventions.

Application Procedure

Each applicant must submit one original and two (2) copies of its application package to NHTSA, Office of Contracts and Procurement (NAD–30), Attention: Karen S. Brockmeier, 400 7th Street SW., room 5301, Washington, DC 20590. Submission of two additional applications will expedite processing but is not required. Applications must be typed on one side of the page only. Applications must include a reference to NHTSA Cooperative Agreement Program Number DTNH22–96–H–05194 and identify the program approach for which the application is submitted. Applicants may apply for more than one program approach, however, a separate application and budget must be submitted for each program area approach. Only complete applications received on or before July 10, 1996, shall be considered.

Application Content

1. The application package must be submitted with OMB Standard Form 424 (Rev. 4–88, including 424A and 424B), Applications for Federal Assistance, with the required information filled in and the certified assurances included. While Form 424–A deals with budget information, and Form 424B identifies Budget Categories, the available space does not permit a level of detail which is sufficient to provide for a meaningful evaluation of the proposed costs. A supplemental sheet shall be provided which presents a detailed breakdown of the proposed costs, as well as any costs which the applicant indicates will be contributed by the organization or its local affiliates and partners.

2. Applications shall include a program narrative statement which addresses the following in separately labeled sections:

a. *Technical Approach:* A description of the organizational membership and purpose, demonstrating the need for the assistance, and stating the principal goals and subordinate objectives of the project, as well as the anticipated results and benefits. This section shall describe any unusual features, such as design or technological innovations, reductions in cost or time, or extraordinary social/community involvement. Supporting documentation from concerned interests other than the applicant can be used. Any relevant data based on planning studies should be included or footnoted. (Evaluation Factor #1)

b. *Implementation Plan:* A description of the program approach, including a plan of action pertaining to the scope and detail of the proposed work. This section shall include the reasons for taking this plan of action as opposed to others. The Implementation Plan shall include a presentation at one or more national meetings (e.g. Moving Kids Safely, Lifesavers or others.) (Evaluation Factor #2)

c. *Project Management and Staffing:* Quantitative projections of the accomplishments to be achieved, if possible, or lists of activities in chronological order to show the schedule of accomplishments and their target dates. This section shall list each organization, corporation, consultant or other individuals who will work on the project along with a short description of the nature of the individual's effort or contribution and relevant experience. (Evaluation Factor #3)

d. *Evaluation Plan:* A description of the kinds of data to be collected and maintained and the criteria to be used to evaluate the results. This section shall explain the methodology that will be used to determine if the needs identified and discussed are being met, and if the results and benefits identified are being achieved. (Evaluation Factor #4)

Evaluation Criteria and Review Process

Initially, all applications will be reviewed to confirm that the applicant is an eligible recipient and to assure that the application contains all of the information required by this notice. Each complete application from an eligible recipient will then be evaluated by an Evaluation Committee. The Evaluation Committee will include one non-NHTSA staff specialist from the Children's Safety Network. The application will be evaluated using the following criteria:

1. Understanding of the Problem and the Relationship to the Health/Medical Community (40%). The extent to which the applicant has demonstrated an understanding of the child transportation safety issues. The extent to which the applicant is knowledgeable about data sources, community linkages, the need for a coordinated approach to controlling child traffic injuries using the health/medical field as leaders, and his demonstrated the organization's affiliate's willingness to commit to and participate in the program. The extent to which the applicant has access to the potential target populations in the community.

2. Goals, Objectives, and Implementation Plan (40%). The extent to which the applicant's goals are clearly articulated and the objectives are time-phased, specific, measurable and achievable. The extent to which the Implementation Plan will achieve an outcome oriented result that will reduce child-related traffic injuries and deaths. The Implementation Plan will be evaluated with respect to its feasibility, realism, and ability to achieve the desired outcomes.

3. Project Management and Staffing (10%). The reasonableness of the applicant's plan for accomplishing the objectives of the project within the time frame set out in this announcement. The skill and experience of proposed staff, including project management and program staff and proposed affiliates, and ability to accomplish the program objectives.

4. Evaluation Plan (10%). The extent to which the proposed methods for measuring the processes and outcomes of the proposed interventions (countermeasures) will assess the effectiveness of the use of the Health/Medical Community in reaching the desired target populations.

Special Award Selection Factors

While not a requirement, applicants are strongly urged to consider the use of other available organizational resources, including other sources of financial support. Preference may be given, for those applicants that are evaluated as meritorious for consideration of award, for those who show commitment on the part of the Health/Medical organization by committing other organizational resources or seeking additional outside partners (cost-sharing strategies).

Terms and Conditions of the Award

1. Prior to award, each recipient must comply with the certification requirements of 49 CFR Part 20, Department of Transportation New Restriction or Lobbing, and 49 CFR Part 29 Department of Transportation Government-wide Department and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants).

2. Performance Requirements and Deliverables:

(a) The grantee shall arrange to meet with the Contracting Officer's Technical Representative (COTR) within 2 weeks of the award of the cooperative agreement to discuss the implementation plan, including milestones and deliverables.

(b) The grantee shall supply Quarterly Progress Reports every ninety days, in a format to be determined at the time of award. Quarterly Progress Reports are to include a summary of the previous quarter's activities and accomplishments, as well as proposed activities for the upcoming quarter. Any decisions and actions required in the upcoming quarter should be included in the report.

(c) Draft Final Report. The grantee shall prepare a Draft Final Report that includes a description of the intervention strategies, program implementation, and findings from the program evaluation. It is important, for purposes of future programs, to know what worked and did not work, under what circumstances, and what can be done to avoid potential problems in replicating similar programs. The grantee shall submit the Draft final report to the COTR 30 days prior to the end of the performance period. The COTR will review the document and provide comments within 2 weeks of receipt of the document.

(d) Final Report. The grantee shall revise the draft final report to reflect the COTR's comments. The revised document shall be delivered to the COTR on or before the end of the performance period. The grantee shall supply the COTR on computer disk copy in WordPerfect format, and four additional hard copies of the revised document.

3. Meetings and Briefings. The grantee shall plan for the initial planning meeting in Washington, DC with the COTR, as well as an interim briefing approximately midway through the project, a final briefing at the end of the project period, and a presentation at one or more national meetings, (e.g. Moving Kids Safety, Lifesavers or other).

4. During the effective performance period of cooperative agreements awarded under this announcement, the agreement shall be subject to the National Highway Traffic Safety Administration's General Provisions for Assistance Agreements.

Issued on: May 22, 1996.

James Hedlund,

Associate Administrator for Traffic Safety Programs.

[FR Doc. 96–13344 Filed 5–28–96; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Geriatrics and Gerontology, Notice of Meeting

The Department of Veterans Affairs gives notice that a meeting of the Geriatrics and Gerontology Advisory Committee (GGAC) will be held on June 11–12, 1996 by the Department of Veterans Affairs, in Room 1105 of VA TechWorld located at 801 I Street NW., Washington, DC. The purpose of the GGAC is to advise the Secretary of Veterans Affairs and the Under Secretary for Health relative to the care and treatment of the aging veterans, and to evaluate the Geriatric Research, Education, and Clinical Centers. The Committee will convene at 9:00 a.m. (EST) on June 11 and will adjourn at Noon (EST) on June 12.

The agenda for June 11 will begin with updates for the Office of Geriatrics and Extended Care. The first day's agenda will also cover an overview of activities in the offices of Research and Development; Geriatric and Grants Management Service; Patient Care Services, Academic Affiliations; and Extended Care Service.

On June 12 the Committee will plan the programs and activities for future GGAC projects as well as plan review of the GRECC (Geriatric Research, Education, and Clinical Centers).

The meeting will be open to the public up to the seating capacity which is about 20 persons. Those wishing to attend should contact Jacqueline Holmes, Program Assistant, Office of the Assistant Chief Medical Director for Geriatrics and Extended Care, phone (202) 565–7164, not later than 12 noon, EST June 7, 1996.

Dated: May 20, 1996.

By Direction of the Secretary.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 96–13361 Filed 5–28–96; 8:45 am]

BILLING CODE 8320–01–M

federal register

Wednesday
May 29, 1996

Part II

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 930

Tart Cherries Grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin; Secretary's Decision and Referendum Order on the Proposed Marketing Agreement and Order; Proposed Rule

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

[Docket No. AO–370–A5; FV93–930–2]

Tart Cherries Grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin; Secretary's Decision and Referendum Order on the Proposed Marketing Agreement and Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule and referendum order.

SUMMARY: This decision proposes the issuance of a marketing agreement and order for tart cherries grown in certain designated States and provides growers and processors the opportunity to vote in a referendum to determine if they favor the proposed order. For the purposes of this document, the term ''Cherries'' refers to all tart/sour cherry varieties grown in the proposed production area, which consists of the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin. The proposed order would authorize volume regulation, grade, size, and maturity regulations, and mandatory inspection. It would also authorize production, processing, and marketing research and promotion projects, including paid advertising. The order would be administered by an 18 member administrative board consisting of 17 growers and handlers and one public member, and would be financed by assessments on handlers of tart cherries grown in the production area. A primary objective of this program would be to improve producer returns by strengthening consumer demand through volume control and quality assurance mechanisms. Tart cherry producers and processors would vote in a referendum to determine if they favor issuance of the proposed marketing order.

DATES: The referendum shall be conducted from June 12, 1996, through July 10, 1996. The representative period for the purpose of the referendum herein ordered is July 1, 1995, through May 31, 1996.

FOR FURTHER INFORMATION CONTACT:

(1) R. Charles Martin or Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, D.C. 20090–6456; telephone: 202–720–5053, FAX: 202–720–5698.

(2) Robert Curry, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 1220 S.W. Third Avenue, room 369, Portland, Oregon 97204; telephone: 503–326–2725, FAX: 503–326–7440.

SUPPLEMENTARY INFORMATION:

Prior Documents in This Proceeding

Notice of Hearing, issued on November 30, 1993, and published in the Federal Register on November 30, December 23, 1993, and January 31, 1994 [58 FR 63108, 58 FR 68065, and 59 FR 4259, respectively]. The notice reopening the hearing was issued on December 5, 1994, and published in the Federal Register on December 8, 1994 [59 FR 63273]; Recommended Decision and Opportunity to File Written Exceptions to the Proposed Marketing Agreement and Order, issued November 20, 1995, and published in the Federal Register on November 29, 1995 (60 FR 61292). The reopening of the comment period to file written exceptions to the proposed marketing agreement and order was issued on December 27, 1995, and published in the Federal Register on January 2, 1996 (61 FR 21).

This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code, and is therefore excluded from the requirements of Executive Order 12866.

The marketing agreement and order proposed herein have been reviewed under Executive Order 12778, Civil Justice Reform. They are not intended to have retroactive effect. If adopted, the proposed agreement and order would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with the proposal.

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

Preliminary Statement

This proposed marketing agreement and order was formulated on the record of a public hearing held December 15–17, 1993, in Grand Rapids, Michigan; January 13, 1994, in Provo, Utah; February 15–17, 1994, in Portland, Oregon; January 12–13, 1995, in Portland, Oregon; and January 18–19, 1995, in Grand Rapids, Michigan. These multiple hearing sessions were held to consider a proposed marketing agreement and order regulating the handling of tart cherries grown in the proposed production area. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act, and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900). Approximately 40 witnesses, including tart cherry growers, handlers, and economists, testified in support of the order. Growers and handlers mainly from the States of Oregon and Washington testified in opposition to the proposed order and asked to have Oregon and Washington excluded from the proposed production area.

At the conclusion of the February 1994 hearing in Oregon, the deadline for filing post-hearing briefs was set at April 29, 1994. The deadline for filing post-hearing briefs was subsequently extended to May 31, 1994. However, based on a review of the hearing evidence and post-hearing briefs, USDA determined that the hearing should be reopened to clarify some provisions. USDA wanted to obtain additional information and clarification concerning: (1) The States that should be regulated under the order; (2) the economic impact of the proposed order on small and large businesses; (3) whether the expected program benefits would exceed costs, especially for growers, handlers and consumers; and (4) how certain provisions would be implemented under the proposed marketing order. The hearing was reopened and held January 12–13, 1995, in Portland, Oregon, and January 18–19, 1995 in Grand Rapids, Michigan. At the conclusion of the Michigan hearing, the deadline for filing post-hearing briefs was set at March 17, 1995. Ten briefs were filed following the first briefing period and seven briefs were filed following the second briefing period.

The proponents testified that severely fluctuating tart cherry prices are

inherently harmful to growers and consumers. It was contended that the proposed marketing order would improve grower returns by strengthening consumer demand through volume control and quality assurance mechanisms.

Upon the basis of evidence introduced at the hearing and the record thereof, the Administrator of the Agricultural Marketing Service (AMS) on November 29, 1995, filed with the Hearing Clerk, U. S. Department of Agriculture, a recommended decision with the opportunity for written exceptions by December 29, 1995. Subsequently, the USDA received three requests to provide more time to analyze the recommended decision and prepare and file written comments. Based on these requests the USDA reopened the comment period until January 16, 1996.

There were 29 exceptions received on the proposed order. Seven exceptions support the order as proposed, 4 support the order with minor modifications, 2 support the order with substantial modifications, 15 oppose the order, and 1 recommends only a minor technical clarification. Exceptions were received from: Richard DeRuiter, Michigan tart cherry processor; Senator Mark Hatfield, Congressional Representatives Peter DeFazio, Jim Bunn, Ron Wyden, Elizabeth Furse, and Wes Cooley, all from the State of Oregon; Mark L. Schrepel, Oregon tart cherry grower and processor; William R. Sherman, Burnette Foods, Inc., Michigan grower/processor; Randy Hageman, General Manager, Milne Fruit Products; Rick Jacobson, NORPAC Foods; Christian Schlect, President, Northwest Horticultural Council; Mark Riley, Michigan tart cherry grower; Terry Dorsing, President, Washington Tart Cherry Products, Inc.; Ray, Jim, Mildred and Mary Schultz, Michigan tart cherry growers; Philip Walker, Oregon tart cherry grower; Thomas A. Facer, Vice-President Agricultural Services, Comstock Michigan Fruit Division; Lee W. Schrepel, Chair, Oregon Tart Cherry Association; Bruce Andrews, Director, Oregon Department of Agriculture; the Department of Justice, Anti-Trust Division; Claude A. Rowley, Manager, Payson Fruit Growers; David Frank, Fruit Belt Canning, Co. Inc.; Norman R. Veliquette, President, Great Lakes Packing Company; Dean Kleckner, President, American Farm Bureau Federation; Forest P. Johnson, Michigan tart cherry grower; Ken Guise, Executive Vice-President, Chief Operating Officer, Knouse Foods Cooperative, Inc.; Kenneth T. Morrison, President, Cherry Growers, Inc.; David White, President, Chain O'Lakes Fruit Growers Association; Randy G. Harmson, General Manager, Michigan Agricultural Cooperative Marketing Association, Inc.; Jack Laurie, President, Michigan Farm Bureau; Teryl R. Roper, Associate Professor and Extension Fruit Specialist, University of Wisconsin; Gene A. Veliquette, Michigan tart cherry grower, President, Shoreline Fruit, Inc.; Ian A. MacKay, CPA, American Institute of Certified Public Accountants; and the Cherry Marketing Institute (CMI), the proponent group.

The issues raised in the exceptions are discussed in the *Findings and Conclusions.*

Small Business Consideration and Paperwork Reduction Act: In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), AMS has considered the economic impact of this action on small entities. The record indicates that there are approximately 1,600 growers of tart cherries and 75 handlers who process cherries in the production area proposed to be regulated. Small agricultural service firms have been defined by the Small Business Administration (SBA) (13 CFR 121.601) as those whose annual receipts are less than $5,000,000, and small agricultural producers as those having annual receipts of less than $500,000. The majority of the tart cherry handlers and producers may be classified as small entities.

For practical purposes, there is no fresh market for tart cherries. Processors dry, freeze, can, juice, or puree pitted tart cherries. Market use averages are: 56 percent of the product becomes industrial grade frozen cherries; 16 percent goes into consumer-size cans of pie filling; 8 percent is used for commercial pie filling; 10 percent becomes juice concentrate; 2 percent is dried; and, 8 percent goes into water packs.

Since 1971, there has been a marked transformation in the processing industry's structure. Currently, 75 percent of the crop is processed by farmer-owned cooperatives or grower-owned processing facilities; whereas in 1971, a substantial volume was processed by independent handlers. Processors, through their sales agents, market in all U.S. markets and export to Europe and Asia. There are no discrete regional markets where cherries from a particular district could have a particular advantage, beyond nominal differences in transportation costs, which can often be overcome by price discounting.

The record evidence shows that economic adversity has caused more than 21 percent of Michigan's growers to withdraw from tart cherry farming. There were 1,183 Michigan commercial growers in 1986, compared to 933 in 1992. In 1992, Michigan growers had an average production of 238,000 pounds with 19 percent of those growers averaging 800,000 pounds, accounting for 66 percent of the total Michigan production. In States other than Michigan, there has also been a general decline in the number of commercial growers since 1986. There are fewer growers in other States besides Michigan, but the number of bearing acres has increased from 45,000 acres in 1986, to more than 50,000 acres in 1990.

Record evidence also indicates that the demand for red tart cherries is inelastic at high and low levels of production, and relatively elastic in the middle range. At the extremes, during times of very low and very high production, different factors become operational. In very short crop years, such as 1991, there is limited but sufficient exclusive demand for cherries that can cause processor prices to double and grower prices to triple. In the event of large crops, there seems to be no price low enough to expand sales beyond about 275 million pounds of raw fruit in a single year.

Since 1982, annual sales have averaged 230 million pounds. Under the proposed order, total returns to growers could be increased by restricting supplies of red tart cherries available for sale by handlers during large crop years. Also, production characteristics of the tart cherry industry provide an opportunity to increase growers' total earnings by converting the excess production of large crop years into storable products that could constitute reserve pools. These pools would be liquidated in a year when the available supplies are short.

One of the main concerns addressed in this proposed order is the short term annual variation in supply which is attributable to climatic factors that neither growers nor processors can control, and which leads to chaotic marketing conditions. Such climatic factors can result in highly unpredictable annual crop sizes, causing gluts and shortages of tart cherries. When gluts occur, large carryin inventories can decrease processor and grower prices, regardless of the anticipated size of the oncoming year's crop. Many sales are consummated with large buyers well before the current crop year's supply and demand situation is clear (based on what can best be described as ''Anticipated Supply'', i.e., the sum of the carryin inventory and USDA crop forecast, available usually

late in June, weeks before the actual crop harvest.)

These large, unrestricted carryin inventories and crop estimates can play a dominant role in setting the tone of the market in a given year. The proposed order is intended to lessen the impact of these inventories and estimates by establishing an ''optimum supply,'' thereby reducing price swings to growers and buyers, and ultimately resulting in a stabilization and enhancement of the market.

The order would impose some reporting and record keeping requirements on handlers. Handler testimony indicated that the expected burden that would be imposed with respect to these requirements would be negligible since most of the information that would be reported to the Board is already compiled by handlers for other uses and is readily available. Reporting and record keeping requirements issued under comparable marketing order programs impose an average annual burden on each regulated handler of about one hour. It is reasonable to expect that a comparable burden would be imposed under this proposed marketing order on the estimated 75 handlers of tart cherries. With respect to growers, they testified at the hearing that information required to be submitted to the Board for grower diversion is already collected and available from growers.

The Act requires that, prior to the issuance of a marketing order for tart cherries, a referendum be conducted among effected producers and processors to determine if they favor issuance of the order. The ballot material that would be used in conducting the referendum would be submitted to and approved by OMB before it is used. It is estimated that it would take an average of 20 minutes for each of the approximately 1,600 tart cherry growers and 75 tart cherry processors to complete the ballots. Additionally, it has been estimated that it would take approximately ten minutes for each handler to read and sign the marketing agreement.

In compliance with Office of Management and Budget (OMB) regulations (5 CFR Part 1320), which implement the Paperwork Reduction Act of 1995 (Pub. L. 104–13), the information collection and record keeping requirements contained in the proposed rule specific to the ballot material to be used in conducting the referendum have been approved by OMB on a temporary basis and have been assigned OMB number 0581–0177. An expiration date of September 1996 has been established for this temporary OMB approval. A complete package of information and collection requirements contained in this proposed rule will be submitted, for approval, to OMB at a later date. Those requirements would not become effective prior to OMB review. Interested persons would be provided 60 days to comment on : (1) whether the proposed collection of information is necessary for the functioning of the proposed tart cherry marketing order program and USDA'S oversight of that program; (2) the accuracy of the collection burden estimate and the validity of methodology and assumptions used in estimating the burden on respondents; (3) ways to enhance the quality, utility, and clarity of the information requested; and (4) ways to minimize the burden, including use of automated or electronic technologies. Any record keeping and reporting requirements imposed would be evaluated against the potential benefits to be derived and it is expected that any added burden resulting from increased reporting and record keeping would not be significant when compared to those anticipated benefits derived from administration of the order.

The purpose of the RFA is to fit regulatory and informational requirements to the size and scale of the business entities in a manner that is consistent with the objectives of the rule and applicable statutes. The proposed marketing order provisions have been carefully reviewed and every effort has been made to eliminate any unnecessary costs or requirements. As discussed in the RFA, Congress' intent, among other objectives, was to direct agencies to identify the need for any ''special accommodation'' (e.g., exemption or relaxation) on regulated small entities (i.e., handlers) because, in the past, some Federal regulatory and reporting requirements imposed unnecessary and disproportionately burdensome demands on small businesses. After reviewing the record AMS determined that direct or indirect costs imposed under the marketing order regulation would not be proportionately greater on small handlers than on large handlers, or conversely, that any projected order benefits would not be proportionately smaller for small handlers than for large handlers.

The record evidence indicates that the proposed order may impose some additional costs and requirements on handlers, but those costs are insignificant and are directly proportional to the size of the regulated handlers. The evidence also indicates that, given the severe economic conditions and unstable markets facing the majority of the industry, the benefits to small (as well as large) handlers are likely to be greater than would accrue under the alternatives to the order proposed herein, namely no marketing order, or an order without the proposed combination of volume controls and other order authorities.

The record evidence indicates that the proposed order would be instrumental in providing expanding markets and sales, and raising and stabilizing prices of tart cherries, primarily for the benefit of producers. The evidence also indicates that handlers would benefit as well. While the level of such benefits to handlers is difficult to quantify, it is also clear the provisions of the proposed order are designed to benefit small entities. Small handlers and producers are more likely to be minimally capitalized than large entities, and are less likely to survive without the stability the proposed order would provide.

Accordingly, based on the information discussed above, AMS has determined that the issuance of this proposed rule and referendum order would not have a significant economic impact on a substantial number on small entities.

The material issues presented on the record are:

1. Whether the handling of tart cherries grown in the proposed production area is in the current of interstate or foreign commerce, or directly burdens, obstructs, or affects such commerce;

2. Whether the economic and marketing conditions are such that they justify a need for a Federal marketing agreement and order which will tend to effectuate the declared policy of the Act;

3. What the definition of the production area and the commodity to be covered by the marketing order should be;

4. What the identity of the persons and the marketing transactions to be regulated should be; and

5. What the specific terms and provisions of the order should be including:

(a) The definition of terms used therein which are necessary and incidental to attain the declared policy and objectives of the order and the Act;

(b) The establishment, composition, maintenance, procedures, powers and duties of a committee that shall be the local administrative agency for assisting the Secretary in the administration of the marketing order;

(c) The authority to incur expenses and the procedure to levy assessments on handlers to obtain revenue for paying such expenses;

(d) The authority to establish or provide for the establishment of production, processing and marketing research and marketing development projects, including paid advertising;

(e) The authority to establish regulations that would require minimum quality and inspection requirements applicable to cherries to be handled;

(f) The authority to establish regulations that would provide for a volume control program;

(g) The establishment of requirements for handler reporting and record keeping;

(h) The requirement of compliance with all provisions of the order and with any regulations issued under it; and

(i) Additional terms and conditions as set forth in section 930.81 through section 930.91 of the Notice of Hearing published in the Federal Register of November 30, 1993, which are common to all marketing agreements and orders, and other terms and conditions published at section 930.92 through section 930.94 that are common to marketing agreements only.

Findings and Conclusions and Rulings on Exceptions

The material issues, findings and conclusions, rulings, and general findings and determinations included in the Recommended Decision set forth in the November 29, 1995, issue of the Federal Register [60 FR 61292] are hereby approved and adopted subject to the following additions and modifications:

Based upon the exceptions filed by Department of Justice, Anti-trust Division (DOJ), and Mr. Lee Schrepel, the findings and conclusions in material issue number 2 of the Recommended Decision concerning the question of whether economic and marketing conditions are such that they justify a need for a Federal marketing agreement and order which would tend to effectuate the declared policy of the Act are amended by adding the following eight paragraphs after the last paragraph (60 FR 61297) to read as follows:

In its exception to the Recommended Decision, DOJ urged USDA to reject the proponents' request for a marketing order for tart cherries. DOJ contended that the proposed marketing order is not by any means a ''national solution'' for any existing problems in the tart cherry industry, and its implementation would harm the public. DOJ asserts there is no reliable evidence to show that the proposed marketing order would produce supply or price stability and it should not be issued. In addition, DOJ cited two areas of disagreement with the Recommended Decision. DOJ stated that: (1) The tart cherry industry does not require regulation based on the evidence presented at the hearing; and (2) the proposed marketing order would not stabilize tart cherry prices or supplies.

In regard to its first concern, DOJ stated that growers and handlers who prefer to protect against fluctuating prices may do so by using any one of the numerous market mechanisms that already exist for that purpose. DOJ stated that these mechanisms are far superior to government regulation for reducing risk because they help producers deal with fluctuating supplies without artificially inflating prices. As previously stated, the market mechanisms suggested by DOJ are currently available to the industry. The marketing order is another tool for the industry to use in stabilizing supplies. Marketing orders do not exist to the exclusion of other market mechanisms. However, as the record shows, those mechanisms have not been effective in dealing with the production variability problems faced by the industry.

In regard to its second concern, DOJ contended that the finding that the proposed marketing order would contribute to orderly marketing conditions and, therefore, effectuate the declared policy of the Act, is without support in the record. The agency stated that USDA relied heavily on the testimony of Dr. Forker, who testified on price stability. It is DOJ's position that Dr. Forker's conclusions on price stability are wrong and that he improperly manipulated the data to reach a desired result. In addition, in his exception, Mr. Lee Schrepel also objected to USDA relying on the evidence presented by Dr. Forker.

As previously stated, USDA believes that the proponents have demonstrated a need for a tart cherry marketing order. The record supports the argument that the industry has suffered since the termination of the prior order. A proposed order was developed to correct the situation with the goal of increasing grower returns and bringing supplies in line with demand. Authority for volume control regulation which would only be used when the market warrants it, is included in the order. Record evidence supports the need for the marketing order. Evidence presented at the hearing did not offer a basis for discrediting Dr. Forker. Dr. Forker is a recognized expert in his field and there was no persuasive evidence presented at the hearing which would refute his testimony. In addition, USDA did not rely solely on Dr. Forker. It considered all the testimony and analyzed the record in its entirety in arriving at its findings and conclusions.

In Mr. Schrepel's exception, he stated that USDA has discounted any and all arguments that reporting and record keeping requirements will be significantly greater for Oregon producers and processors, and that their subsequent costs and benefits of operating under the marketing order are proportionately and significantly different than expected to be experienced in larger producing districts. Mr. Schrepel also contends that smaller producing States (i.e., Pennsylvania and Oregon) have not been producing the reports that will be needed under the marketing order, and therefore it will be an added burden on small handlers to submit such reports to the Board under the marketing order.

Handlers from the smaller producing areas testified that reporting to the Board would not be unduly burdensome. They normally keep such records in conducting their business operations and therefore could easily compile the information for use under the marketing order. In addition, handlers in districts which are not volume regulated (e.g., the smaller producing states) would have fewer reporting and record keeping requirements than those handlers in regulated districts since they would not be maintaining reserve pools and reporting on storage and disposition. Such requirements would stay reduced as long as that district's production remains below the trigger amount for volume regulation.

The record evidence also supports the premise that small growers and handlers would have the most to benefit from implementation of the marketing order because such growers and handlers have been going out of business over most of the last 8 years due to low cherry prices. Since the order would help increase grower returns, this should increase the buffer between success and failure.

Based on the above discussion, the exceptions by DOJ and Mr. Schrepel are denied.

Based upon the exceptions filed by Mr. Dorsing, Mr. Hageman, Mr. Mark Schrepel, and Mr. Lee Schrepel, the findings and conclusions in material issue number 3 of the Recommended Decision concerning the definition of the production area and the commodity to be covered are amended by adding the following six paragraphs after the last paragraph (60 FR 61299) to read as follows:

The exception filed by Mr. Dorsing stated that the States of Washington and Oregon should not be included in the proposed marketing order. Mr. Dorsing

indicated that 1995 production figures for the State of Washington show that over 90 percent of the tart cherry production went to juice concentrate. He contended that the majority of producers in Washington and Oregon produce their cherries for use in juice concentrate rather than canned or frozen products. Mr. Dorsing also stated that the juice characteristics of the Northwest tart cherry are unique in character and juice companies are finding that the characteristics of Northwest juice concentrate meet their required specifications. He also stated that Northwest production is not adding to the ''glut'' in the packed product industry, since the Northwest is primarily a juice concentrate industry. Mr. Dorsing stated further that the Northwest tart cherry industry pays for its own storage, develops its own markets and does its own promotion and advertising. Thus, there is nothing to be gained by the Northwest being included in the tart cherry marketing order. In addition, Mr. Dorsing requested that each State be allowed to vote separately for inclusion in the marketing order.

The exception filed by Mr. Hageman opposed the proposed marketing order. He stated that the order would unnaturally inflate grower prices to nearly double the current level. He also asked that Washington and Oregon be excluded from coverage under the proposed marketing order. The reason given was that Washington and Oregon account for 6.5 percent of the 1990–1994 total U.S. production and that, during the same time period, less than 20 percent of the Washington and Oregon production entered the five plus one canned and frozen product line. This would indicate that less than 1.5 percent of the nation's supply of five plus one stock was produced in the Northwest. It was argued by Mr. Hageman that the Northwest industry is dependent on the juice concentrate and puree market which does not compete with the five plus one market. Mr. Hageman also requested a State-by-State referendum.

The exception filed by Mr. Mark Schrepel stated that any proposed order should not include the State of Oregon, and that the Act appears not to include cherries for canning or freezing if they originated in Oregon or Washington. Mr. Schrepel believes that no Oregon grower or processor supports the order. He also requested a State-by-State referendum.

The exception filed by Mr. Lee Schrepel indicated that one of the reasons the proposed order should exclude Washington and Oregon is because the Northwest has distinctive production and marketing characteristics. Further, it is Mr. Schrepel's contention that successful marketing orders depend on the support of affected producers and handlers. According to him, the unanimous opposition of Oregon producers and handlers and near unanimous opposition by Washington producers and handlers demonstrate the lack of this essential element. Mr. Schrepel also requested voting by a State-by-State referendum.

As previously stated, to exclude any portion of the proposed production area would tend to defeat the purpose of the proposed order and could depress prices of the regulated cherries. Contrary to Mr. Schrepel's suggestion, Oregon and Washington cherries for freezing or canning are not excluded from coverage under the Act. Record evidence supports the position that the oversupply situation in the U.S. is a national problem. In addition, the juice concentrate market in areas such as Oregon and Washington can be impacted by production in other areas. Therefore, the entire industry needs to work together to alleviate the problem. Also, the record evidence supports the argument that the Northwest has the greatest potential to expand tart cherry producing acreage, thereby further benefiting from the proposed order in the event of increased production. Therefore, the Northwest should be included in the production area under the proposed order and the requests to exclude Oregon and Washington from the proposed production area are denied.

In regard to the requests to conduct a State-by-State referendum to determine who should be covered under the proposed tart cherry order, such requests are denied. The Act requires that all producers and processors in the proposed production area should vote in a referendum on the promulgation of an order. There is no authority for State by State voting.

Based upon the exception filed by CMI, the findings and conclusions in material issue number 5(a) of the Recommended Decision concerning the commodity to be covered are amended by adding the following paragraph after the sixth paragraph (60 FR 61300) to read as follows:

CMI stated that the definition of cherries should be modified to correct the misspelling of a species name and to include the words ''or hybrids of'' to the cherry definition. Adding these words would correct and clarify the definition. Therefore, CMI's exception is adopted herein.

Based upon the exceptions filed by CMI, Mr. Morrison, and Mr. Facer, the findings and conclusions in material issue number 5(b) of the Recommended Decision concerning the establishment, composition, maintenance, procedures, powers and duties of the Board are amended by adding the following eight paragraphs after the 73rd paragraph in material issue number 5(b) (60 FR 61307) to read as follows:

In its exception, it was CMI's contention that the order should be modified to require that, in order for the Board to adopt preliminary or final free and restricted percentages for any crop year, at least 11 Board members from districts that would be subject to volume regulation vote in the affirmative on any such action. CMI also wanted this requirement to apply if there are modifications to the marketing policy under section 930.50(f). In addition, CMI argued that since the Recommended Decision contains a Board voting requirement of two-thirds of the entire Board rather than a majority of the Board, as originally proposed, this modification is necessary because it is important that a clear majority of those who are going to be regulated agree with the determination before volume regulation can go into effect. It was also CMI's concern that the unregulated districts could somehow influence the decision to impose volume regulation when such regulation is a possibility under the optimum supply formula. Eleven votes out of 13 is approximately 85 percent of the votes from the volume regulated districts. CMI suggested that this voting requirement apply to recommendations made under sections 930.50(b), 930.50(d) and 930.50(f).

In his exception, Mr. Morrison argued that Board members from nonregulated districts should not be allowed to vote on matters concerning regulation of the crop or the timing on the release of the primary pool.

Throughout this formal rulemaking process, it has been expressed that the oversupply situation in the U.S. is a national problem, and that the entire industry should work together to alleviate the problem by participating in the proposed marketing order. Although USDA understands CMI's concerns, they are overstated, since the proposed order provisions concerning the marketing policy and issuance of volume regulations contain a number of procedural steps which, in many respects, make them self-executing. Also, it is the Secretary, and not the Board, who issues the volume regulations and sets the final free and restricted percentages. Therefore, as

previously discussed in the Recommended Decision, all actions by the Board, including volume regulation issues, should continue to require a two-thirds affirmative vote of the entire Board to pass. Therefore, CMI's and Mr. Morrison's exceptions are denied.

Mr. Facer requested that only regulated districts be allowed to vote on the release of the primary reserve. This is not necessary nor is it supported by the record. As previously stated the situation that exists in the industry is a national problem, therefore, all members that represent the tart cherry industry in the Board should vote in all matters. The reserve would be released by the Board when certain conditions exist. For example, proposed section 930.50(g) would release, to all handlers, up to an additional 10 percent (above the optimum supply level) of the average of the prior three years sales, if such inventory is available in the primary inventory reserve. Therefore, Mr. Facer's exception is denied.

Based upon the exception filed by CMI and Mr. Lee Schrepel, the findings and conclusions in material issue number 5(b) of the Recommended Decision concerning the establishment, composition, maintenance, procedures, powers and duties of the Board are amended by adding the following three paragraphs after the fourth paragraph (60 FR 61301) to read as follows:

Questions and recommendations regarding order language concerning the Board membership limitation on sales constituencies in proposed § 930.20(f) were raised by both Mr. Lee Schrepel and CMI. It was Mr. Schrepel's concern that a single sales constituency could potentially gain control of the Board and he asked that not more than 30 percent of the Board be allowed to be affiliated (even remotely) in any manner with a single sales constituency. However, a 30 percent limitation is not adequately supported by the record. CMI's concern was that if a grower who sells cherries through a number of different processors is nominated for membership to the Board in a district, all of those processors but one would then be prevented from having grower representation on the Board. According to CMI, this would be true even if the grower sold a very small amount of cherries to a particular handler on a one-time basis. As proposed by CMI, this concern can be addressed by considering the sales constituency to which the grower delivers the majority of his or her cherries to be the grower's sales constituency for nomination and representation purposes.

Concerns regarding sales constituencies and Board representation have been raised from the beginning of this rulemaking process. That is one of the reasons that USDA decided to impose a two-thirds voting requirement instead of a simple majority, and added a provision requiring the consensus of at least two-thirds of the entire Board to pass any action by the Board (see page 61306 of the Recommended Decision). The record is clear that the major reason § 930.20(f) generated so much discussion was the perception among some of the participants at the hearing sessions that the Board could become controlled by a single constituency, and the interests of those growers and handlers not associated with such constituency would not receive proper attention or could be ignored altogether. Additions and changes to § 930.20(f) were suggested by Mr. Lee Schrepel and CMI, and although these have merit, they are not dispositive of the main issue, *i.e.*, control of the Board by a single interest group.

When the question of adding further restrictions to § 930.20(f) arose early in the rulemaking proceeding, CMI indicated that it was unlikely that any single sales constituency could gain control of the Board, and that theoretical projections of such possibilities are not realistic. Furthermore, it was pointed out by CMI that the Secretary could effectively enforce the limitations contemplated by § 930.20(f) without modifying its language because the ultimate decision of whom to appoint to the Board lies with the Secretary. Therefore, in light of such requirements, and clear record evidence that the purpose of § 930.20(f) is to achieve a fair and balanced Board representation, USDA will not add additional limitations to § 930.20(f), but, instead, will add language to more clearly express the purpose of that section. In addition, the Secretary could issue regulations to implement the section, if necessary.

Based upon the exception filed by Mr. Lee Schrepel, the findings and conclusions in material issue number 5(b) of the Recommended Decision concerning the establishment, composition, maintenance, procedures, powers and duties of the Board are amended by adding the following two paragraphs after the 30th paragraph (60 FR 61303) to read as follows:

In Mr. Lee Schrepel's exception, he stated that the testimony by the proponent made it clear that its intent is to maintain control of the Board's public member. It was Mr. Schrepel's view that the proposed marketing order still has no provisions to prevent the Board from appointing Board members. Mr. Schrepel argued that the public member should be appointed at the sole discretion of the Secretary, without the advice or consent of the Board.

The Secretary has discretion in appointing members and alternate members to the Board, including the public member. The appointments can be made from Board nominees or other qualified individuals. In the case of the public member and such member's alternate, the Secretary is relying on the Board to nominate and elect eligible individuals. As was previously stated in the Recommended Decision, such individuals would then be subject to appointment by the Secretary. This procedure is similar to the selection of public members and alternates on other marketing order committees. Therefore, § 930.24 is modified to clarify the selection and appointment procedure.

Based upon the exceptions filed by Mr. Facer, Mr. Guise, Mr. Lee Schrepel and CMI, the findings and conclusions in material issue number 5(b) of the Recommended Decision concerning the establishment, composition, maintenance, procedures, powers and duties of the Board are amended by adding the following six paragraphs after the 27th paragraph (60 FR 61303) to read as follows:

The exception filed by Mr. Facer stated that the responsibilities and authority of the Board relating to its ability to assess the industry for research, development, promotion and advertising are too broadly described. Also, the Board composition includes too much representation from the nonregulated districts.

USDA relies on the marketing order committees and boards to recommend rules and regulations concerning their particular industries. Marketing order committees and boards are comprised of industry grower and handler members and are experienced in the industry's operations and should be capable of evaluating the industry's needs. It is for the Secretary to determine whether rules recommended by committees or boards should be issued. Board composition was recommended by the proponent group to provide fair and equitable representation to the entire industry based on the relative levels of production of cherries in the various producing districts. It was the proponents' position that all States covered under the order should be represented on the Board in order to keep them informed of the Board's activities. In addition, all States covered under the marketing order have the potential to become regulated States in the future. Mr. Facer's exception is therefore denied.

The exceptions filed by Mr. Ken Guise, Mr. Lee Schrepel and CMI requested that the proposed order be modified to correct the handler nomination petition process for District 6. Currently, only one handler exists in District 6, which covers the State of Pennsylvania (Knouse Foods Cooperative, Inc.). The Recommended Decision provided that for a handler to be nominated for election to the Board, the handler would have to obtain the signature of at least one handler, other than the nominee, from the nominee's district who is eligible to vote in the referendum. Under this procedure, Mr. Guise and CMI point out that since there is no other handler in District 6 except Knouse Foods, such handler would be denied the opportunity to be nominated for election to the Board and District 6 would never be represented by a handler representative unless another handler were to start operating in that District.

CMI stated that this result is wholly unintended by the proponent and requests that the USDA modify section 930.23(b)(2) to require that when nominating handler members to the Board, the petition form be signed by a handler other than the nominee shall not apply in any District where less than two handlers are eligible to vote.

Mr. Schrepel requested that the same procedures developed for Pennsylvania also apply to Washington and Oregon, since they have very few handlers. The modification proposed by the proponents would also address Mr. Lee Schrepel's concerns since the modification would apply to any District that has less than two handlers.

Mr. Guise's, Mr. Lee Schrepel's and CMI's exception on this issue is therefore adopted in this Secretary's Decision and appropriate changes are made in section 930.23(b)(2).

Based upon the exception filed by Mr. Lee Schrepel, the findings and conclusions in material issue number 5(b) of the Recommended Decision concerning the establishment, composition, maintenance, procedures, powers and duties of the Board are amended by adding the following paragraph after the 33rd paragraph (60 FR 61304) to read as follows:

Mr. Lee Schrepel requested that the procedures for electing alternate members to the Board be more clearly detailed in the order. The proposed order provides under section 930.23 that each member and alternate member would be nominated and elected separately. The Board has the authority to recommend rules and regulations to effectuate such authority and specify more detailed procedures in regard to the nomination process. Therefore, Mr. Schrepel's exception is denied.

Based upon the exception filed by Mr. Lee Schrepel, the findings and conclusions in material issue number 5(b) of the Recommended Decision concerning the establishment, composition, maintenance, procedures, powers and duties of the Board are amended by adding the following paragraph after the 35th paragraph (60 FR 61304) to read as follows:

In his exception, Mr. Schrepel stated that USDA has submitted contradictatory language regarding the nomination process. He claimed that USDA appears to be advancing it's own interests of fast tracking the proposal, if promulgated, by conducting nomination meetings in the districts and allowing growers and handlers to vote for members and alternate members at these meetings. USDA is not fast tracking such a proposal. If the Secretary determines that conducting nomination meetings and voting at these meetings would be the best method of completing the process in a timely manner, then such method should be used. Should the proposed order receive the required level of grower and processor support in the referendum, USDA intends to conduct meetings to nominate and elect the initial Board members and alternate members using petition forms and election ballots as provided by § 930.23. Therefore, Mr. Schrepel's exception is denied.

In Mr. Lee Schrepel's exception, he indicated that there was an error in proposed section 930.22 regarding Board members' terms of office. The current proposed order specifies that one-third of such initial members and alternates shall serve only one fiscal year, one-third of such members and alternates shall serve only two fiscal years and one-third of such members and alternate members shall serve two fiscal years. The latter reference to two fiscal years should be changed to three fiscal years to be consistent with the record evidence. Mr. Schrepel is correct and his exception is adopted herein by revising the order language.

Based upon the exceptions filed by Mr. MacKay and Mr. Lee Schrepel, the findings and conclusions in material issue number 5(b) of the Recommended Decision concerning the establishment, composition, maintenance, procedures, powers and duties of the Board are amended by adding the following three paragraphs after the 51st paragraph (60 FR 61305) to read as follows:

In Mr. Lee Schrepel's exception, he stated that in section 930.31(h), the reference to disbursement of all funds, including the payment of storage to handlers, should not be included in that particular section. USDA does not intend for the Board to utilize assessments to pay for the storage of any cherries or cherry products. The proponent's proposal to collect assessments from handlers for storage of primary inventory reserve cherries was removed by the USDA in the Recommended Decision. Therefore, such language referencing storage assessments should not be contained in the proposed order. This has been an oversight and such language shall be removed. Therefore, Mr. Schrepel's exception is adopted.

The exception filed by Mr. MacKay requested that the proposed marketing order be modified under the area of duties of the Board to include that the Board's financial statements be prepared in accordance with generally accepted accounting principles and to be audited by a certified public accountant. Currently, the proposed order provides that the Board cause its books to be audited by a certified public accountant. Mr. MacKay requested USDA to clarify in the final order whether the term ''books'' refers to the Board's financial statements and clarify the basis for the financial statement presentation (generally accepted accounting principles).

The term ''books'' does refer to the Board's financial statements. The modification to change the term ''books'' to ''financial statements'' is incorporated in this document. However, the modification to clarify the basis for the financial statement presentation (generally accepted accounting principles) is denied. The Fruit and Vegetable Division's Marketing Agreement and Order Operation Manual specifies the types of financial statement presentations to be used in committee audits. This manual is used by all marketing order committees and is a policy document issued by USDA. It is not feasible to place such language in the order, since in the future, USDA could change the basis for financial statement presentation for all marketing order committees to use. If such a change occurred, the marketing order would have to be amended, which can be a costly process. Therefore, such a modification is denied. Thus, Mr. MacKay's exception is partially denied.

Based upon the exception filed by Mr. Lee Schrepel, the findings and conclusions in material issue number 5(c) of the Recommended Decision concerning the authority to incur expenses and the procedure to levy assessments on handlers to obtain revenue for paying such expenses are

amended by adding the following paragraph after the seventh paragraph (60 FR 61308) to read as follows:

In his exception, Mr. Lee Schrepel contended that a built-in limit on the authority to level assessments should be established. Mr. Schrepel proposed that this authority be capped at no more than 5 percent of the average field price for the season. He suggested that this limit could be adjustable through modification at continuance referendum time or more frequently. Under the order, the tart cherry industry assessment rate would be dependent on meeting administrative and other expenses and would be necessarily influenced by the volume of the crop. The assessment rate would be established through informal rulemaking which would require a Board recommendation and an opportunity for public comment. Mr. Schrepel did not specify why 5 percent of the average field price for the season would be a reasonable limit, and record evidence does not contain support for such a cap. However, if the marketing order is implemented, the Board could adopt such a cap as a guideline when recommending the assessment rate. Therefore, Mr. Schrepel's exception is denied.

Based upon the exception filed by Mr. Lee Schrepel, the findings and conclusions in material issue number 5(c) of the Recommended Decision concerning the authority to incur expenses and the procedure to levy assessments on handlers to obtain revenue for paying such expenses are amended by adding the following two paragraphs after the eighth paragraph (60 FR 61308) to read as follows:

In Mr. Lee Schrepel's exception, he stated that it is not equitable to exempt from assessment those cherries which are diverted in accordance with proposed sections 930.58 and 930.59.

Pursuant to section 930.62, cherries would be exempt from assessments if they are diverted according to section 930.59. Product diverted by handlers would not be entering normal market channels, therefore assessments should not be levied. Mr. Schrepel does not point to any evidence in the record to support his exception concerning assessment of diverted cherries. Conversely, record testimony amply supported exempting diverted cherries, since they are not entering normal market channels. Therefore, Mr. Schrepel's exception is denied.

Based upon the exceptions filed by Mr. Mark Schrepel and Mr. Morrison, the findings and conclusions in material issue number 5(c) of the Recommended Decision concerning the authority to incur expenses and the procedure to levy assessments on handlers to obtain revenue for paying such expenses are amended by adding the following three paragraphs after the eighth paragraph (60 FR 61308) to read as follows:

In Mr. Mark Schrepel's exception, he stated that he is concerned about provisions within the proposal that would add expense and hardship to growers. Mr. Schrepel contended that handlers should not be assessed under this marketing order program if handlers are not in a regulated district. He further stated that handlers in unregulated districts should not be assessed for any expenses accrued by the Board since handlers who divert are not assessed on diverted product.

As supported by record evidence, all growers and handlers in the States proposed to be covered under the marketing order, including those not subject to volume regulation, would enjoy the benefits provided by the marketing order (i.e., improved grower returns and increased consumption of tart cherries). Therefore, all handlers should be assessed for the administrative costs of the order. Also, handlers who enter cherries into normal market channels who choose to divert some of their cherries would still be assessed for the cherries that enter normal market channels. Therefore, Mr. Schrepel's exception is denied.

In Mr. Morrison's exception, he stated that further effort needs to be made to make sure that growers understand that the cost of holding and processing the reserve can be passed on to growers by their handlers. It is true that some handlers may pass such costs on to their growers, either directly or indirectly. Under the former order, which was based on a grower pool, growers were directly assessed storage and processing costs for reserve pool cherries. However, this proposed order is based on a handler pool. Therefore, it does not contain authority to assess growers for such costs. Because of this difference, Mr. Morrison's recommendation to somehow emphasize that storing and processing costs can be passed on to growers is denied.

Based upon the exception filed by Mr. Lee Schrepel, the findings and conclusions in material issue number 5(d) of the Recommended Decision concerning the authority to provide for the establishment of production, processing and marketing research and market development projects, including paid advertising, are amended by adding the following paragraph after the sixth paragraph (60 FR 61309) to read as follows:

Mr. Lee Schrepel questioned whether the handlers in States that have State marketing order programs should be exempted from paying assessments on research and marketing development to the Federal marketing order. Mr. Schrepel stated that there should only be one assessment, a Federal or state assessment, not both. There is no current proposal to exempt handlers from paying these assessments if they are in a State that has a State marketing order program. The record evidence did indicate that it would be highly unlikely that the Board would initiate recommendations for research, development, or promotion related assessments while a high percentage of tart cherry growers are financing such activities through other organizations. The record evidence does not contain support for Mr. Schrepel's proposal, therefore, his exception is denied.

Based upon the exceptions filed by Mr. Frank, Mr. Morrison, Mr. Facer, and Mr. Lee Schrepel, the findings and conclusions in material issue number 5(e) of the Recommended Decision concerning the authority to establish regulations that would require minimum quality and inspection requirements are amended by adding the following six paragraphs after the seventh paragraph (60 FR 61310) to read as follows:

In Mr. Frank's exception, he stated that sections 930.44 (a) and (b) are ambiguous and do not spell out what form of inspection would be required (raw product or finished product). He also stated that any inspection of free tonnage cherries should be a decision by a handler and growers that deliver cherries to such handler. This should not be a decision by an administrative body such as the Board. Local weather conditions could affect a small geographic area, thereby causing damage in a localized area rather than the entire production area under the proposed order. This also interferes with a handler's decision on what quality such handler feels could be marketed. Mr. Frank suggested that the above mentioned sections be deleted from the proposed marketing order.

Mr. Morrison also filed an exception that stated that only the quality of cherries placed in the reserve should be regulated. This would be the same as the prior order. Also, Mr. Morrison stated that the Board should not regulate the raw product grade.

In Mr. Facer's exception, he stated that although the order requires inspection of primary reserve tart cherries, there is no official quality standards for some products. Therefore,

such inspection will be impractical, irrelevant and of no economic benefit.

In Mr. Lee Schrepel's exception, he stated that the Board should not be empowered to require the inspection of all cherries entering the stream of commerce.

As previously stated, the proponents testified that as technology increases, the Board should have the authority to adopt quality standards for cherries, especially those concerning pit count. If quality standards are recommended by the Board and implemented by the Secretary, no handler would be allowed to process cherries into manufactured products or sell manufactured products in the current of commerce unless the cherries used in such products meet the applicable requirements. Before recommending quality regulation, the record evidence shows that it was the intent of the proponents that the Board would obtain an industry consensus before making a recommendation to USDA on this issue. Any such regulation would be issued by the Secretary through informal rulemaking which would allow an opportunity for comment.

Without additional Board action, only inventory reserve cherries would be inspected, prior to placing them in the reserve. It is imperative to maintain the quality of the reserve so that only good quality cherries are released to handlers to be sold in the marketplace. Therefore, based on the above discussion on the record evidence, Mr. Frank's, Mr. Morrison's, Mr. Facer's, and Mr. Lee Schrepel's exceptions are denied.

Based upon the exception filed by Mr. Lee Schrepel, the findings and conclusions in material issue number 5(e) of the Recommended Decision concerning the authority to establish regulations that would require minimum quality and inspection requirements are amended by adding the following two paragraphs after the 4th paragraph (60 FR 61310) to read as follows:

In Mr. Schrepel's exception, he stated that the cost of inspecting new cherries to be rotated into the reserve and removing older cherries out of the reserve should be at the expense of the handler. Such action as this, undertaken by or at the convenience of the affected handler for the benefit of the handler or some other party, should not be the expense of the industry.

As previously stated, rotating cherries in the reserve is not a requirement. However, it would benefit the industry if it were done. This would insure that good quality cherries are being released when inventory reserve cherries are sold. The Board will have the authority to limit the number of inspections of cherries to be rotated into inventory for which the Board would be financially liable. In order to establish such limits, the Board would make a recommendation to the Secretary and informal rulemaking would be conducted. Based on the fact that the record evidence supports including this authority it will remain in the order. Therefore, Mr. Lee Schrepel's exception is denied.

Based upon the exception filed by Mr. Lee Schrepel, the findings and conclusions in material issue number 5(e) of the Recommended Decision concerning the authority to establish regulations that would require minimum quality and inspection requirements are amended by adding the following two paragraphs after the third paragraph (60 FR 61310) to read as follows:

The exception filed by Mr. Lee Schrepel stated that there should be no reimbursement of inspection costs for quality inspections for any reserve or free market cherries. Also, requirements for reinspection are inappropriate unless such cherries are part of the primary reserve.

The record evidence indicates that quality control inspections would be paid for by handlers. However, inspections of primary reserve cherries should be paid for by the Board. As previously stated, this would insure that only good quality cherries would be available for release from the reserve into the marketplace. This benefits all in the industry. In regard to reinspection, cherries would only be reinspected if they were regraded, resorted, repackaged or any other way further prepared for market. This would be done if a handler had to repackage a product that was already packaged for a client. This provision is a safety valve to prevent poor quality product entering the marketplace. New crop cherries would be inspected prior to being placed in the primary reserve. The record evidence supports the above provisions, therefore, Mr. Lee Schrepel's exception is denied.

Based upon the exceptions filed by CMI, the findings and conclusions in material issue number 5(e) of the Recommended Decision concerning the authority to establish regulations that would require minimum quality and inspection requirements are amended by adding the following paragraph after the seventh paragraph (60 FR 61310) to read as follows:

CMI's exception stated that the proponent wishes to make it clear that the Board would exercise its powers with regard to the establishment of quality standards and inspection requirements in a manner consistent with the establishment of quality standards under the prior order. Producers and handlers were comfortable with the way that the Board under the prior order instituted inspection requirements. The proponents expect the new Board would operate in the same manner, although they recognize that there are obvious significant differences between the two orders. In addition, such quality regulations would be implemented through the informal rulemaking process which would require a Board vote and opportunity for the public to comment.

Based upon the exception filed by Mr. Harmson, the findings and conclusions in material issue number 5(f) of the Recommended Decision concerning the authority to establish volume regulation provisions under the proposed order are amended by adding the following two paragraphs after the 15th paragraph (60 FR 61311) to read as follows:

In an exception filed by Mr. Harmson, he stated that the provision that would allow the Board to acknowledge a national bargaining agency on behalf of growers should not be deleted from the proposed order. Bargaining associations are a form of group action in agriculture that contributes greatly to the economic well being of growers and adds an important dimension to representation of their interests in the marketplace.

As previously stated, the record evidence did not adequately explain how such a provision would work or what the benefits would be to growers. Also, the record evidence did not define the functions of a national bargaining association as related to the proposed marketing order. Therefore, Mr. Harmson's exception is denied.

Based upon the exception filed by Mr. Lee Schrepel, the findings and conclusions in material issue number 5(f) of the Recommended Decision concerning the authority to establish volume regulation provisions under the proposed order are amended by adding the following two paragraphs after the 23rd paragraph (60 FR 61312) to read as follows:

The exception filed by Mr. Lee Schrepel stated that ownership of the primary or secondary reserve should not be allowed to be transferred, but remain with the handler who had the initial reserve obligation.

Record evidence supported authorizing the transfer of a handler's equity in the primary reserve to another person. As previously stated, a handler may need to do this if, for example, such handler does not have the storage

area to store the primary reserve. Therefore, Mr. Schrepel's exception is denied.

Based upon the exception filed by CMI, the findings and conclusions in material issue number 5(f) of the Recommended Decision concerning the authority to establish volume regulation provisions under the proposed order are amended by adding the following paragraph after the seventh paragraph (60 FR 61311) to read as follows:

In CMI's exception, it stated that section 930.50(b) governing the application of the optimum supply formula in calculating preliminary free and restricted percentages was altered from the proponents' proposal. The proponents' proposal provided that tonnage requirements for the current crop year should be subtracted from the current year USDA crop forecast. The Recommended Decision provided that these numbers should be divided. This calculation would not work properly and is an inadvertent error by USDA. Therefore, it will be corrected in the amendatory language and CMI's exception is adopted.

Based upon the exception filed by CMI, the findings and conclusions in material issue number 5(f) of the Recommended Decision concerning the authority to establish volume regulation provisions under the proposed order are amended by adding the following paragraph after the 67th paragraph (60 FR 61316) to read as follows:

The exception filed by CMI indicated that section 930.52(d) should be corrected and clarified by removing the word ''maximum'' in the phrase ''maximum average annual processed production'' since this phrase is ambiguous and lacks clear meaning. One can either have a maximum annual production or an average annual production over the last five years, but not both. Therefore, section 930.52(d) should be modified by removing the word ''maximum'' and simply permit a district to drop out of volume regulation when its current crop is 50 percent less than the average crop processed over the prior five years. CMI's exception is adopted herein.

Based upon the exceptions filed by Mr. Rowley, Mr. Morrison, CMI, Mr. Mark Schrepel, and Mr. Lee Schrepel, the findings and conclusions in material issue number 5(f) of the Recommended Decision concerning the authority to establish volume regulation provisions under the proposed order are amended by adding the following eight paragraphs after the 59th paragraph (60 FR 61315) to read as follows:

The exception filed by Mr. Rowley stated that he was very concerned that the Recommended Decision did not authorize cherries used for drying as a diversion outlet. Mr. Rowley stated that his company had spent over $1,500,000 to develop dried cherries and dried cherry products. He believes that it would be grossly unfair that unregulated States could sell all their dried cherry products and he could not since dried cherries is not a diversion outlet.

Mr. Mark Schrepel's exception expressed concern that export would be prohibited as an exempt use or diversion outlet.

Mr. Morrison's exception requested that diversion credit be allowed for juice, exports and dried cherries. Mr. Morrison stated that companies have invested substantial sums to develop new markets and expand current markets dealing with juice, export and dried cherries. In CMI's exception, it requested that the USDA modify section 930.62 to include dried cherries that are exported, and cherries that are converted to juice.

Under section 930.59 of the proposed order, handler diversion can take place by several methods, including uses exempt under section 930.62. Section 930.62 provides that diverted cherries used for specific purposes may be exempt from certain provisions of the marketing order. These include exemption from assessment and volume control provisions.

Dried cherries or cherries designated for export can be exempted under § 930.62 from certain order provisions or can be allowed to qualify as diversion outlets under § 930.59. As specified under section 930.62, the Board can also designate other exempt uses. If the Board choose to designate export or dried cherries as an exempted use under § 930.62, export and dried cherries could also be specified as an eligible diversion outlet. Thus, such uses requested by the exceptions for diversion credit are not prohibited under the marketing order, except for cherries converted to juice or juice concentrate.

As previously discussed, record evidence supports the proposition that cherries converted to juice or juice concentrate cannot be used as an eligible diversion outlet. The arguments raised in the exceptions did not overcome the evidence in the record indicating that cherries converted to juice or juice concentrate cannot be used as an eligible diversion. This is mainly because of the possibility of oversupplies damaging the juice market already established by cherry producers and handlers in Oregon and Washington.

In addition, CMI's exception requested USDA to modify section 930.59(d) to clarify that the prohibition of juice or juice concentrate as an eligible handler diversion only prohibits the conversion of diverted cherries to juice or concentrate. CMI requested that the use of juice or juice concentrate for sales in export markets be eligible for diversion credit. As previously discussed, the prohibition of juice or juice concentrate for diversion credit, discussed in the Recommended Decision (60 FR 61316), would also apply to sales of juice or juice concentrate in export markets. This prohibition on diversion credit, however, does not preclude the export of free tonnage cherries that have been converted to juice or juice concentrate. Therefore, CMI's exception is denied.

Finally, Mr. Lee Schrepel's exception stated that there was an error in section 930.58(b) which referenced section 930.63 as exempted uses. Section 930.62 is the section in the marketing order that specifies the exempt uses. Therefore, section 930.58(b) should be corrected.

Based upon the exceptions filed by Mr. Frank and Mr. Facer, the findings and conclusions in material issue number 5(f) of the Recommended Decision concerning the authority to establish volume regulation provisions under the proposed order are amended by adding the following paragraph after the 68th paragraph (60 FR 61317) to read as follows:

In Mr. Frank's exception, he stated that tart cherries is a national crop and the oversupply is a national problem. Therefore, Washington, Oregon, Wisconsin and Pennsylvania should not be exempt from participating in the marketing order. These States comprise 17 percent of the total bearing acreage. Mr. Frank states that this is not an insignificant amount and to exempt these States from participating in the marketing order is not fair or right. In Mr. Facer's exception, he stated that he opposed the 15 million pound requirement tart cherry producing areas would have to meet to become regulated under the order. All tart cherry producing areas should be included or there should not be a marketing order. The above-mentioned States are not exempt from the marketing order. If the proposed order becomes effective, they would not be regulated under the order's proposed volume regulation because they do not meet the 15 million pound criteria. Should they meet the criteria in the future, they would become regulated. Handlers in all States would pay assessments for the administration of the order. The record evidence does not warrant volume

regulation in the States discussed by Mr. Frank or Mr. Facer, at this time. Therefore, Messrs. Frank's and Facer's exceptions are denied.

Based upon the exception filed by Mr. Facer, the findings and conclusions in material issue number 5(f) of the Recommended Decision concerning the authority to establish volume regulation provisions under the proposed order are amended by adding the following two paragraphs after the 23rd paragraph (60 FR 61312) to read as follows:

Mr. Facer expressed a concern that the proposed order would not protect individual producers' investments in processing/marketing cooperatives. He stated that many producers have made substantial investments in cooperatives to market their production while other producers have no such investments. It is his contention that the order will make all producers equal, allowing each to market the same portion of his/her crop.

The proposed order does not regulate producers. The order regulates only handlers of tart cherries. If a volume regulation is implemented, handlers would have to decide how to market their product, whether to withhold the required reserve or divert product, or both. Independent handlers and cooperatives would be making similar decisions concerning tart cherries to those they have made in the past when faced with overproduction. Such decisions would include identifying which producers' cherries to purchase, and which of those to utilize in various products and markets. The proposed marketing order is intended to bring supplies in line with current demand, thereby increasing returns to growers. Therefore, Mr. Facer's exception is denied.

Based upon the exception filed by Mr. Lee Schrepel, the findings and conclusions in material issue number 5(f) of the Recommended Decision concerning the authority to establish volume regulation provisions under the proposed order are amended by adding the following two paragraphs after the 20th paragraph (60 FR 61312) to read as follows:

Mr. Lee Schrepel's exception stated that the Board, even with the concurrence of the Secretary, should never have authority to modify the 50 million pound primary reserve limit. If a modification occurs, it should involve a proposal of modification to the Secretary followed by a comment period and State-by-State voting.

The record evidence supports the 50 million pound level specified in section 930.50(i). If the Board recommended a change to the 50 million pound level, it would have to be implemented through the formal rulemaking process which would require a public hearing and eventually a favorable vote by growers and processors to implement such change. State-by-State voting is not authorized under the Act nor is it supported by the record.

Based upon the exception filed by CMI, the findings and conclusions in material issue number 5(f) of the Recommended Decision concerning the authority to establish volume regulation provisions under the proposed order are amended by adding the following paragraph after the 16th paragraph (60 FR 61311) to read as follows:

The exception filed by CMI stated that there was an inconsistency in section 930.55(b) of the proposed order. The record evidence supported the concept that handlers could place cherries in any form in the inventory reserve. Handlers would have the option of choosing what form of inventory they wish to store. However, proposed section 930.55(b) states that the form to be used would be prescribed by the Board. This statement is inconsistent with the record evidence. Therefore, CMI's exception is adopted and appropriate modifications are made in section 930.55(b).

Based upon the exception filed by CMI, the findings and conclusions in material issue number 5(f) of the Recommended Decision concerning the authority to establish volume regulation provisions under the proposed order are amended by adding the following paragraph after the 15th paragraph (60 FR 61311) to read as follows:

The exception filed by CMI stated that section 930.53 should also apply to the modification, suspension, or termination of quality regulations along with volume regulations. This change would clarify the Board's responsibility to monitor crop and market conditions and recommend changes to existing regulations as necessary. Therefore, CMI's exception is adopted and appropriate modifications to section 930.53 have been made.

Based upon the exception filed by Mr. Lee Schrepel, the findings and conclusions in material issue number 5(f) of the Recommended Decision concerning the authority to establish volume regulation provisions under the proposed order are amended by adding the following paragraph after the 12th paragraph (60 FR 61311) to read as follows:

In Mr. Lee Schrepel's exception, he stated that the reference to the harvest season beginning in August (used as part of an illustration) was incorrect. Mr. Schrepel stated that the harvest season actually begins in mid-June and runs through mid-August. Mr. Schrepel's exception is correct.

Based upon the exception filed by Mr. Lee Schrepel, the findings and conclusions in material issue number 5(f) of the Recommended Decision concerning the authority to establish volume regulation provisions under the proposed order are amended by adding the following paragraph after the 52nd paragraph (60 FR 61314) to read as follows:

The exception filed by Mr. Lee Schrepel stated that grower diversion credit should not be given for fruit that is storm damaged. A diversion credit may be a marketable commodity, an item of value, and no such value should be accrued for unmarketable cherries. USDA did not include the proponents' proposal to authorize diversion credit for unharvestable or unmarketable fruit. The record evidence supported the proposition that growers should be allowed to receive diversion credit for marketable, harvestable fruit, even if some portion of such fruit was damaged by storm winds or floods. USDA has determined that the grower diversion program contained in the Recommended Decision could benefit the industry and believes that this finding is consistent with Mr. Schrepel's exception.

Based upon the exceptions filed by CMI and Mr. Lee Schrepel, the findings and conclusions in material issue number 5(f) of the Recommended Decision concerning the authority to establish volume regulation provisions under the proposed order are amended by adding the following 10 paragraphs after the 68th paragraph (60 FR 61317) to read as follows:

The exception filed by CMI stated that since USDA modified the provisions under section 930.52, the section may not now provide authority to subject additional districts to volume regulation once the initial group of volume regulated districts is established at the time of promulgation. CMI also proposes a new section 930.52 to replace section 930.52 that was published in the Recommended Decision. CMI objected to USDA removing a 150 percent trigger provision which would make districts that had a surge in production subject to volume control. USDA determined that such an additional criteria would be complicated for the Board to administer and possibly inequitable to growers and handlers.

CMI stated that, since the 150 percent trigger was removed from the proposal, the potential now exists for having up to 25 million pounds of unregulated

production. In a market of 250 million pounds, this amounts to 10 percent of unregulated production annually and an additional 10 percent could have a substantial impact upon markets and prices. CMI states that this emphasizes the need to have realistic production triggers. Also, CMI disagrees with USDA's conclusion that the dual triggers (150 percent and 15 million pounds) would somehow cause confusion and concern that a district could meet one criteria and not the other and still be regulated. CMI contends that the rules pertaining to the 15 million pound criteria and the 150 percent trigger are clear on the record, and therefore are not confusing.

CMI has proposed modifications to section 930.52 which would provide that: (1) Upon promulgation, those districts potentially subject to any imposed volume regulation would be those in which the average annual production of cherries over the prior three years, measured on a total production basis, has exceeded 15 million pounds of cherries and that handlers in districts not meeting this 15 million pound requirement at the time of order promulgation shall become subject to any volume regulation implemented in accordance with this part in the crop year that follows any three-year period in which the 15 million pound average production requirement is exceeded in that district; (2) If total production data is unavailable for a district, the Board would adjust the 15 million pound trigger upward or downward by a factor accounting for the historical difference between the total production and total utilization; and (3) When a district hits the 15 million pound trigger, it would be subject to regulation in the next crop year and remain regulated until the crop year following that in which its production drops below 15 million pounds over any three-year period subsequent to the year in which it hit the original 15 million pound threshold.

Regarding modification number one, USDA is adopting CMI's exception. This would clarify the intent and meaning of section 930.52 which should provide that after the initial regulation of districts that meet the 15 million pound test, additional districts may become regulated in the future.

Regarding modification number two, USDA is not adopting this exception. Such factors as proposed by CMI would be confusing and difficult to administer. If the order is promulgated, information needed to calculate each State's production would be collected under the marketing order. The marketing order provides for information collection from handlers that can be used for this purpose.

Finally, the third modification is also denied. This modification would lock a State in to being regulated for three years once it reaches the 15 million pound threshold. This was not the intent of USDA's modification to the Recommended Decision to delete the 150 percent trigger mechanism. USDA intended that States would become regulated in the year subsequent to when they reach 15 million pounds (computed as a rolling average of a three year period). Also, States would become unregulated in the year subsequent to when they fell below the 15 million pounds. The production of each State or district would be reviewed annually to determine if they would be regulated or not regulated in the upcoming crop year. Therefore, CMI's exception is denied on this issue.

In Mr. Lee Schrepel's exception, he stated that the Board should not have the authority to modify the 15 million pound requirement for volume regulation. If the Board decided to recommend modification of the 15 million pound level, such modification would have to be implemented through formal rulemaking procedures. This would require a public hearing and a favorable vote by growers and processors to implement such change.

Mr. Schrepel further stated that the proposal should be modified to facilitate that this trigger (15 million pound requirement) for imposition of volume regulations increase whenever it falls below 8 percent of the optimum supply. There is no support in the record for such proposition. Also, Mr. Schrepel did not specify why 8 percent was chosen and how this provision would work, therefore, his exception is denied.

Mr. Schrepel also requested clarification of when districts would become permanently regulated; would it be contingent upon the average of the previous three seasons? As previously discussed, no district would be regulated unless that district continued to have production above the 15 million pound requirement. Each year, the production of each district (based on a rolling 3-year average) would be evaluated to determine if such district would be regulated in the upcoming crop year.

Mr. Schrepel also requested that USDA specify the source of data for application of the trigger. USDA believes that the proponents intended that the Board use post-harvest production figures from each district. The Board can also obtain this information from USDA data and handler reports.

Based upon the exception filed by Mr. Lee Schrepel, the findings and conclusions in material issue number 5(f) of the Recommended Decision concerning the authority to establish volume regulation provisions under the proposed order are amended by adding the following paragraph after the 19th paragraph (60 FR 61312) to read as follows:

Mr. Lee Schrepel's exception stated under section 930.63(a) that referenced ''60 days prior to the end of the crop year'' appears to be open to interpretation by the reader. USDA disagrees with this statement. Crop year is defined under the marketing to mean the 12-month period beginning on July 1 of any year and ending on June 30 of the following year. Therefore, 60 days prior to the end of the crop year would mean April 30. Mr. Schrepel's exception is denied.

Based upon the exception filed by Mr. Lee Schrepel, the findings and conclusions in material issue number 5(h) of the Recommended Decision concerning the additional terms and conditions which are common to all marketing orders are amended by adding the following five paragraphs after the sixth paragraph (60 FR 61318) to read as follows:

Mr. Lee Schrepel's exception stated that a continuance referendum every sixth year is not frequent enough. The industry should be able to petition the Secretary to hold a continuance referendum more frequently.

The record evidence supported the conduct of a continuance referendum at least every six years among growers and processors in the industry to determine if they favor continuance of the order. This is also consist with Departmental guidelines that endorse a continuance referendum every six years. The Secretary is not prevented from holding a continuance referendum at an earlier date if such referendum is deemed necessary. Therefore, Mr. Schrepel's exception is denied.

Mr. Schrepel also stated that the standards or criteria should be as stringent for continuance of the order as it is for the initial promulgation. As was indicated in the Recommended Decision, it was contemplated that the criteria for continuance of the order would be based on a two-thirds affirmative vote by number or volume represented in the referendum. This standard would be similar to the promulgation standard. In any event, the Secretary would still have discretionary authority in deciding whether to continue the order. Therefore, Mr. Schrepel's exception is denied.

Mr. Schrepel also stated that section 930.91 should include provisions for the initiation of an amendment from a source within the industry other than the Board. Mr. Schrepel stated that incidents may occur and the Board may not choose to act on a matter that may be of considerable importance to an industry segment. The language in section 930.91 is standard language which is found in other orders and does not preclude anyone from recommending amendments.

The Secretary relies on the Board to make recommendations that are important to the welfare of the industry. If one segment of the industry is concerned about an issue, it should be brought to the Board to be addressed. Any person can submit recommendations to the Secretary for consideration. If the Secretary does conclude that formal rulemaking is necessary based on a Board recommendation or other recommendations, other persons will also have the opportunity to submit proposals. In addition, the Secretary may propose amendments, even in the absence of outside recommendations. Therefore, Mr. Schrepel's exception is denied.

In addition, to the exceptions filed and discussed above, CMI filed an exception that included some typographical errors in the amendatory language of the proposed order. Those changes are adopted in the amendatory language below. They are:

(1) Section 930.11—Add the words ''for his or her own account'' at the end of the definition.

(2) Section 930.15—cross sectional references are incorrect that refer to the primary and secondary reserve.

(3) Section 930.17—cross sectional reference is incorrect that refers to the primary and secondary reserve.

(4) Section 930.25—the phrase ''reapportionment or'' should be added to make this section consistent with other changes that were made.

(5) Section 930.51—A comma and the word ''this'' were left out of the proposal.

(6) Section 930.55(a)—cross sectional reference is incorrect that refers to equity holders.

(7) Section 930.57(a)—cross sectional reference is incorrect that refers to equity holders.

(8) Section 930.58(b)—cross sectional reference is incorrect that refers to exemptions.

(9) Section 930.58(b)(i)—add an ''and'' at the end of the paragraph.

(10) Section 930.60—Change ''sole property'' to sole responsibility.''

Also, in his exception, Mr. Lee Schrepel pointed out some typographical errors and omissions of words in the Recommended Decision. They are: (1) the dates of the Grand Rapids, Michigan hearing session were incorrectly listed (60 FR 61292) and should be changed from January 9 and 10, 1995, to January 18 and 19, 1995, respectively; (2) in the description of small agricultural producers as those entities having annual receipts of less than $500,000 (60 FR 61293), the words ''less than'' were inadvertently omitted and should be added; and, (3) the listings of U.S. bearing acreage of tart cherries (60 FR 61293) in 1986 and 1990 were incorrectly stated and should be changed from 4.5 million and 5 million, respectively, to 45,000 and 50,000, respectively.

USDA has modified sections 70(c) to make that provision consistent with authorities provided under this proposed order and other Federal marketing orders. In addition, where necessary, USDA has made minor conforming changes to ensure that all sections of this part accurately reflect the modifications adopted in this decision.

Rulings on Exceptions

In arriving at the findings and conclusions and the regulatory provisions of this decision, the exceptions to the Recommended Decision were carefully considered in conjunction with the record evidence. To the extent that the findings and conclusions and the regulatory provisions of this decision are at variance with the exceptions, such exceptions are denied.

Marketing Agreement and Order

Annexed hereto and made a part hereof is the document entitled ''Order Regulating the Handling of Tart Cherries Grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin.'' This document has been decided upon as the detailed and appropriate means of effectuating the foregoing findings and conclusions.

It is hereby ordered, That this entire decision be published in the Federal Register.

Referendum Order

It is hereby directed that a referendum be conducted in accordance with the procedure for the conduct of referenda (7 CFR 900.400) to determine whether the issuance of the annexed order regulating the handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin is approved or favored by growers and processors, as defined under the terms of the order, who, during the representative period were engaged in the production or processing of tart cherries in the proposed production area.

The representative period for the conduct of such referendum is hereby determined to be July 1, 1995, through May 31, 1996.

The agents of the Secretary to conduct such referendum are hereby designated to be Gary D. Olson and Robert J. Curry, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 1220 S.W. Third Avenue, room 369, Portland, Oregon 97204; telephone 503–326–2724, FAX 503–326–7440.

List of Subjects in 7 CFR Part 930

Marketing agreements, Tart cherries, Reporting and recordkeeping requirements.

Dated: May 22, 1996.

Shirley R. Watkins,

Deputy Assistant Secretary, Marketing and Regulatory Programs.

Order Regulating the Handling of Tart Cherries Grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin [1]

Findings and determinations upon the basis of the record. Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure effective thereunder (7 CFR part 900), a public hearing was held upon a proposed marketing agreement and order regulating the handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin.

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The marketing agreement and order, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The marketing agreement and order regulate the handling of tart cherries grown in the production area in the same manner as, and are applicable only to persons in the respective classes of commercial and industrial activity specified in the marketing agreement and order upon which hearings have been held;

[1] This order shall not become effective unless and until the requirements of section 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

(3) The marketing agreement and order are limited in their application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

(4) There are no differences in the production and marketing of tart cherries produced in the production area which make necessary different terms and provisions applicable to different parts of such area; and

(5) All handling of tart cherries grown in the production area is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

Order Relative to Handling

It is therefore ordered, That on and after the effective date hereof, all handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin, shall be in conformity to, and in compliance with, the terms and conditions of the said order, as follows:

The provisions of the proposed marketing agreement and order contained in the Recommended Decision issued by the Administrator on November 20, 1995, and published in the Federal Register on November 29, 1995 [60 FR 61292], as revised herein, shall be and are the terms and provisions of this agreement and order. Sections 930.92 through 930.94 apply only to the proposed marketing agreement and not the proposed order.

Title 7, Chapter IX is proposed to be amended by adding part 930 to read as follows:

PART 930—TART CHERRIES GROWN IN THE STATES OF MICHIGAN, NEW YORK, PENNSYLVANIA, OREGON, UTAH, WASHINGTON, AND WISCONSIN

Subpart A—Order Regulating Handling

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Subpart B—[Reserved]

Authority: 7 U.S.C. 601–674.

Subpart A—Order Regulating Handling

Definitions

§ 930.1 Act.

Act means Public Act No. 10, 73d Congress (May 12, 1933), as amended, and as reenacted and amended by the Agriculture Marketing Agreement Act of 1937, as amended (48 Stat. 31, as amended, 68 Stat. 906, 1047; 7 U.S.C. 601 *et seq.*).

§ 930.2 Board.

Board means the Cherry Industry Administrative Board established pursuant to § 930.20.

§ 930.3 Cherries.

Cherries means all tart/sour cherry varieties grown in the production area classified botanically as *Prunus cerasas,* or hybrids of *Prunus cerasas* by *Prunus avium,* or *Prunus cerasas* by *Prunus fruticosa.*

§ 930.4 Crop year.

Crop year means the 12-month period beginning on July 1 of any year and ending on June 30 of the following year, or such other period as the Board, with the approval of the Secretary, may establish.

§ 930.5 Department or USDA.

Department or *USDA* means the United States Department of Agriculture.

§ 930.6 District.

District means one of the subdivisions of the production area described in § 930.20(c), or such other subdivisions as may be established pursuant to § 930.21, or any subdivision added pursuant to § 930.63.

§ 930.7 Fiscal period.

Fiscal period is synonymous with fiscal year and means the 12-month period beginning on July 1 of any year and ending on June 30 of the following year, or such other period as the Board, with the approval of the Secretary, may establish: *Provided,* That the initial fiscal period shall begin on the effective date of this part.

§ 930.8 Free market tonnage percentage cherries.

Free market tonnage percentage cherries means that proportion of cherries handled in a crop year which are free to be marketed in normal commercial outlets in that crop year under any volume regulation established pursuant to § 930.50 or § 930.51 and, in the absence of a

restricted percentage being established for a crop year pursuant to § 930.50 or § 930.51, means all cherries received by handlers in that crop year.

§ 930.9 Grower.

Grower is synonymous with *producer* and means any person who produces cherries to be marketed in canned, frozen, or other processed form and who has a proprietary interest therein: *Provided,* That the term *grower* shall not include a person who produces cherries to be marketed exclusively for the fresh market in an unpitted condition.

§ 930.10 Handle.

Handle means the process to brine, can, concentrate, freeze, dehydrate, pit, press or puree cherries, or in any other way convert cherries commercially into a processed product, or divert cherries pursuant to § 930.59 or obtain grower diversion certificates issued pursuant to § 930.58, or otherwise place cherries into the current of commerce within the production area or from the area to points outside thereof: *Provided,* That the term *handle* shall not include:

(a) The brining, canning, concentrating, freezing, dehydration, pitting, pressing or the converting, in any other way, of cherries into a processed product for home use and not for resale.

(b) The transportation within the production area of cherries from the orchard where grown to a processing facility located within such area for preparation for market.

(c) The delivery of such cherries to such processing facility for such preparation.

(d) The sale or transportation of cherries by a grower to a handler of record within the production area.

(e) The sale of cherries in the fresh market in an unpitted condition.

§ 930.11 Handler.

Handler means any person who first handles cherries or causes cherries to be handled for his or her own account.

§ 930.12 Person.

Person means an individual, partnership, corporation, association, or any other business unit.

§ 930.13 Primary inventory reserve.

Primary inventory reserve means that portion of handled cherries that are placed into handlers' inventories in accordance with any restricted percentage established pursuant to § 930.50 or § 930.51.

§ 930.14 Production area.

Production area means the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington and Wisconsin.

§ 930.15 Restricted percentage cherries.

Restricted percentage cherries means that proportion of cherries handled in a crop year which must be either placed into handlers' inventories in accordance with § 930.55 or § 930.57 or otherwise diverted in accordance with § 930.60 and thereby withheld from marketing in normal commercial outlets under any volume regulation established pursuant to § 930.50 or § 930.51.

§ 930.16 Sales constituency.

Sales constituency means a common marketing organization or brokerage firm or individual representing a group of handlers or growers.

§ 930.17 Secondary inventory reserve.

Secondary inventory reserve means any portion of handled cherries voluntarily placed into inventory by a handler under § 930.57.

§ 930.18 Secretary.

Secretary means the Secretary of Agriculture of the United States, or any officer or employee of the U.S. Department of Agriculture to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead.

Administrative Body

§ 930.20 Establishment and membership.

(a) There is hereby established a Cherry Industry Administrative Board (Board) consisting of 18 members. Seventeen of these members shall be qualified growers and handlers selected pursuant to this part, each of whom shall have an alternate having the same qualifications as the member for whom the person is an alternate. The remaining member of the Board shall be a public member who, along with his or her alternate, shall be elected by the Board from the general public.

(b) District representation on the Board shall be as follows:

District	Grower members	Handler members
1	2	2
2	1	2
3	1	1
4	1	1
5	1	or 1
6	1	or 1
7	1	1
8	1	or 1
9	1	or 1

(c) Upon the adoption of this part, the production area shall be divided into the following described subdivisions for purposes of this section:

District 1—Northern Michigan: That portion of the State of Michigan which is north of a line drawn along the northern boundary of Mason County and extended east to Lake Huron.

District 2—Central Michigan: That portion of the State of Michigan which is south of District 1 and north of a line drawn along the southern boundary of Allegan County and extended east to Lake St. Clair.

District 3—Southern Michigan: That portion of the State of Michigan not included in Districts 1 and 2.

District 4—The State of New York.

District 5—The State of Oregon.

District 6—The State of Pennsylvania.

District 7—The State of Utah.

District 8—The State of Washington.

District 9—The State of Wisconsin.

(d) The ratio of grower to handler representation in District 2 shall alternate each time the term of a Board member from the representative group having two seats expires. During the initial period of the order, the ratio shall be as designated in paragraph (b) of this section.

(e) Board members from Districts 5, 6, 8 and 9 may be either grower or handler members and will be nominated and elected as outlined in § 930.23. If District 5, 6, 8, and/or 9 becomes subject to volume regulation under §§ 930.52(a), then the Board shall be reestablished by the Secretary to provide such District(s) with at least one grower and one handler seat on the Board and such seats shall be filled according to the provisions of § 930.23.

(f) In order to achieve a fair and balanced representation on the Board, and to prevent any one sales constituency from gaining control of the Board, not more than one Board member may be from, or affiliated with, a single sales constituency in those districts having more than one seat on the Board. There is, however, no prohibition on the number of Board members from differing districts that may be elected from a single sales constituency which may have operations in more than one district. However, as provided in § 930.23, a handler or grower may only nominate Board members and vote in one district.

(g) Subject to the approval of the Secretary, the Board shall at its first meeting and annually thereafter elect from among any of its members a chairperson and a vice-chairperson and may elect other appropriate officers.

§ 930.21 Reestablishment.

Districts, subdivisions of districts, and the distribution of representation among growers and handlers within a respective district or subdivision

thereof, or among the subdivision of districts, may be reestablished by the Secretary, subject to the provisions of § 930.23, based upon recommendations by the Board. In recommending any such changes, the Board shall consider:

(a) the relative importance of producing areas;

(b) relative production;

(c) the geographic locations of producing areas as they would affect the efficiency of administration of this part;

(d) shifts in cherry production within the districts and the production area;

(e) changes in the proportion and role of growers and handlers within the districts; and

(f) other relevant factors.

§ 930.22 Term of office.

The term of office of each member and alternate member of the Board shall be for three fiscal years: Provided that, of the nine initial members and alternates from the combination of Districts 1, 2 and 3, one-third of such initial members and alternates shall serve only one fiscal year, one-third of such members and alternates shall serve only two fiscal years, one-third of such members and alternates shall serve three fiscal years; and one-half of the initial members and alternates from Districts 4 and 7 shall serve only one fiscal year, and one-half of such initial members and alternates shall serve two fiscal years (determination of which of the initial members and their alternates shall serve for 1 fiscal year, 2 fiscal years, or 3 fiscal years, in both instances, shall be by lot). Members and alternate members shall serve in such capacity for the portion of the term of office for which they are selected and have qualified until their respective successors are selected, have qualified and are appointed. The consecutive terms of office of grower, handler and public members and alternate members shall be limited to two 3-year terms, excluding any initial term lasting less than 3 years. The term of office of a member and alternate member for the same seat shall be the same. If this part becomes effective on a date such that the initial fiscal period is less than 6 months in duration, then the tolling of time for purposes of this subsection shall not begin until the beginning of the first 12-month fiscal period.

§ 930.23 Nomination and election.

(a) *Forms and ballots.* Nomination and election of initial and successor members and alternate members of the Board shall be conducted through petition forms and election ballots distributed to all eligible growers and handlers via the U.S. Postal Service or other means, as determined by the Secretary. Similar petition forms and election ballots shall be used for both members and alternate members and any requirements for election of a member shall apply to the election of an alternate.

(b) *Nomination:*

(1) In order for the name of a grower nominee to appear on an election ballot, the nominee's name must be submitted with a petition form, to be supplied by the Secretary or the Board, which, except in District 8, contains at least five signatures of growers, other than the nominee, from the nominee's district who are eligible to vote in the referendum. Grower petition forms in District 8 must be signed by only two growers, other than the nominee, from the nominee's district.

(2) In order for the name of a handler nominee to appear on an election ballot, the nominee's name must be submitted with a petition form, to be supplied by the Secretary or the Board, which contains the signature of at least one handler, other than the nominee, from the nominee's district who is eligible to vote in the referendum. The requirement that the petition form be signed by a handler other than the nominee shall not apply in any District where less than two handlers are eligible to vote.

(3) Only growers, including duly authorized officers or employees of growers, who are eligible to serve as grower members of the Board shall participate in the nomination of grower members and alternate grower members of the Board. No grower shall participate in the submission of nominees in more than one district during any fiscal period. If a grower produces cherries in more than one district, that grower may select in which district he or she wishes to participate in the nominations and election process and shall notify the Secretary or the Board of such selection. A grower may not participate in the nomination process in one district and the election process in a second district in the same election cycle.

(4) Only handlers, including duly authorized officers or employees of handlers, who are eligible to serve as handler members of the Board shall participate in the nomination of handler members and alternate handler members of the Board. No handler shall participate in the selection of nominees in more than one district during any fiscal period. If a handler handles cherries in more than one district, that handler may select in which district he or she wishes to participate in the nominations and election process and shall notify the Secretary or the Board of such selection. A handler may not participate in the nominations process in one district and the elections process in a second district in the same election cycle. If a person is a grower and a grower-handler only because some or all of his or her cherries were custom packed, but he or she does not own or lease and operate a processing facility, such person may vote only as a grower.

(5) In Districts 5, 6, 8 and 9, both growers and handlers may be nominated for the district's Board seat. Grower and handler nominations must follow the petition procedures outlined in paragraphs (b)(1) and (b)(2) of this section.

(6) All eligible growers and handlers in all districts may submit the names of the nominees for the public member and alternate public member of the Board.

(7) After the appointment of the initial Board, the Secretary or the Board shall announce at least 180 days in advance when a Board member's term is expiring and shall solicit nominations for that position in the manner described in this section. Nominations for such position should be submitted to the Secretary or the Board not less than 120 days prior to the expiration of such term.

(c) *Election:*

(1) After receiving nominations, the Secretary or the Board shall distribute ballots via the U.S. Postal Service or other means, as determined by the Secretary, to all eligible growers and handlers containing the names of the nominees by district for the respective seats on the Board, excluding the public voting member seat. The ballots will clearly indicate that growers and handlers may only rank or otherwise vote for nominees in their own district.

(2) Except as provided in paragraph (c)(4) of this section, only growers, including duly authorized officers or employees of growers, who are eligible to serve as grower members of the Board shall participate in the election of grower members and alternate grower members of the Board. No grower shall participate in the election of Board members in more than one district during any fiscal period. If a grower produces cherries in more than one district, the grower must vote in the same district in which he or she chose to participate in the nominations process under paragraph (b)(3) of this section. However, if the grower did not participate in the nominations process, he or she may select in which district he or she wishes to vote and shall notify the Secretary or the Board of such selection.

(3) Except as provided in paragraph (c)(4) of this section, only handlers, including duly authorized officers or

employees of handlers, who are eligible to serve as handler members of the Board shall participate in the election of handler members and alternate handler members of the Board. No handler shall participate in the election of Board members in more than one district during any fiscal period. If a handler does handle cherries in more than one district, he or she must vote in the same district in which the handler elected to participate in the nominations process under paragraph (b)(4) of this section. However, if a handler did not participate in the nominations process, that handler may select in which district he or she chooses to vote and shall notify the Secretary or the Board of such selection. If a person is a grower and a grower-handler only because some or all of his or her cherries were custom packed, but he or she does not own or lease and operate a processing facility, such person may vote only as a grower.

(4) In Districts 5, 6, 8 and 9, growers and handlers may vote for either the grower or handler nominee(s) for the single seat allocated to those districts.

(d) The members of the Board appointed by the Secretary pursuant to § 930.24 shall, at the first meeting and whenever necessary thereafter, by at least a two-thirds vote of the entire Board, select individuals to serve as the public member and alternate public member of the Board from the list of nominees received from growers and handlers pursuant to paragraph (b) of this section or from other persons nominated by the Board. The persons selected shall be subject to appointment by the Secretary under § 930.24.

(e) The Board, with the approval of the Secretary, may establish rules and regulations necessary and incidental to the administration of this section.

§ 930.24 Appointment.

The selection of nominees made pursuant to elections conducted under § 930.23(c) shall be submitted to the Secretary in a format which indicates the nominees by district, with the nominee receiving the highest number of votes at the top and the number of votes received being clearly indicated. The Secretary shall appoint from those nominees or from other qualified individuals, the grower and handler members of the Board and an alternate for each such member on the basis of the representation provided for in § 930.20 or as provided for in any reapportionment or reestablishment undertaken pursuant to § 930.21. The public member and alternate public member is nominated by the Board pursuant to § 930.23(d) and shall also be subject to appointment by the Secretary. The Secretary shall appoint from nominees by the Board or from other qualified individuals the public member and the alternate public member.

§ 930.25 Failure to nominate.

If nominations are not made within the time and in the manner prescribed in § 930.23, the Secretary may, without regard to nominations, select the members and alternate members of the Board on the basis of the representation provided for in § 930.20 or as provided for in any reapportionment or reestablishment undertaken pursuant to § 930.21.

§ 930.26 Acceptance.

Each person to be appointed by the Secretary as a member or as an alternate member of the Board shall, prior to such appointment, qualify by advising the Secretary that he/she agrees to serve in the position for which nominated for selection.

§ 930.27 Vacancies.

To fill any vacancy occasioned by the failure of any person appointed as a member or as an alternate member of the Board to qualify, or in the event of the death, removal, resignation, or disqualification of any member or alternate member of the Board, a successor for the unexpired term of such member or alternate member of the Board shall be appointed by the Secretary from the most recent list of nominations for the Board made by growers and handlers, from nominations made by the Board, or from other qualified individuals. Any nominations made by the Board to fill a vacancy must be received by the Secretary within 90 days of the effective date of the vacancy. Board members wishing to resign from the Board must do so in writing to the Secretary.

§ 930.28 Alternate members.

An alternate member of the Board, during the absence of the member for whom that member serves as an alternate, shall act in the place and stead of such member and perform such other duties as assigned. However, if a member is in attendance at a meeting of the Board, an alternate member may not act in the place and stead of such member. In the event of the death, removal, resignation, or disqualification of a member, the alternate shall act for the member until a successor for such member is appointed and has qualified.

§ 930.29 Eligibility for membership on Cherry Industry Administrative Board.

(a) Each grower member and each grower alternate member of the Board shall be a grower, or an officer or employee of a grower, in the district for which nominated or appointed.

(b) Each handler member and each handler alternate member of the Board shall be a handler, or an officer or employee of a handler, who owns, or leases, and operates a cherry processing facility in the district for which nominated or appointed.

(c) The public member and alternate public member of the Board shall be prohibited from having any financial interest in the cherry industry and shall possess such additional qualifications as may be established by regulation.

§ 930.30 Powers.

The Board shall have the following powers:

(a) To administer this part in accordance with its terms and provisions;

(b) To make rules and regulations to effectuate the terms and provisions of this part;

(c) To receive, investigate, and report to the Secretary complaints of violations of this part; and

(d) To recommend to the Secretary amendments to this part.

§ 930.31 Duties.

The Board shall have, among others, the following duties:

(a) To select such officers, including a chairperson and vice-chairperson, as may be necessary, and to define the duties of such officers and the duties of the chairperson and the vice-chairperson;

(b) To employ or contract with such persons or agents as the Board deems necessary and to determine the duties and compensation of such persons or agents;

(c) To select such committees and subcommittees as may be necessary;

(d) To adopt bylaws and to adopt such rules for the conduct of its business as it may deem advisable;

(e) To submit to the Secretary a budget for each fiscal period, prior to the beginning of such period, including a report explaining the items appearing therein and a recommendation as to the rates of assessments for such period;

(f) To keep minutes, books, and records which will reflect all of the acts and transactions of the Board and which shall be subject to examination by the Secretary;

(g) To prepare periodic statements of the financial operations of the Board and to make copies of each statement available to growers and handlers for examination at the office of the Board;

(h) To cause its financial statements to be audited by a certified public accountant at least once each fiscal year

and at such times as the Secretary may request. Such audit shall include an examination of the receipt of assessments and the disbursement of all funds. The Board shall provide the Secretary with a copy of all audits and shall make copies of such audits, after the removal of any confidential individual grower or handler information that may be contained in them, available to growers and handlers for examination at the offices of the Board;

(i) To act as intermediary between the Secretary and any grower or handler with respect to the operations of this part;

(j) To investigate and assemble data on the growing, handling, and marketing conditions with respect to cherries;

(k) To apprise the Secretary of all Board meetings in a timely manner;

(l) To submit to the Secretary such available information as the Secretary may request;

(m) To investigate compliance with the provisions of this part;

(n) To develop and submit an annual marketing policy for approval by the Secretary containing the optimum supply of cherries for the crop year established pursuant to § 930.50 and recommending such action(s) necessary to achieve such optimum supply;

(o) To implement volume regulations established under § 930.50 and issued by the Secretary under § 930.51, including the release of any inventory reserves;

(p) To provide thorough communication to growers and handlers regarding the activities of the Board and to respond to industry inquiries about Board activities;

(q) To oversee the collection of assessments levied under this part;

(r) To enter into contracts or agreements with such persons and organizations as the Board may approve for the development and conduct of activities, including research and promotion activities, authorized under this part or for the provision of services required by this part and for the payment of the cost thereof with funds collected through assessments pursuant to § 930.41 and income from such assessments. Contracts or agreements for any plan or project shall provide that:

(1) The contractors shall develop and submit to the Board a plan or project together with a budget(s) which shall show the estimated cost to be incurred for such plan or project;

(2) Any contract or agreement for a plan or project and any plan or project adopted by the Board shall only become effective upon approval by the Secretary; and

(3) Every such contracting party shall keep accurate records of all of its transactions and make periodic reports to the Board of activities conducted and an accounting for funds received and expended, and such other reports as the Secretary or the Board may require. The Secretary or employees of the Board may audit periodically the records of the contracting party;

(s) Pending disbursement consistent with its budget, to invest, with the approval of the Secretary, and in accordance with applicable Departmental policies, funds collected through assessments authorized under § 930.41 and income from such assessments;

(t) To establish standards or grade requirements for cherries for frozen and canned cherry products, subject to the approval of the Secretary;

(u) To borrow such funds, subject to the approval of the Secretary and not to exceed the expected expenses of one fiscal year, as are necessary for administering its responsibilities and obligations under this part; and

(v) To establish, with the approval of the Secretary, such rules and procedures relative to administration of this subpart as may be consistent with the provisions contained in this subpart and as may be necessary to accomplish the purposes of the Act and the efficient administration of this subpart.

§ 930.32 Procedure.

(a) Twelve members of the Board, including alternates acting for absent members, shall constitute a quorum. For any action of the Board to pass, at least two-thirds of the entire Board must vote in support of such action.

(b) The Board may provide through its own rules and regulations, subject to approval by the Secretary, for simultaneous meetings of groups of its members assembled at different locations and for votes to be conducted by telephone or other means of communication. Votes so cast shall be promptly confirmed in writing.

(c) All meetings of the Board are open to the public, although the Board may hold portions of meetings in executive session for the consideration of certain business. The Board will establish, with the approval of the Secretary, a means of advanced notification of growers and handlers of Board meetings.

§ 930.33 Expenses and compensation.

Except for the public member and alternate public member who shall receive such compensation as the Board may establish and the Secretary may approve, the members of the Board, and alternates when acting as members, shall serve without compensation but shall be reimbursed for necessary and reasonable expenses, as approved by the Board, incurred by them in the performance of their duties under this part. The Board at its discretion may request the attendance of one or more alternates at any or all meetings, notwithstanding the expected or actual presence of the respective member(s), and may pay the expenses of such alternates.

Expenses and Assessments

§ 930.40 Expenses.

The Board is authorized to incur such expenses as the Secretary finds are reasonable and likely to be incurred for its maintenance and functioning and to enable it to exercise its powers and perform its duties in accordance with the provisions of this part. The funds to cover such expenses shall be acquired by the levying of assessments as provided in § 930.41.

§ 930.41 Assessments.

(a) An assessment may be levied upon handlers annually under this part to cover the administrative costs of the Board, costs of inspection, and any research, development and promotion activities initiated by the Board under § 930.48.

(b) Each part of an assessment intended to cover the costs of each activity in paragraph (a) of this section, must be identified and approved by the Board and the Secretary, and any notification or other statement regarding assessments provided to handlers must contain such information.

(c) As a pro rata share of the administrative, inspection, research, development, and promotion expenses which the Secretary finds reasonable and likely to be incurred by the Board during a fiscal period, each handler shall pay to the Board assessments on all cherries handled, as the handler thereof, during such period: *Provided*, a handler shall be exempt from any assessment on the tonnage of handled cherries that are diverted according to § 930.59 which includes cherries represented by grower diversion certificates issued pursuant to § 930.58(b)(2) and acquired by handlers and those cherries devoted to exempt uses under § 930.62.

(d) The Secretary, after consideration of the recommendation of the Board, shall fix the rate of assessment to be paid by each handler during the fiscal period in an amount designed to secure sufficient funds to cover the expenses which may be approved and incurred

during such period or subsequent period as provided in paragraph (c) of this section. At any time during or after the fiscal period, the Secretary may increase the rate of assessment in order to secure sufficient funds to cover any later finding by the Secretary relative to the expenses which may be incurred. Such increase shall be applied to all cherries handled during the applicable fiscal period. In order to provide funds for the administration of the provisions of this part during the first part of a fiscal period before sufficient operating income is available from assessments, the Board may accept the payment of assessments in advance, and may borrow money for such purposes.

(e) Assessments not paid within a time prescribed by the Board may be made subject to interest or late payment charges, or both. The period of time, rate of interest, and late payment charge will be as recommended by the Board and approved by the Secretary: *Provided,* That when interest or late payment charges are in effect, they shall be applied to all assessments not paid within the prescribed period of time.

(f) Assessments will be calculated on the basis of pounds of cherries handled: *Provided,* That the formula adopted by the Board and approved by the Secretary for determining the rate of assessment will compensate for differences in the number of pounds of cherries utilized for various cherry products and the relative market values of such cherry products.

(g) The Board, with the approval of the Secretary, may establish rules and regulations necessary and incidental to the administration of this section.

§ 930.42 Accounting.

(a) If, at the end of a fiscal period, the assessments collected are in excess of expenses incurred, the Board, with the approval of the Secretary, may carry over all or any portion of such excess into subsequent fiscal periods as a reserve. Such reserve funds may be used to cover any expenses authorized by this part, and to cover necessary expenses of liquidation in the event of termination of this part. If any such excess is not retained in a reserve, it shall be refunded proportionately to the handlers from whom the excess was collected. Without an additional reserve level approved by the Secretary, the amount held in reserve may not exceed approximately one year's operational expenses. Upon termination of this part, any funds not required to defray the necessary expenses of liquidation shall be disposed of in such a manner as the Secretary may determine to be appropriate: *Provided,* That to the extent practicable, such funds shall be returned pro rata to the persons from whom such funds were collected.

(b) All funds received by the Board pursuant to the provisions of this part shall be used solely for the purpose specified in this part and shall be accounted for in the manner provided in this part. The Secretary may at any time require the Board and its members to account for all receipts and disbursements.

Quality Control

§ 930.44 Quality Control.

(a) *Quality standards.* The Board may establish, with the approval of the Secretary, such minimum quality and inspection requirements applicable to cherries as will contribute to orderly marketing or be in the public interest. If such requirements are adopted, no handler shall process cherries into manufactured products or sell manufactured products in the current of commerce unless such cherries and/or such cherries used in the manufacture of products meet the applicable requirements as evidenced by certification acceptable to the Board. The Board, with the approval of the Secretary, may establish rules and regulations necessary and incidental to the administration of this section.

(b) *Inspection and certification.* Whenever the handling of any cherries requires inspection pursuant to this part, each handler who handles cherries shall cause such cherries to be inspected by the appropriate division of USDA, and certified by it as meeting the applicable requirements of such regulation: *Provided,* That inspection and certification shall be required for cherries which previously have been so inspected and certified only if such cherries have been regraded, resorted, repackaged, or in any other way further prepared for market. Promptly after inspection and certification, each such handler shall submit, or cause to be submitted, to the Board a copy of the certificate of inspection issued with respect to such cherries.

Research, Market Development and Promotion

§ 930.48 Research, Market Development and Promotion.

The Board, with the approval of the Secretary, may establish or provide for the establishment of production and processing research, market research and development, and/or promotional activities, including paid advertising, designed to assist, improve or promote the efficient production and processing, marketing, distribution, and consumption of cherries subject to this part. The expense of such projects shall be paid from funds collected pursuant to this part and the income from such funds.

Regulations

§ 930.50 Marketing policy.

(a) *Optimum Supply.* On or about July 1 of each crop year, the Board shall hold a meeting to review sales data, inventory data, current crop forecasts and market conditions in order to establish an optimum supply level for the crop year. The optimum supply volume shall be calculated as 100 percent of the average sales of the prior three years to which shall be added a desirable carryout inventory not to exceed 20 million pounds or such other amount as the Board, with the approval of the Secretary may establish. This optimum supply volume shall be announced by the Board in accordance with paragraph (h) of this section.

(b) *Preliminary percentages.* On or about July 1 of each crop year, the Board shall establish a preliminary free market tonnage percentage which shall be calculated as follows: from the optimum supply computed in paragraph (a) of this section, the Board shall deduct the carryin inventory to determine the tonnage requirements (adjusted to a raw fruit equivalent) for the current crop year which will be subtracted by the current year USDA crop forecast. If the resulting number is positive, this would represent the estimated over-production which would need to be the restricted percentage tonnage. This restricted percentage tonnage would then be divided by the sum of the USDA crop forecast for the regulated districts to obtain the percentages for the regulated districts. The Board shall establish a preliminary restricted percentage equal to the quotient, rounded to the nearest whole number, with the compliment being the preliminary free tonnage percentage. If subtracting the current crop year requirement, computed in the first sentence from the current USDA crop forecast, results in a negative number, the Board shall establish a preliminary free tonnage of 100 percent with a preliminary restricted percentage of zero. The Board shall announce these preliminary percentages in accordance with paragraph (h) of this section.

(c) *Interim percentages.* Between July 1 and September 15 of each crop year, the Board may modify the preliminary free market tonnage and restricted percentages to adjust to the actual pack occurring in the industry. The Board shall announce any interim percentages

in accordance with paragraph (h) of this section.

(d) *Final percentages.* No later than September 15 of each crop year, the Board shall review actual production during the current crop year and make such adjustments as are necessary between free and restricted tonnage to achieve the optimum supply and recommend such final free market tonnage and restricted percentages to the Secretary and announce them in accordance with paragraph (h) of this section. The difference between any final free market tonnage percentage designated by the Secretary and 100 percent shall be the final restricted percentage. With its recommendation, the Board shall report on its consideration of the factors in paragraph (e) of this section.

(e) *Factors.* When computing preliminary and interim percentages, or determining final percentages for recommendation to the Secretary, the Board shall give consideration to the following factors:

(1) The estimated total production of cherries;

(2) The estimated size of the crop to be handled;

(3) The expected general quality of such cherry production;

(4) The expected carryover as of July 1 of canned and frozen cherries and other cherry products;

(5) The expected demand conditions for cherries in different market segments;

(6) Supplies of competing commodities;

(7) An analysis of economic factors having a bearing on the marketing of cherries;

(8) The estimated tonnage held by handlers in primary or secondary inventory reserves; and

(9) Any estimated release of primary or secondary inventory reserve cherries during the crop year.

(f) *Modification.* In the event the Board subsequently deems it advisable to modify its marketing policy, because of national emergency, crop failure, or other major change in economic conditions, it shall hold a meeting for that purpose, and file a report thereof with the Secretary within 5 days (exclusive of Saturdays, Sundays, and holidays) after the holding of such meeting, which report shall show the Board's recommended modification and the basis therefor.

(g) *Reserve tonnage to sell as free tonnage.* In addition, the Board shall make available tonnage equivalent to an additional 10 percent, if available, of the average sales of the prior 3 years for market expansion. Handlers can determine if they need the additional tonnage and inform the Board so that reserve cherries may be released to them. Handlers not desiring the additional tonnage would not have it released to them.

(h) *Publicity.* The Board shall promptly give reasonable publicity to growers and handlers of each meeting to consider a marketing policy or any modification thereof, and each such meeting shall be open to them and to the public. Similar publicity shall be given to growers and handlers of each marketing policy report or modification thereof, filed with the Secretary and of the Secretary's action thereon. Copies of all marketing policy reports shall be maintained in the office of the Board, where they shall be made available for examination. The Board shall notify handlers, and give reasonable publicity to growers, of its computation of the optimum supply, preliminary percentages, and interim percentages and shall notify handlers of the Secretary's action on final percentages by registered or certified mail.

(i) *Restricted Percentages.* Restricted percentage requirements established under paragraph (b), (c) or (d) of this section may be fulfilled by handlers by either establishing an inventory reserve in accordance with § 930.55 or § 930.57 or by diversion of product in accordance with § 930.59. In years where required, the Board shall establish a maximum percentage of the restricted quantity which may be established as a primary inventory reserve such that the total primary inventory reserve does not exceed 50 million pounds. Handlers will be permitted to divert (at plant or with grower-diversion certificates) as much of the restricted percentage requirement as they deem appropriate, but may not establish a primary inventory reserve in excess of the percentage established by the Board for restricted cherries. In the event handlers wish to establish inventory reserve in excess of this amount, they may do so, in which case it will be classified as a secondary inventory reserve and will be regulated accordingly.

(j) *Inventory Reserve Release.* In years when inventory reserve cherries are available and when the expected availability of cherries from the current crop plus expected carryin inventory does not fulfill the optimum supply, the Board shall release not later than November 1st of the current crop year such volume from the inventory reserve as will satisfy the optimum supply.

(k) The Board, with the approval of the Secretary, may establish rules and regulations necessary and incidental to the administration of this section.

§ 930.51 Issuance of volume regulations.

(a) Whenever the Secretary finds, from the recommendation and supporting information supplied by the Board, that to designate final free market tonnage and restricted percentages for any cherries acquired by handlers during the crop year will tend to effectuate the declared policy of the Act, the Secretary shall designate such percentages. Such regulation designating such percentage shall fix the free market tonnage and restricted percentages, totaling 100 percent, which shall be applied in accordance with this section, § 930.55, § 930.57 and § 930.59 to cherries grown in regulated districts, as determined under § 930.52, and handled during such fiscal period.

(b) The Board shall be informed immediately of any such regulation issued by the Secretary, and the Board shall promptly give notice thereof to handlers.

(c) That portion of a handler's cherries that are restricted percentage cherries is the product of the restricted percentage imposed under paragraph (a) of this section multiplied by the tonnage of cherries, originating in a regulated district, handled, including those diverted according to § 930.59, by that handler in that fiscal year. Therefore, while diverted cherries, including those represented by grower diversion certificates, may be exempt from assessment under § 930.41, they must be counted when computing restricted percentage requirements.

(d) The Board, with the approval of the Secretary, shall develop rules and regulations which shall provide guidelines for handlers in complying with any restricted tonnage requirements, including, but not limited to, a grace period of at least 30 days to segregate and appropriately document any tonnage they wish to place in the inventory reserve and to assemble any applicable diversion certificates.

§ 930.52 Establishment of districts subject to volume regulations.

(a) Upon adoption of this part, the districts in which handlers shall be subject to any volume regulations implemented in accordance with this part shall be those districts in which the average annual production of cherries over the prior three years has exceeded 15 million pounds. Handlers in districts not meeting the 15 million pound requirement at the time of order promulgation shall become subject to volume regulation implemented in accordance with this part in the crop year that follows any three-year period in which the 15 million pound average

production requirement is exceeded in that district.

(b) Handlers in districts which are not subject to volume regulation would only be so regulated to the extent that they handled cherries which were grown in a district subject to regulation as specified in paragraph (a) of this section. In such a case, the handler must place in inventory reserve pursuant to § 930.55 or § 930.57 or divert pursuant to § 930.59 the required restricted percentage of the crop originating in the regulated district.

(c) Handlers in districts not meeting the production requirement described in paragraph (a) of this section in a given year would not be subject to volume regulation in the next crop year.

(d) Any district producing a crop which is less than 50 percent of the average annual processed production in that district in the previous five years would be exempt from any volume regulation if, in that year, a restricted percentage is established.

(e) The Board, with the approval of the Secretary, may establish rules and regulations necessary and incidental to the administration of this section.

§ 930.53 Modification, suspension, or termination of regulations.

(a) In the event the Board at any time finds that, by reason of changed conditions, any regulations issued pursuant to §§ 930.44 or 930.51 should be modified, suspended, or terminated, it shall so recommend to the Secretary.

(b) Whenever the Secretary finds, from the recommendations and information submitted by the Board or from other available information, that a regulation issued pursuant to §§ 930.44 or 930.51 should be modified, suspended or terminated with respect to any or all shipments of cherries in order to effectuate the declared policy of the Act, the Secretary shall modify, suspend, or terminate such regulation.

§ 930.54 Prohibition on the use or disposition of inventory reserve cherries.

(a) *Release of primary and secondary inventory reserve cherries.* Except as provided in § 930.50 and paragraph (b) of this section, cherries that are placed in inventory reserve pursuant to the requirements of § 930.50, § 930.51, § 930.55, or § 930.57 shall not be used or disposed of by any handler or any other person: *Provided,* That if the Board determines that the total available supplies for use in normal commercial outlets do not at least equal the amount, as estimated by the Board, needed to meet the demand in such outlets, the Board shall recommend to the Secretary and provide such justification that, during such period as may be recommended by the Board and approved by the Secretary, a portion or all of the primary and/or secondary inventory reserve cherries shall be released for such use.

§ 930.55 Primary inventory reserves.

(a) Whenever the Secretary has fixed the free market tonnage and restricted percentages for any fiscal period, as provided for in § 930.51(a), each handler in a regulated district shall place in his or her primary inventory reserve for such period, at such time, and in such manner, as the Board may prescribe, or otherwise divert, according to § 930.59, a portion of the cherries acquired during such period.

(b) The form of the cherries, frozen, canned in any form, dried, or concentrated juice, placed in the primary inventory reserve is at the option of the handler. Except as may be limited by § 930.50 (i) or as may be permitted pursuant to § 930.59 and § 930.62, such inventory reserve portion shall be equal to the sum of the products obtained by multiplying the weight or volume of the cherries in each lot of cherries acquired during the fiscal period by the then effective restricted percentage fixed by the Secretary: *Provided,* That in converting cherries in each lot to the form chosen by the handler, the inventory reserve obligations shall be adjusted in accordance with uniform rules adopted by the Board in terms of raw fruit equivalent.

(c) Inventory reserve cherries shall meet such standards of grade, quality, or condition as the Board, with the approval of the Secretary, may establish. All such cherries shall be inspected by USDA. A certificate of such inspection shall be issued which shall show, among other things, the name and address of the handler, the number and type of containers in the lot, the grade of the product, the location where the lot is stored, identification marks (can codes or lot stamp), and a certification that the cherries meet the prescribed standards. Promptly after inspection and certification, each such handler shall submit, or cause to be submitted, to the Board, at the place designated by the Board, a copy of the certificate of inspection issued with respect to such cherries.

(d) Handlers shall be compensated for inspection costs incurred on cherries placed in the primary inventory reserve. All reporting of cherries placed in, rotated in and out, or released from an inventory reserve shall be in accordance with rules and procedures established by the Board, with the approval of the Secretary. The Board could, with the approval of the Secretary, also limit the number of inspections of reserve cherries being rotated into inventory reserves for which the Board would be financially liable.

(e) Except as provided in § 930.54, handlers may not sell inventory reserve cherries prior to their official release by the Board. Handlers may rotate cherries in their inventory reserves with prior notification to the Board. All cherries rotated into the inventory reserve must meet the applicable inspection requirements.

§ 930.56 Off-premise inventory reserve.

Any handler may, upon notification to the Board, arrange to hold inventory reserve, of his or her own production or which was purchased, on the premises of another handler or in an approved commercial storage facility in the same manner as though the inventory reserve were on the handler's own premises.

§ 930.57 Secondary inventory reserve.

(a) In the event the inventory reserve established under § 930.55 of this part is at its maximum volume, and the Board has announced, in accordance with § 930.50, that volume regulation will be necessary to maintain an orderly supply of quality cherries for the market, handlers in a regulated district may elect to place in a secondary inventory reserve all or a portion of the cherries the volume regulation would otherwise require them to divert in accordance with § 930.59.

(b) Should any handler in a regulated district exercise his or her right to establish a secondary inventory reserve under paragraph (a) of this section, all costs of maintaining that reserve, as well as inspection costs, will be the responsibility of the individual handler.

(c) The secondary inventory reserve shall be established in accordance with §§ 930.55(b) and (c) and such other rules and regulations which the Board, with the approval of the Secretary, may establish.

(d) The Board shall retain control over the release of any cherries from the secondary inventory reserve. No cherries may be released from the secondary reserve until all cherries in any primary inventory reserve established under § 930.55 have been released. Any release of the secondary inventory reserve shall be in accordance with the annual marketing policy and with § 930.54.

§ 930.58 Grower diversion privilege.

(a) *In general.* Any grower may voluntarily elect to divert, in accordance with the provisions of this section, all

or a portion of the cherries which otherwise, upon delivery to a handler, would become restricted percentage cherries. Upon such diversion and compliance with the provisions of this section, the Board shall issue to the diverting grower a grower diversion certificate which such grower may deliver to a handler, as though there were actual harvested cherries.

(b) *Eligible diversion.* Grower diversion certificates shall be issued to growers only if the cherries are diverted in accordance with the following terms and conditions or such other terms and conditions that the Board, with the approval of the Secretary, may establish. Diversion may take such of the following forms which the Board, with the approval of the Secretary, may designate: uses exempt under § 930.62; nonhuman food uses; or other uses, including diversion by leaving such cherries unharvested.

(c) *Application/mapping.* The Board, with the approval of Secretary, shall develop rules and regulations providing for the diversion of cherries by growers. Such regulations may include, among other things: (1) The form and content of applications and agreements relating to the diversion, including provisions for supervision and compensation; and (2) provisions for mapping areas in which cherries will be left unharvested.

(d) *Diversion certificate.* If the Board approves the application it shall so notify the applicant and conduct such supervision of the applicant's diversion of cherries as may be necessary to assure that the cherries have been diverted. After the diversion has been accomplished, the Board shall issue to the diverting grower a diversion certificate stating the weight of cherries diverted. Where diversion is carried out by leaving the cherries unharvested, the Board shall estimate the weight of cherries diverted on the basis of such uniform rule prescribed in rules and regulations as the Board, with the approval of the Secretary, may recommend to implement this section.

§ 930.59 Handler diversion privilege.

(a) *In general.* Handlers handling cherries harvested in a regulated district may fulfill any restricted percentage requirement in full or in part by voluntarily diverting cherries or cherry products in a program approved by the Board, rather than placing cherries in an inventory reserve. Upon such diversion and compliance with the provisions of this section, the Board shall issue to the diverting handler a handler diversion certificate which shall satisfy any restricted percentage or diversion requirement to the extent of the Board or Department inspected weight of the cherries diverted.

(b) *Eligible diversion.* Handler diversion certificates shall be issued to handlers only if the cherries are diverted in accordance with the following terms and conditions or such other terms and conditions that the Board, with the approval of the Secretary, may establish. Such diversion may take place in any of the following forms which the Board, with the approval of the Secretary, may designate: uses exempt under § 930.62; contribution to a Board approved food bank or other approved charitable organization; acquisition of grower diversion certificates that have been issued in accordance with § 930.58; or other uses, including diversion by destruction of the cherries at the handler's facilities: *Provided,* That diversion may not be accomplished by converting cherries into juice or juice concentrate.

(c) *Notification.* The handler electing to divert cherries through means specified in this section or other approved means (not including uses exempt under § 930.62), shall first notify the Board of such election. Such notification shall describe in detail the manner in which the handler proposes to divert cherries including, if the diversion is to be by means of destruction of the cherries, a detailed description of the means of destruction and ultimate disposition of the cherries. It shall also contain an agreement that the proposed diversion is to be carried out under the supervision of the Board and that the cost of such supervision is to be paid by the handler. Uniform fees for such supervision shall be established by the Board, pursuant to rules and regulations approved by the Secretary.

(d) *Application.* The handler electing to divert cherries by utilizing an exemption under § 930.62 shall first apply to the Board for approval of such diversion; no diversion should take place prior to such approval. Such application shall describe in detail the uses to which the diverted cherries will be put. It shall also contain an agreement that the proposed diversion is to be carried out under the supervision of the Board and that the cost of such supervision is to be paid by the applicant. The Board shall notify the applicant of the Board's approval or disapproval of the submitted application.

(e) *Diversion certificate.* The Board shall conduct such supervision of the handler's diversion of cherries under paragraph (c) or under paragraph (d) of this section as may be necessary to assure that the cherries are diverted. After the diversion has been accomplished, the Board shall issue to the diverting handler a handler diversion certificate indicating the weight of cherries which may be used to offset any restricted percentage requirement.

§ 930.60 Equity holders.

(a) *Inventory reserve ownership.* The inventory reserve shall be the sole responsibility of the handlers who place products into the inventory reserve. A handler's equity in the primary inventory reserve may be transferred to another person upon notification to the Board.

(b) *Agreements with growers.* Individual handlers are encouraged to have written agreements with growers who deliver their cherries to the handler as to how any restricted percentage cherries delivered to the handler will be handled and what share, if any, the grower will have in the eventual sale of any inventory reserve cherries.

(c) *Rulemaking authority.* The Board, with the approval of the Secretary, may adopt rules and regulations necessary and incidental to the administration of this section.

§ 930.61 Handler compensation.

Each handler handling cherries from a regulated district that is subject to volume regulations shall be compensated by the Board for inspection relating to the primary inventory reserve as the Board may deem to be appropriate. The Board, with the approval of the Secretary, may establish such rules and regulations as are necessary and incidental to the administration of this section.

§ 930.62 Exemptions.

The Board, with the approval of the Secretary, may exempt from the provisions of § 930.41, § 940.44, § 930.51, § 930.53, and § 930.55 through § 930.57 cherries: diverted in accordance with § 930.59; used for new product and new market development; used for experimental purposes or for any other use designated by the Board, including cherries processed into products for markets for which less than 5 percent of the preceding 5-year average production of cherries were utilized. The Board, with the approval of the Secretary, shall prescribe such rules, regulations, and safeguards as it may deem necessary to ensure that cherries handled under the provisions of this section are handled only as authorized.

§ 930.63 Deferment of restricted obligation.

(a) *Bonding.* The Board, with the approval of the Secretary, may require handlers to secure bonds on deferred inventory reserve tonnage. Handlers may, in order to comply with the requirements of §§ 930.50 and 930.51 and regulations issued thereunder, secure bonds on restricted percentage cherries to temporarily defer the date that inventory reserve cherries must be held to any date requested by the handler. This date shall be not later than 60 days prior to the end of that crop year. Such deferment shall be conditioned upon the voluntary execution and delivery by the handler to the Board of a written undertaking within thirty (30) days after the Secretary announces the final restricted percentage under § 930.51. Such written undertaking shall be secured by a bond or bonds with a surety or sureties acceptable to the Board that on or prior to the acceptable deferred date the handler will have fully satisfied the restricted percentage amount required by § 930.51.

(b) *Rulemaking authority.* The Board, with the approval of the Secretary, may adopt rules and regulations necessary and incidental to the administration of this section.

Reports and Records

§ 930.70 Reports.

(a) *Weekly production, monthly sales, and inventory data.* Each handler shall, upon request of the Board, file promptly with the Board, reports showing weekly production data; monthly sales and inventory data; and such other information, including the volume of any cherries placed in or released from a primary or secondary inventory reserve or diverted, as the Board shall specify with respect to any cherries handled by the handler. Such information may be provided to the Board members in summary or aggregated form only without any reference to the individual sources of the information.

(b) *Other reports.* Upon the request of the Board, with the approval of the Secretary, each handler shall furnish to the Board such other information with respect to the cherries acquired, handled, stored and disposed of by such handler as may be necessary to enable the Board to exercise its powers and perform its duties under this part.

(c) *Protection of proprietary information.* Under no circumstances shall any information or reports be made available to the Board members, or to any person designated by the Board or by the Secretary, which will reveal the proprietary information of an individual handler.

§ 930.71 Records.

Each handler shall maintain such records of all cherries acquired, handled, stored or sold, or otherwise disposed of as will substantiate the required reports and as may be prescribed by the Board. All such records shall be maintained for not less than two years after the termination of the fiscal year in which the transactions occurred or for such lesser period as the Board may direct with the approval of the Secretary.

§ 930.72 Verification of reports and records.

For the purpose of assuring compliance and checking and verifying the reports filed by handlers, the Secretary and the Board, through its duly authorized agents, shall have access to any premises where applicable records are maintained, where cherries are received, stored, or handled, and, at any time during reasonable business hours, shall be permitted to inspect such handlers premises and any and all records of such handlers with respect to matters within the purview of this part.

§ 930.73 Confidential information.

All reports and records furnished or submitted by handlers to the Board and its authorized agents which include data or information constituting a trade secret or disclosing trade position, financial condition, or business operations of the particular handler from whom received, shall be received by and at all times kept in the custody and under the control of one or more employees of the Board or its agent, who shall disclose such information to no person other than the Secretary.

Miscellaneous Provisions

§ 930.80 Compliance.

Except as provided in this part, no person may handle cherries, the handling of which has been prohibited by the Secretary under this part, and no person shall handle cherries except in conformity with the provisions of this part and the regulations issued hereunder. No person may handle any cherries for which a diversion certificate has been issued other than as provided in § 930.58(b) and § 930.59(b).

§ 930.81 Right of the Secretary.

Members of the Board (including successors and alternates), and any agents, employees, or representatives thereof, shall be subject to removal or suspension by the Secretary at any time. Each regulation, decision, determination, or other act of the Board shall be subject to the Secretary's disapproval at any time. Upon such disapproval, the disapproved action of the Board shall be deemed null and void, except as to acts done in reliance thereon or in accordance therewith prior to such disapproval by the Secretary.

§ 930.82 Effective time.

The provisions of this part, and of any amendment thereto, shall become effective at such time as the Secretary may declare, and shall continue in force until terminated, or suspended.

§ 930.83 Termination.

(a) The Secretary may, at any time, terminate any or all of the provisions of this part by giving at least 1 day's notice by means of a press notice or in any other manner in which the Secretary may determine.

(b) The Secretary shall terminate or suspend the operation of any or all of the provisions of this part whenever the Secretary finds that such provisions do not tend to effectuate the declared policy of the Act.

(c) The Secretary shall terminate the provisions of this part whenever the Secretary finds by referendum or otherwise that such termination is favored by a majority of the growers and processors: *Provided,* That such majority has, during the current fiscal year, produced or canned and frozen more than 50 percent of the volume of the cherries which were produced or processed within the production area. Such termination shall become effective on the last day of June subsequent to the announcement thereof by the Secretary.

(d) The Secretary shall conduct a referendum within the month of March of every sixth year after the effective date of this part to ascertain whether continuation of this part is favored by the growers and processors. The Secretary may terminate the provisions of this part at the end of any fiscal period in which the Secretary has found that continuance is not favored by a majority of growers and processors who, during a representative period determined by the Secretary, have been engaged in the production or processing of tart cherries in the production area. Such termination shall be announced on or before the end of the fiscal period.

(e) The provisions of this part shall, in any event, terminate whenever the provisions of the Act authorizing them cease to be in effect.

§ 930.84 Proceedings after termination.

(a) Upon the termination of the provisions of this part, the then

functioning members of the Board shall, for the purpose of liquidating the affairs of the Board, continue as trustees of all the funds and property then in its possession, or under its control, including claims for any funds unpaid or property not delivered at the time of such termination.

(b) The said trustees shall:

(1) continue in such capacity until discharged by the Secretary;

(2) from time to time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the Board and of the trustees, to such person as the Secretary may direct; and

(3) upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title and right to all of the funds, property, and claims vested in the Board or in the trustees pursuant to this part.

(c) Any person to whom funds, property, and claims have been transferred or delivered, pursuant to this section, shall be subject to the same obligations imposed upon the Board and upon the trustees.

§ 930.85 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this part or of any regulation issued pursuant to this part, or the issuance of any amendment to either thereof, shall not:

(a) Affect or waive any right, duty, obligation, or liability which shall have risen or which may thereafter arise in connection with any provision of this part or any regulation issued thereunder;

(b) Release or extinguish any violation of this part or any regulation issued thereunder;

(c) Affect or impair any rights or remedies of the Secretary or any other person with respect to any such violation.

§ 930.86 Duration of immunities.

The benefits, privileges, and immunities conferred upon any person by virtue of this part shall cease upon its termination, except with respect to acts done under and during the existence of this part.

§ 930.87 Agents.

The Secretary may, by designation in writing, name any officer or employee of the United States, or name any agency or division in the U.S. Department of Agriculture, to act as the Secretary's agent or representative in connection with any provisions of this part.

§ 930.88 Derogation.

Nothing contained in this part is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States to exercise any powers granted by the Act or otherwise, or, in accordance with such powers, to act in the premises whenever such action is deemed advisable.

§ 930.89 Personal liability.

No member or alternate member of the Board and no employee or agent of the Board shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate member, employee, or agent, except for acts of dishonesty, willful misconduct, or gross negligence.

§ 930.90 Separability.

If any provision of this part is declared invalid or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder of this part or the applicability thereof to any other person, circumstance, or thing shall not be affected thereby.

§ 930.91 Amendments.

Amendments to this subpart may be proposed, from time to time, by the Board or by the Secretary.

§ 930.92 Counterparts.

This agreement may be executed in multiple counterparts and when one counterpart is signed by the Secretary, all such counterparts shall constitute, when taken together, one and the same instrument as if all signatures were contained in one original.

§ 930.93 Additional parties.

After the effective date thereof, any handler may become a party to this agreement if a counterpart is executed by such handler and delivered to the Secretary. This agreement shall take effect as to such new contracting part at the time such counterpart is delivered to the Secretary, and the benefits, privileges, and immunities conferred by this agreement shall then be effective as to such new contracting party.

§ 930.94 Order with marketing agreement.

Each signatory hereby requests the Secretary to issue, pursuant to the Act, an order providing for regulating the handling of tart cherries in the same manner as is provided for in this agreement.

Subpart B—[Reserved]

Dated: May 22, 1996.

Shirley R. Watkins,

Deputy Assistant Secretary, Marketing and Regulatory Programs.

[FR Doc. 96–13383 Filed 5–24–96; 8:45 am]

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federal register

Wednesday
May 29, 1996

Part III

Department of Housing and Urban Development

24 CFR Parts 206 and 234

Condominium Units in Non-FHA Approved Projects; Mortgage Insurance; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 206 and 234

[Docket No. FR–3655–F–02]

RIN 2502–AG23

Office of the Assistant Secretary for Housing-Federal Housing Commissioner; Mortgage Insurance on Condominium Units in Non-FHA Approved Projects

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, (HUD).

ACTION: Final rule.

SUMMARY: This rule adds provisions to the regulations governing Federal Housing Administration (FHA) mortgage insurance on condominium units to permit insurance of mortgages on individual units in condominium projects that have not received FHA approval in advance. These ''spot loans'' will be approved under less stringent requirements than the existing requirements for mortgage insurance for condominiums, but mortgages on these units are required to satisfy standards that assure that the risk involved for FHA is reasonable. The final rule does make one change from the proposed rule in response to public comment—to increase, for small projects, the percentage of units that may be approved for FHA mortgage insurance.

EFFECTIVE DATE: June 28, 1996.

FOR FURTHER INFORMATION CONTACT: Richard Manuel, Director, Single Family Development Division, Office of Insured Single Family Housing, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, D.C. 20410. He may be reached at (202) 708–2700 (not a toll-free number). For hearing- and speech-impaired persons, this number may be accessed via text telephone by dialing the Federal Information Relay Service at 1–800–877–9339.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in § 234.26(i) of this rule were reviewed and approved by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (42 U.S.C. 3501–3520) and assigned OMB approval number 2502–0513. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

I. Response to Public Comments

On June 23, 1995, HUD published a proposed rule to revise the regulations concerning eligibility of mortgages for insurance under the Home Equity Conversion Mortgage Insurance program (24 CFR part 206) or under the Condominium Ownership Mortgage Insurance program (24 CFR part 234). During the comment period, which ended August 22, 1995, HUD received 7 public comments from lending institutions and individuals. Three of the public comments favored the rule, while the remaining comments focused on difficulties with the rule. The only change being made in the rule as a result of consideration of these public comments is to increase the percentage of units on which ''spot loans'' are permitted from 10 percent to 20 percent of the units in a project of 30 or fewer units.

General comments

Several commenters stated that the rule would permit elderly homeowners to take advantage of the Home Equity Conversion Mortgage program more easily, since they would not have to make public to other unit owners in the condominium that they were seeking additional income from this source. Similarly, homeowners would be able to use the refinancing program that permits cash out to the buyer in a project not currently eligible for FHA mortgage insurance. The availability of this additional cash to condominium owners will increase their ability to keep up with growing costs for such basic needs as increasing condominium association fees, health care costs, or other essential services.

One commenter praised the reduction in paperwork, noting that the Federal National Mortgage Association (''Fannie Mae'') and the Federal Home Loan Mortgage Corporation (''Freddie Mac'') streamlined their project approval processes in the past decade, with each one using a procedure very similar to the one proposed in this rule for one class of mortgage (Fannie Mae Type A condominium and Freddie Mac Class III condominium).

A commenter also praised this effort as contributing towards stabilizing the condominium resale market.

Specific Comments

Ten Percent Limit on Participation in a Project

1. *Comment:* There is no way now to track how many units in a particular project have received the benefit of FHA mortgage insurance. Even though project approval requests could be added to HUD's existing CHUMS system at the time of project approval, spot loans would be difficult to track. This problem is complicated by the multitude of direct endorsement lenders.

Response: Since the Department currently is without the technical or staffing capability to track the exact number of FHA-insured mortgages in a condominium project, mortgagees will be responsible for assuring that the condominium project meets all the streamlined approval requirements. These streamlined requirements are similar to Fannie Mae's requirements for approving ''Type A condominiums,'' found in Part VIII, Chapter 2, § 201 of its *Selling Guide.* To the extent that the Department has information that can assist in ensuring compliance with the new FHA requirements, it will provide mortgagees with that information.

The rule requires lenders to monitor all of the requirements, including the limit on FHA spot loans in a project of no more than ten percent of the units and certifying to this effect. The Department recognizes that there is some potential for exceeding the prescribed limit, either accidentally or intentionally. The local HUD offices or the Regional Processing Centers will be conducting random reviews of these mortgage loans. Mortgage lenders demonstrating a pattern of abuse will be subject to sanctions.

The Department relies primarily on this limitation on the number of loans in a project to minimize risk of loss. As an additional safeguard, however, risk of loss also is minimized by the other requirements added to § 234.26, which collectively should ensure the viability of the project.

2. *Comment:* HUD need not limit this type of approval to 10 percent of the units. Alternative suggestions were to eliminate the limit entirely (Fannie Mae and Freddie Mac do not so limit their exposure); to add a requirement for the lender to insure that the project's budget is adequate, such as to fund replacement of common elements; or to increase the percentage to 20 percent of the units if the project has fewer than 30 units and/or has been in existence for more than five years. For example, in a project of fewer than 10 units, even one unit would exceed the 10 percent limit.

Response: The reason for this restriction is to limit the Department's risk of loss under this program. Furthermore, it assures that the spot loan process does not become a means of circumventing the requirements and protection of HUD's condominium approval process. Since the Department recognizes that small condominium

projects might not be able to participate in the spot loan program, we are accepting the recommendation to permit up to 20% of the units in a project of 30 or fewer units to have FHA-insured mortgages.

Concern About Default Rate

1. *Comment:* Units insured under spot loans pose a greater risk of default than those approved as part of a project approval. Many of the criteria relied upon in approving condominium developments for FHA insurance under the Section 234(c) program would not be used in the case of spot loans.

Response: The Department expects mortgage lenders to apply sound underwriting practices in processing spot loans. In most cases, spot loan projects should have the same maintenance level, reserves for replacement level, plan for maintenance, and insurance coverage as comparable developments approved under the Section 234(c) program. Lenders also should look at the length of time the homeowners association has operated successfully. All pertinent information regarding the viability of the development should be reviewed. Lenders may wish to create checksheets to facilitate this review. Presently, the Department believes that it is unnecessary to require all spot loan appraisals to be done on the Fannie Mae Form 1073, as one commenter suggested.

2. *Comment:* One method for limiting FHA's risk would be to limit spot loan mortgage insurance to reverse mortgage loans.

Response: The impetus for the spot loan program was to provide home mortgage insurance for those seeking to purchase condominium units in developments where there is little likelihood that the development would make the requisite changes in its legal documents (usually to benefit one association member) to obtain FHA approval. However, the Department wants spot loans to be available in forward loans as well as reverse loans. Reducing the risk of loss is addressed by limiting the Department's involvement in the development.

Downpayment

Comment: Given the additional risk involved in approving mortgage insurance without the full approval process, the downpayment should be proportionately increased, for example to 20 or 30 percent.

Response: The Department believes that increased downpayment requirements would thwart the spot loan program and, particularly, those constituents the Department has traditionally served—middle- and moderate-income families who normally could not obtain loans in other mortgage insurance markets. Few of FHA traditional constituents could afford to meet a 20 percent downpayment requirement. As previously noted, the Department has determined that spot loans pose a ''reasonable risk,'' which the rule controls largely by limiting the Department's involvement in each development.

Enforcement of lender responsibilities

Comment: If a lender approves a mortgage for FHA insurance under the spot loan provisions and the project does not satisfy the eligibility requirements stated in the regulation, there should be a penalty. Cancellation of the mortgage insurance or loss of the lender's direct endorsement authority might be appropriate.

Response: The Department agrees that enforcement mechanisms governing mortgagee activity apply to this program, as to other FHA mortgage insurance activity. The Department will monitor activity under the spot loan program.

Miscellaneous

1. *Comment:* Current provisions for FHA-approved projects with respect to the 51% owner-occupancy requirement should be loosened—permitting HUD field offices to approve a lower percentage if appropriate.

Response: This provision is not new. It follows current practice for non-spot loans. The Department does not believe it appropriate to change this requirement at this time.

2. *Comment:* The criterion (§ 234.26(i)(1)(iii)) limiting the number of units *owned by a single entity* in a project for which a spot loan approval is sought should be changed to the number of units *controlled by a single entity*. This would prevent insuring mortgages in projects where family members and wholly owned businesses or partnerships own more than 10 percent of the units in a project.

Response: The Department believes that ''ownership'' is a reasonable standard to use and that is easy to understand. ''Control'' is harder to identify and enforce. The Department declines to change this provision.

Findings and Certifications

Impact on the Environment

A Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations at 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332, in connection with the proposed rule on this subject. The Finding of No Significant Impact is available for public inspection and copying during regular business hours (7:30 a.m. to 5:30 p.m.) in the Office of the Rules Docket Clerk, room 10276, 451 Seventh Street, SW, Washington, DC 20410–0500.

Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule do not have significant impact on States or their political subdivisions since the provisions of the proposed rule affect private purchasers and sellers of condominium units.

Impact on the Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being. Therefore, the rule is not subject to review under the Order. The rule merely broadens the coverage of condominium units for which mortgage insurance can be obtained.

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule will not have a significant impact on a substantial number of small entities, because it makes available additional financing options for purchasers and sellers of condominium units.

Catalog

The Catalog of Federal Domestic Assistance number for the program affected by this proposed rule is 14.133.

List of Subjects

24 CFR Part 206

Aged, Condominiums, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 234

Condominiums, Mortgage insurance, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the preamble, parts 206 and 234 of title 24 of the Code of Federal Regulations are amended as follows:

PART 206—HOME EQUITY CONVERSION MORTGAGE INSURANCE

1. The authority citation continues to read as follows:

Authority: 12 U.S.C. 1715b, 1715z-20; 42 U.S.C. 3535(d).

2. Section 206.51 is revised to read as follows:

§ 206.51 Eligibility of mortgages involving a dwelling unit in a condominium.

If the mortgage involves a dwelling unit in a condominium, the project in which the unit is located shall have been committed to a plan of condominium ownership by deed, or other recorded instrument, that is acceptable to the Secretary, except as provided in § 234.26(i) of this chapter.

PART 234—CONDOMINIUM OWNERSHIP MORTGAGE INSURANCE

3. The authority citation for part 234 continues to read as follows:

Authority: 12 U.S.C. 1715b and 1715y; 42 U.S.C. 3535(d). Section 234.520(a)2)(ii) is also issued under 12 U.S.C. 1701(a).

4. In § 234.26, a new paragraph (i) would be added, to read as follows:

§ 234.26 Project requirements.

* * * * *

(i) Notwithstanding the requirements of paragraphs (a) through (h) of this section, a loan on a single unit in an unapproved condominium project (''spot loan'') may qualify for mortgage insurance under this part.

(1) The project must meet the following criteria:

(i) All units, common elements, and facilities—including those that are part of any master association—must have been completed, and the project cannot be subject to additional phasing or annexation. The project must provide for undivided ownership of common areas by unit owners;

(ii) Control of the owners' association must have been turned over to the unit purchasers, and the unit purchasers must have been in control for at least one year;

(iii) At least 90% of the total units in the project must have been conveyed to the unit purchasers, and at least 51% of the total units in the project must have been conveyed to purchasers who are occupying the units as their principal residences or second homes. No single entity (the same individual, investor group, partnership, or corporation) may own more than 10% of the total units in the project;

(iv) The units in the project must be owned in fee simple or be an eligible leasehold interest, as described in § 234.65, and the unit owners must have sole ownership interest in, and right to the use of, the project's facilities, common elements, and limited common elements including parking, recreational facilities, etc.;

(v) The project must be covered by hazard, flood, and liability insurance acceptable to the Commissioner;

(vi) For projects with more than 30 units, no more than 10% of the total units in the project may be encumbered by FHA-insured mortgages. (If more than 10% of the units in the project are encumbered by FHA-insured mortgages, the condominium project must be approved under paragraphs (a) through (h) of this section.) For smaller projects, no more than 20% of the total units in the project may be encumbered by FHA-insured mortgages; and

(vii) The assumability provisions of § 234.66 must be satisfied.

(2) Lenders must perform an underwriting analysis and certify that a project satisfies the eligibility criteria for a ''spot loan'' in a condominium project that has not been approved by FHA. Lenders may use information from the appraiser, the owners' association, the management company, the real estate broker, and the project developer, but the lender must ensure the accuracy of the information obtained from these sources.

(Approved by the Office of Management and Budget under control number 2502–0513)

Dated: May 22, 1996.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 96–13335 Filed 5–28–96; 8:45 am]

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federal register

Wednesday
May 29, 1996

Part IV

Environmental Protection Agency

Paper Products Recovered Materials Advisory Notice

ENVIRONMENTAL PROTECTION AGENCY

[SWH–FRL–5510–4–/EPA530–Z–96–005]

Paper Products Recovered Materials Advisory Notice

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of availability of final document.

SUMMARY: EPA is providing notice of the availability of the final Paper Products Recovered Materials Advisory Notice (RMAN) and supporting materials. Under Section 6002 of the Resource Conservation and Recovery Act, which establishes a buy-recycled program for federal agencies, EPA designates items that are or can be made with recovered materials and provides recommendations for government procurement of these items. The Agency is revising the 1988 recommendations to government procuring agencies for purchasing paper and paper products containing recovered materials. The final Paper Products RMAN addresses issues raised by paper manufacturers, merchants, and purchasers as they implemented the 1988 recommendations, and incorporates minimum content standards for uncoated printing and writing papers established by Executive Order. This action will promote paper recycling by using government purchasing to expand and maintain markets for recovered paper.

ADDRESSES: Supporting materials are available for viewing in the RCRA Information Center (RIC), located in Crystal Gateway I, 1235 Jefferson Davis Highway, First Floor, Arlington, Virginia. The Docket Identification Number is F–96–PPRF–FFFFF. The RIC is open from 9:00 am to 4:00 pm, Monday through Friday, excluding federal holidays. To review docket materials, it is recommended that the public make an appointment by calling 703 603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15 per page. The index of and some supporting materials are also available electronically. See Section IV of the **SUPPLEMENTARY INFORMATION** section for information on accessing the materials electronically.

FOR FURTHER INFORMATION CONTACT: For general information, please contact the RCRA Hotline at 800 424–9346, TDD 800 553–7672 (hearing impaired), or 703 412–9810 (Washington, DC metropolitan area).

For more detailed information regarding the recommendations in today's notice, contact Dana Arnold of the Office of Solid Waste at 703 308–7279 or at U.S. Environmental Protection Agency (5306W), 401 M Street, S.W., Washington, DC 24060, or at e-mail: arnold.dana@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Preamble Outline

I. Authority
II. Agency's Response to Public Comments
A. Definition of ''Postconsumer Fiber''
B. Definitions of ''Recovered Fiber'' and ''Mill Broke''
C. Inclusion of Recommendations for Consumer (At-home) Tissue Products
D. Recommendations for Newsprint, Corrugated Containers, Carrierboard, and Commercial/Industrial Tissue Products
1. Newsprint
2. Corrugated Containers
3. Carrierboard
4. Commercial/Industrial Tissue Products
III. Revision to Executive Order 12873
IV. Supporting Materials and Accessing Internet
V. Use of EPA's Recommendations
Final Paper Products Recovered Materials Advisory Notice

I. Authority

The final Paper Products Recovered Materials Advisory Notice (Paper RMAN) is published under authority of sections 2002(a) and 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6912(a) and 6962, and Executive Order 12873, ''Federal Acquisition, Recycling, and Waste Prevention'' (58 FR 54911, October 22, 1993).

II. Agency's Response to Public Comments

Today, the U.S. Environmental Protection Agency (EPA or the Agency) is publishing a final Paper RMAN, which contains recommendations for procuring agencies to use when purchasing paper and paper products in accordance with section 6002 of the Resource Conservation and Recovery Act of 1976 (RCRA).

EPA received over 50 comments on the draft Paper RMAN, which was published in the Federal Register on March 15, 1995 (see 50 FR 14181–14191). In addition to responding to EPA's requests in the draft Paper RMAN for comment on certain issues, the commenters also raised the following issues:

(1) Definition of ''postconsumer fiber,''

(2) Definitions of ''recovered fiber'' and ''mill broke,''

(3) Inclusion of recommendations for consumer (at-home) tissue products, and

(4) Recommendations for newsprint, corrugated containers, carrierboard, and commercial/industrial tissue products.

A summary of all comments received and the Agency's response to these comments are provided in ''Final Summary of Comments on the Proposed Paper Products Recovered Materials Advisory Notice'' and ''Final Paper Products Recovered Materials Advisory Notice—Response to Comments,'' respectively. The response to comments document also provides discussions of changes EPA made to the March 1995 draft recommendations, other than those discussed in this notice. See also ''Draft Paper Products RMAN—Supporting Analyses,'' February 1995, for additional discussions of the recommendations in the Paper RMAN. Section IV of this preamble provides information on viewing and obtaining copies of these documents.

A. Definition of ''Postconsumer Fiber''

In the draft Paper RMAN, EPA defined ''postconsumer fiber'' based on RCRA section 6002(h)(1)'s definition of ''postconsumer recovered materials.'' This is the same definition EPA used in the 1988 paper procurement guideline. In the draft Paper RMAN, however, EPA further stated that the definition of ''postconsumer fiber'' excludes ''fiber derived from printers' over-runs, converters' scrap, and over-issue publications.'' EPA has consistently taken the position since 1988 that postconsumer fiber does not include these recovered papers.

Several commenters argued that EPA should adopt a broader postconsumer definition for its recommendations. Most of these commenters believe that over-issue publications, such as newspapers and magazines, are postconsumer materials. Some of the commenters also stated that printers' over-runs should be included in the postconsumer definition. The commenters stated that the source of recovered paper is irrelevant to the pulp and papermaking processes because printed materials must be handled and pulped in the same way, regardless of source. The commenters also stated that it is not always possible to determine the origin of a bale or truckload of recovered paper and that there is no scientific means of testing paper to determine whether or not it is from a postconsumer source. They further claimed that the use of the narrower definition adds to the costs of manufacturing recycled paper because it

is more costly to track postconsumer materials.

EPA previously discussed these arguments in the preamble to the draft Paper RMAN (60 FR 14185, March 15, 1995) and in ''Draft Paper Products RMAN—Supporting Analyses''. Commenters simply repeated past arguments without providing new information to justify expanding the postconsumer definition. As explained in the following discussion, EPA continues to believe that its interpretation of RCRA section 6002 is reasonable.

RCRA section 6002(c) requires each procuring agency that purchases an EPA-designated item to procure such item containing the highest levels of recovered material practicable. In the case of paper, a procuring agency must procure a designated paper item composed of the ''highest percentage of postconsumer recovered materials.'' RCRA section 6002(h) defines ''recovered materials'' in the case of paper products. Paper recovered materials include two subsets: postconsumer materials, defined in (h)(1), and manufacturing and other recovered materials, defined in (h)(2).

Of the three types of material in question (converting scrap, printers' over-runs, and over-issue publications), one—converting scrap—clearly is not a postconsumer material. RCRA section 6002(h) specifically lists it with manufacturing and other recovered materials in subset (h)(2).

With respect to the other two types of material, over-issue publications and printers' over-runs, RCRA section 6002(h)(1) suggests two clear benchmarks for determining whether these are postconsumer materials. First, postconsumer paper includes paper that has passed through its end-usage as a consumer item. This includes conventional discarded paper (e.g., old newspapers and magazines) from retail stores, homes, and office buildings. Second, postconsumer paper also includes paper recovered from municipal solid waste. Thus, the statute would seem to limit postconsumer recovered newspapers and magazines to those publications collected from the consumer *before* they enter the municipal solid waste stream as well as that recovered from the municipal solid waste stream *after* collection. Over-issue publications and printers' over-runs which never reach a consumer do not meet either of these criteria.

The examples in the RCRA section 6002(h) definition appear to make a distinction between recovered materials and postconsumer recovered materials based on whether the paper is received by an ultimate consumer. Thus, for example, paper, paperboard and fibrous materials may be postconsumer paper after passing through their intended end uses as a consumer item. If, however, that same paper, paperboard or fibrous material never reaches a consumer, it remains a preconsumer recovered material.

In addition, a reading of the types of materials listed in section 6002(h)(1) suggests that over-issue publications and over-runs are not postconsumer materials. Among the examples of postconsumer paper given in the statute are ''old newspapers.'' Because publishers' over-runs and over-issue publications are clearly not ''old'' newspapers or ''old'' magazines, they are not a postconsumer material. Moreover, while section 6002(h) does not specifically list printers' over-runs and over-issue publications as either ''postconsumer materials'' or other recovered materials, it does provide that ''finished paper and paperboard from obsolete inventories of paper and paperboard manufacturers, merchants, wholesalers, dealers, printers, converters, or others [emphasis added]'' are not postconsumer materials. Thus, EPA believes that over-issue publications and printers' over-runs are specifically listed in RCRA section 6002 as preconsumer recovered materials.

Finally, one commenter stated that the postconsumer definition used in the draft Paper RMAN is contrary to the ''recovered materials'' definition in RCRA. The Agency disagrees with this comment. Congress defined ''postconsumer recovered materials'' in RCRA section 6002(h)(1). The postconsumer definition is the first subset of the ''recovered materials'' definition that Congress directs agencies to use when purchasing paper and paper products. Thus, EPA's use of the postconsumer definition is consistent with the RCRA definition.

B. Definitions of ''Recovered Fiber'' and ''Mill Broke''

In the draft Paper RMAN, EPA provided revised definitions of ''recovered fiber'' and ''mill broke.'' ''Recovered fiber'' identifies materials that can be counted toward the total recycled content of paper or paperboard. ''Mill broke'' identifies materials generated at a paper mill that would not be counted either as total recycled content or as postconsumer content under EPA's recommended content levels.

The definitions in the draft Paper RMAN were based on EPA's 1988 definitions of ''waste paper'' and ''mill broke.'' (In the 1988 paper procurement guideline, EPA had established a ''waste paper'' category to promote the use of postconsumer and other recovered paper in the manufacture of printing and writing papers.) EPA made three changes to these 1988 definitions in developing the Paper RMAN definitions. First, the following mill-generated materials were moved from ''waste paper'' to ''mill broke'': offgrade or off-specification rolls, converting scrap, culls, stub rolls, side rolls, end rolls, and obsolete inventories. In other words, these materials could no longer be counted toward the total recovered fiber content levels recommended in the Paper RMAN. EPA stated that these materials are commonly re-pulped, sold to others for pulping, or otherwise used in or converted to paper products. Allowing these materials to count toward recovered fiber content does not provide an incentive for mills to use materials recovered from solid waste and, therefore, does not meet the RCRA objective of increasing markets for postconsumer materials.

Second, EPA specified that materials must be re-pulped. As a result, a person cannot purchase an off-specification or obsolete roll, convert it into cut sheets or note pads, and sell it as paper containing ''recovered materials'' or paper ''meeting EPA's guidelines.''

Third, EPA corrected an error in the 1988 definition of ''waste paper'' by deleting the words ''forest residues'' from the phrase introducing the non-postconsumer materials that count as ''recovered fiber.'' EPA had erroneously included the words ''forest residues'' in the introductory phrase in the 1988 definition of ''waste paper,'' although the Agency had intended to exclude these materials from the definition.

While some commenters agreed with the ''recovered fiber'' and ''mill broke'' definitions, most commenters opposed the narrowing of the ''recovered fiber'' definition and the related expansion of the ''mill broke'' definition. Commenters pointed out that some of the materials that EPA included in the ''mill broke'' definition are specifically listed in the RCRA section 6002(h) definition of ''recovered materials.'' Therefore, the commenters stated, it is contrary to RCRA to include these materials in the definition of ''mill broke.'' Commenters also stated that all of the industry data previously provided to EPA were based on the 1988 definitions and, therefore, would be incorrect. Further, commenters stated that the excluded materials generally are easier to use because they are homogenous, clean, and without printing, whereas postconsumer materials are heterogenous, sometimes

contaminated with food residue and other contaminants, and contain printing. For this reason, mills would not substitute postconsumer materials for the excluded materials, but would instead seek out other preconsumer materials. Finally, commenters stated that the paper industry has based its investments and strategies for manufacturing recycled paper on the 1988 definitions and has invested billions of dollars in recycling, so there is no reason to change course now when the definitions have been working to increase domestic recycling capacity.

In light of the comments, EPA has reconsidered the definitions used in the draft Paper RMAN and has concluded that they are inconsistent with RCRA section 6002(h). EPA also has concluded that industry commenters are correct that retaining the definitions would require the Agency to conduct new research into the recovered fiber content of products. Further, EPA believes that, because the materials in question represent a small percentage of all materials recovered and used, the definitions would not make a significant contribution to expanding the use of postconsumer materials. For these reasons, EPA will retain the 1988 definition of ''mill broke'' in the final Paper RMAN. EPA also is retaining the 1988 definition of ''waste paper'' as the basis of the definition of ''recovered fiber.'' However, the Agency has modified the ''recovered fiber'' definition by adding that the material must be re-pulped and by excluding the words ''forest residues.''

C. Inclusion of Recommendations for Consumer (At-home) Tissue Products

In the draft Paper RMAN, EPA recommended content levels for consumer (at-home) bathroom tissue and paper towels (see Table A–3 in 60 FR 14190, March 15, 1995). Based on the data it had gathered on tissue products, EPA concluded that the paper industry produced two distinct product lines: consumer (at-home) tissue products and commercial/industrial (away-from-home) products. While procuring agencies generally would not purchase consumer tissue products and, consequently, would not be subject to the purchasing requirements under RCRA section 6002 with respect to these products, EPA determined that the Paper RMAN was a useful vehicle for disseminating information on another market for materials recovered from the solid waste stream. RCRA section 8003(e) specifically directs EPA to provide information on resource recovery.

Commenters opposed the inclusion of recommendations for consumer bathroom tissue and paper towels. They stated that the use of postconsumer and recovered fiber in consumer tissue products is driven by customer demand and mill economics and does not need additional stimulus from EPA recommendations. Several of the commenters stated that customer surveys and product shelf tests indicated that consumers resist recycled content consumer tissue products. They also noted that government agencies do not purchase consumer tissue products and that, therefore, EPA had exceeded its authority by recommending content levels for these products.

EPA believes that it did not exceed its authority under RCRA by recommending content levels for consumer tissue products. RCRA section 6002 directs EPA to provide guidance regarding the use of postconsumer materials in paper products. Moreover, as noted above, EPA has general authority under RCRA section 8003 to provide information about the use of recovered materials in products.

EPA's intent in recommending content levels for consumer tissue products was to encourage manufacturers producing these items with postconsumer and other recovered fiber. EPA policy has been to recommend content levels for paper products not purchased by government agencies if those recommendations would advance recycling and were supported by the product manufacturers. However, given the absence of any RCRA section 6002 obligations with respect to consumer tissue products and concern that EPA's action would, in fact, adversely affect the market for such products, EPA is not including recommendations for consumer tissue products in the final Paper RMAN.

D. Recommendations for Newsprint, Corrugated Containers, Carrierboard, and Commercial/Industrial Tissue Products

In the March 15, 1995 Federal Register, EPA described its methodology for establishing the ranges of recovered and postconsumer fiber recommended in the draft Paper RMAN (60 FR 14186). EPA stated that the high end of each range will be set at the maximum content currently used in paper and paper products that are available in sufficient quantities, and with adequate competition, to meet procuring agency needs. The low end of each range will be set at levels that can be met by the simple majority of mills currently producing paper and paper products containing postconsumer and recovered fiber. Comments indicated that the low end of the recommended ranges for newsprint, corrugated containers, carrierboard, and commercial/industrial tissue products did not reflect the fiber levels being used by a simple majority of mills at that time.

1. Newsprint

In the draft Paper RMAN, EPA recommended that newsprint contain 40–100% recovered fiber, including 40–85% postconsumer fiber (see Table A–2 in 60 FR 14189, March 15, 1995). Commenters stated that the low end of EPA's recommended ranges, 40%, is too high and does not reflect the content currently used by a simple majority of North American newsprint mills. In evaluating these comments, EPA researched the current postconsumer content of newsprint manufactured by 34 U.S. and Canadian mills and found that the majority of mills use about 20% postconsumer fiber.

Based on this additional information, and consistent with the methodology described in the draft Paper RMAN, EPA is revising the recommended ranges for newsprint in the final RMAN to 20–100% recovered fiber and 20–85% postconsumer fiber. EPA believes that government procuring agencies will continue to be able to purchase newsprint containing higher levels of both postconsumer and other recovered fiber. EPA believes that some private sector purchasers also will be able to purchase newsprint containing high levels of both postconsumer and other recovered fiber, but others will not. These other purchasers should seek newsprint containing lower levels of both postconsumer and other recovered fiber, consistent with EPA's recommended ranges, rather than simply purchasing newsprint containing no recovered fiber.

2. Corrugated Containers

In the draft Paper RMAN, EPA recommended that corrugated containers with a strength rating of less than 300 pounds per square inch (<300 psi) contain 40–50% recovered fiber, including 40–50% postconsumer fiber. EPA also recommended that corrugated containers with a strength rating of 300 psi contain 30% recovered fiber, all of which is postconsumer fiber (see Table A–4 in 60 FR 14190, March 15, 1995).

Commenters questioned the low end of the ranges and indicated that EPA's data regarding the postconsumer content of corrugating medium did not reflect what the majority of mills currently use. Commenters provided

current information about the percentages of postconsumer and recovered fiber used in corrugated containers. The data confirmed that at least some mills could meet the ranges recommended in the draft Paper RMAN. Using new data submitted by commenters about the current postconsumer content of corrugating medium, and consistent with the methodology described in the draft Paper RMAN, EPA re-calculated the content of corrugated containers and concluded that the low end of the recommended ranges should be 25%. Therefore, in Table A–4 of the final Paper RMAN, EPA recommends that corrugated containers (<300 psi) contain 25–50% recovered fiber, including 25–50% postconsumer fiber and that corrugated containers (300 psi) contain 25–30% recovered fiber, including 25–30% postconsumer fiber.

3. Carrierboard

In the draft Paper RMAN, EPA recommended that carrierboard (which is a type of paperboard used to package multi-packs of beverages containers) contain 25–100% recovered fiber, including 15% postconsumer fiber (see Table A–4 in 60 FR 14190, March 15, 1995). The two manufacturers of unbleached kraft carrierboard commented that, due to shortages of old corrugated containers (OCC), the postconsumer fiber content of their product currently was 10%. The manufacturers previously had used 15% postconsumer fiber but were experiencing problems obtaining adequate supplies of OCC. Based on this information, and consistent with the methodology for establishing the low end of the ranges described in the draft Paper RMAN, EPA is changing the postconsumer fiber recommendation for carrierboard in the final Paper RMAN to a range of 10–15%. EPA is making a corresponding revision to the recovered fiber range, 10–100%. Purchasing agencies should note that, when OCC supplies are adequate, the manufacturers should be able to provide carrierboard containing 15% postconsumer fiber.

4. Commercial/Industrial Tissue Products

In the draft Paper RMAN, EPA recommended that commercial/industrial sanitary tissue products contain 100% recovered fiber, including varying ranges of postconsumer fiber (see Table A–3 in 60 FR 14190, March 15, 1995). EPA recommended a 100% recovered fiber level, rather than a range, because the Agency's data indicated that most manufacturers produced tissue products containing 100% recovered fiber.

Commenters stated that EPA's data on commercial/industrial tissue products were incorrect. The commenters stated that many of the tissue manufacturers produce one product line containing 100% recovered fiber, but this represents only a small fraction of their overall product lines. The commenters also stated that there is not a sufficient supply of tissue products containing 100% recovered fiber to ensure product availability and competition or to supply the broader, commercial (non-government) market. In addition, they stated that, even if they wanted to re-formulate their product lines to contain 100% recovered fiber, they would not be able to do so, because they currently are experiencing shortages and/or high prices for the grades of recovered paper used in tissue products. The commenters submitted new data to substantiate their comments.

In the supporting analyses to the draft Paper RMAN, EPA stated that there is great variability in the postconsumer and recovered fiber usage among tissue producers. The commenters' data confirm this variability. In fact, commenters demonstrated that some tissue mills have integrated pulp and papermaking operations and use small percentages of postconsumer and recovered fiber combined with wood-based pulp. Others rely entirely on postconsumer and recovered fiber. EPA believes that commenters demonstrated that the Agency should recommend a range for the recovered fiber content of tissue products. Adding ranges will provide flexibility to all tissue mills when fiber supplies are tight and will allow more mills to compete, thereby encouraging greater usage of postconsumer fiber.

Commenters proposed that EPA retain the 1988 postconsumer-only content recommendations in the final Paper RMAN, rather than two-part content recommendations. The commenters stated that there is an inadequate supply of recovered paper for tissue mills to meet the postconsumer fiber ranges recommended in the draft Paper RMAN and provided data to support their comments.

EPA continues to believe that the use of two-part content levels will result in greater usage of postconsumer materials by all tissue mills than will postconsumer-only levels because, as stated in the March 15, 1995 Federal Register notice (60 FR 14185), mills will use postconsumer fiber to meet both some of their total recovered fiber needs and their postconsumer fiber needs.

Aggregate data provided by commenters and EPA's conversations with tissue manufacturers indicate that the majority of mills can meet the 1988 recommended content levels for bathroom tissue, paper towels, and paper napkins.

EPA's 1988 recommended content level for facial tissue was 5% postconsumer fiber. EPA requested additional information from the commenters regarding the postconsumer fiber content of facial tissue. The additional information is discussed in ''Final Paper Products RMAN—Response to Comments.'' EPA believes that the information supports a postconsumer fiber range of 10–15% for facial tissue.

Based on the original comments and the additional information about facial tissue, EPA is recommending the following levels for commercial/industrial tissue products in the final Paper RMAN:

- Bathroom tissue: 20–100% recovered fiber, including 20–60% postconsumer fiber,
- Paper towels: 40–100% recovered fiber, including 40–60% postconsumer fiber,
- Paper napkins: 30–100% recovered fiber, including 30–60% postconsumer fiber, and
- Facial tissue: 10–100% recovered fiber, including 10–15% postconsumer fiber.

III. Revision to Executive Order 12873

Section 504 of Executive Order 12873 (58 FR 54916, October 22, 1993) established postconsumer content standards for selected uncoated printing and writing papers. The Executive Order specified a 20% postconsumer content for high speed copier paper, offset paper, forms bond, computer printout paper, carbonless paper, file folders, and white wove envelopes, and a standard of 50% recovered materials, including 20% postconsumer materials, for writing and office paper, book paper, cotton fiber paper, and text and cover paper. EPA incorporated these content levels into its recommendations for printing and writing papers in the draft Paper RMAN. (As explained in ''Draft Paper Products RMAN—Supporting Analyses,'' EPA used slightly different terminology in the draft Paper RMAN than that used in the Executive Order to reflect the way in which terms are currently used by paper mills, vendors, and procuring agencies.)

On March 25, 1996, President Clinton amended section 504 to delete the 50% recovered materials standard. (See Executive Order 12995, 61 FR 13645, March 28, 1996.) As a result, the

Executive Order now establishes a 20% postconsumer content level for all of the named printing and writing papers. EPA has revised Table A–1a in the final Paper RMAN accordingly.

IV. Supporting Materials and Accessing Internet

The index of supporting materials is available in the RCRA Information Center (RIC) and on the Internet. The address and telephone number of the RIC are provided in **ADDRESSES** above. The following supporting materials are available on the Internet:

Final Summary of Comments on the Proposed Paper Products Recovered Materials Advisory Notice, prepared for U.S. EPA by Eastern Research Group, July 27, 1995, 64 pages.

Draft Paper Products RMAN—Supporting Analyses, Office of Solid Waste, U.S. EPA, February 1995, 86 pages.

Final Paper Products Recovered Materials Advisory Notice —Response to Public Comments, Office of Solid Waste, U.S. EPA, April 1996, 64 pages.

Copies of the following supporting materials are available for viewing at the RIC only:

Memorandum regarding the Status of Over-Issue Publications from Richard T. Witt, Attorney, Solid Waste and Emergency Response Division, Office of General Counsel, to Robert W. Dellinger, Associate Division Director, Municipal & Industrial Solid Waste Division, Office of Solid Waste, February 9, 1996, 4 pages.

Minutes, *Ex Parte* Meeting Between EPA and The Tissue Producers Coalition, July 07, 1995, 4 pages.

Memorandum to the Record, Final Paper Products RMAN, re Market Share of Commercial/Industrial Tissue Market, March 12, 1996, 2 pages.

Minutes, *Ex Parte* Meeting Between EPA and Newsprint Manufacturers, February 13, 1996, 3 pages.

''Research on Use of Postconsumer Materials in Newsprint Manufacturing,'' prepared for U.S. EPA by Eastern Research Group, October 25, 1995, 4 pages.

''Meeting Average Recycled Content Newsprint Goals in the Newspaper Publishing Industry,'' Final Report, prepared for U.S. EPA by Eastern Research Group, December 18, 1995, 5 pages.

''Use of Recovered Fiber in Selected Bristols,'' Final Report, prepared for U.S. EPA by Eastern Research Group, December 18, 1995.

Letter to Dana Arnold regarding machine finished uncoated groundwood paper, American Forest & Paper Association, Sara Freund, February 13, 1996, 1 page.

Minutes, *Ex Parte* Meeting Between EPA and Representatives of Mead Corporation, July 18, 1995, 2 pages.

Follow these instructions to access the information electronically:

Gopher: gopher.epa.gov
WWW: http://www.epa.gov
Dial-up: 919 558–0335

The materials can be accessed off the main EPA Gopher menu, in the directory EPA Offices and Regions/Office of Solid Waste and Emergency Response (OSWER)/Office of Solid Waste (RCRA)/[Non-Hazardous Waste—RCRA Subtitle D/Procurement/Paper].

FTP: ftp.epa.gov
Login: anonymous
Password: your Internet address
Files are located in /pub/gopher/OSWRCRA.

V. Use of EPA's Recommendations

EPA encourages state and local agencies to use the recommendations in today's final Paper RMAN when purchasing paper and paper products. EPA also encourages private sector purchasers to use the information provided by EPA when purchasing paper and paper products. EPA recommends that purchasers establish their minimum content standards at the highest percentages available to them that achieve their price and performance objectives, even if these standards exceed EPA's recommended ranges. If a product is not available at a competitive price and at a content level at the high end of EPA's recommended ranges, purchasers should set their standards at the highest levels available to them that meet their price and performance objectives, using the recommended ranges as a guide. In this way, EPA's recommended ranges will encourage both public and private sector purchasers to purchase paper products containing the highest levels of postconsumer and recovered fiber practicable.

EPA has found that some state agencies have been using the Agency's 1988 content recommendations as a starting point in establishing product labeling requirements. While EPA's recommendations were not intended for use as labeling standards, they can be used as an information source for agencies establishing recycled product labeling programs.

EPA cautions persons using EPA's recommendations, whether to establish purchasing specifications or labeling standards, to use them only for the *specific items* for which they were intended. It is not appropriate to analogize from one item in a paper grade (e.g., printing and writing paper, tissue products, paperboard) to another item that could also fall within that grade, without first researching the use of postconsumer and recovered fiber in the other item. The two items could have different performance requirements necessitating different levels of postconsumer or recovered fiber. In addition, one item could be made primarily by mills that use high percentages of postconsumer or recovered fiber, while the other item could be made primarily by mills that use low or no percentages of this fiber.

Dated: May 15, 1996.

Elliott P. Laws,
Assistant Administrator,
Office of Solid Waste and Emergency Response.

Final Paper Products Recovered Materials Advisory Notice

This Paper Products Recovered Materials Advisory Notice (Paper RMAN) contains EPA's recommendations to procuring agencies for purchasing paper and paper products in compliance with section 6002 of the Resource Conservation and Recovery Act of 1976 (RCRA). These recommendations replace the recommendations found in EPA's 1988 paper procurement guideline, 40 CFR Part 250 (53 FR 23545, June 22, 1988). These recommendations also replace the recommendations found in Part A of EPA's 1995 RMAN (60 FR 21388–21389, May 1, 1995). The contents of this Paper RMAN consist of the Part A, Paper and Paper Products, sections listed below.

Contents

Part A—Paper and Paper Products

Section A–1—Printing and Writing Papers
Section A–2—Newsprint
Section A–3—Commercial/Industrial Sanitary Tissue Products
Section A–4—Paperboard and Packaging Products
Section A–5—Miscellaneous Paper Products
Section A–6—Other Recommendations for Paper and Paper Products
Section A–7—Definitions
Appendix A–1.—Example Calculation of Postconsumer Fiber Content of a Corrugated Container

Part A—Paper and Paper Products

Section A–1—Printing and Writing Papers

Preference Program: EPA recommends that procuring agencies establish minimum content standards expressed as a percentage of recovered fiber, including a percentage of postconsumer fiber. EPA recommends that procuring agencies base their minimum content standards for printing and writing papers on the content levels shown in Tables A–1a, A–1b, and A–1c. Percentages are based on the fiber weight of the product. The content

levels in the tables should be read as X% recovered fiber, including Y% postconsumer fiber and *not* as X% recovered fiber plus Y% postconsumer fiber. Where the content level is the same in both columns (e.g., 20% in both the recovered fiber and postconsumer fiber columns), this means that EPA is recommending that agencies establish identical content levels for both postconsumer and recovered fiber.

TABLE A–1A.—RECOMMENDED RECOVERED FIBER CONTENT LEVELS FOR UNCOATED PRINTING AND WRITING PAPERS

Item	Recovered fiber (%)	Postconsumer fiber (%)
Reprographic Paper (e.g., mimeo and duplicator paper, high-speed copier paper, and bond paper) [1]	20	20
Offset Paper (e.g., offset printing paper,[1] book paper*, bond paper [1])	20	20
Tablet Paper (e.g., office paper such as note pads, stationery [1] and other writing [1] papers)	20	20
Forms Bond (e.g., forms, computer printout paper, ledger) [1]	20	20
Envelope Paper:		
Wove	20	20
Kraft:		
White and colored (including manila)	10–20	10–20
Unbleached	10	10
Cotton Fiber Paper (e.g., cotton fiber papers, ledger,[1] stationery [1] and matching envelopes, and other writing [1] papers)	20	20
Text & Cover Paper (e.g., cover stock, book paper [1], stationery [1] and matching envelopes, and other writing [1] paper)	20	20
Supercalendered	10	10
Machine finish groundwood	10	10
Papeteries	20	20
Check Safety Paper	10	10

[1] These items can be made from a variety of printing and writing papers, depending on the performance characteristics of the item. Some of the papers are a commodity-type and some are specialty papers. EPA recommends that procuring agencies determine the performance characteristics required of the paper prior to establishing minimum content standards. For example, bond, ledger, or stationery made from cotton fiber paper or a text & cover paper have different characteristics than similar items made from commodity papers.

TABLE A–1B.—RECOMMENDED RECOVERED FIBER CONTENT LEVELS FOR COATED PRINTING AND WRITING PAPERS

Item	Recovered fiber (%)	Postconsumer fiber (%)
Coated Printing Paper	10	10
Carbonless	20	20

TABLE A–1C.—RECOMMENDED RECOVERED FIBER CONTENT LEVELS FOR BRISTOLS

Item	Recovered fiber (%)	Postconsumer fiber (%)
File Folders (manila and colored)	20	20
Dyed Filing Products	20–50	20
Cards (index, postal, and other, including index sheets)	50	20
Pressboard Report Covers and Binders	50	20
Tags and Tickets	20–50	20

Section A–2—Newsprint

Preference Program: EPA recommends that procuring agencies establish minimum content standards expressed as a percentage of recovered fiber, including a percentage of postconsumer fiber. EPA recommends that procuring agencies base their minimum content standards for newsprint on the content levels shown in Table A–2. Percentages are based on the fiber weight of the product. The content levels in the table should be read as X% recovered fiber, including Y% postconsumer fiber and *not* as X% recovered fiber plus Y% postconsumer fiber.

TABLE A–2.—RECOMMENDED RECOVERED FIBER CONTENT LEVELS FOR NEWSPRINT

Item	Recovered fiber (%)	Postconsumer fiber (%)
Newsprint	20–100	20–85

Section A–3—Commercial/Industrial Sanitary Tissue Products

Preference Program: EPA recommends that procuring agencies establish minimum content standards expressed as a percentage of recovered fiber, including a percentage of postconsumer fiber. EPA recommends that procuring agencies

base their minimum content standards for commercial/industrial tissue products on the content levels shown in Table A–3. Percentages are based on the fiber weight of the product. The content levels in the table should be read as X% recovered fiber, including Y% postconsumer fiber and *not* as X% recovered fiber plus Y% postconsumer fiber.

TABLE A–3.—RECOMMENDED RECOVERED FIBER CONTENT LEVELS FOR COMMERCIAL/INDUSTRIAL SANITARY TISSUE PRODUCTS

Item	Recovered fiber (%)	Postconsumer fiber (%)
Bathroom tissue	20–100	20–60
Paper towels	40–100	40–60
Paper napkins	30–100	30–60
Facial tissue	10–100	10–15
General purpose industrial wipers	40–100	40

Section A–4—Paperboard and Packaging Products

Preference Program: EPA recommends that procuring agencies establish minimum content standards expressed as a percentage of recovered fiber, including a percentage of postconsumer fiber. EPA recommends that procuring agencies base their minimum content standards for paperboard and packaging products on the content levels shown in Table A–4. Percentages are based on the fiber weight of the product. The content levels in the table should be read as X% recovered fiber, including Y% postconsumer fiber and *not* as X% recovered fiber plus Y% postconsumer fiber. Where the content level is the same in both columns (e.g., 40% in both the recovered fiber and postconsumer fiber columns), this means that EPA is recommending that agencies establish identical content levels for postconsumer and recovered fiber.

TABLE A–4.—RECOMMENDED RECOVERED FIBER CONTENT LEVELS FOR PAPERBOARD AND PACKAGING PRODUCTS

Item	Recovered fiber (%)	Postconsumer fiber (%)
Corrugated containers: [1]		
(<300 psi)	25–50	25–50
(300 psi)	25–30	25–30
Solid Fiber Boxes	40	40
Folding cartons[2]	100	40–80
Industrial paperboard (e.g., tubes, cores, drums, and cans)	100	45–100
Miscellaneous (e.g., pad backs, covered binders, book covers, mailing tubes, protective packaging)	90–100	75–100
Padded mailers	5–15	5–15
Carrierboard[3]	10–100	10–15
Brown papers (e.g., wrapping paper and bags)	5–40	5–20

[1] The recovered fiber and postconsumer fiber content is calculated from the content of each component relative to the weight each contributes to the total weight of the box. See Appendix I for an example.

[2] The recommended content ranges are not applicable to all types of paperboard used in folding cartons. Cartons made from solid bleached sulfate or solid unbleached sulfate contain no or small percentages of postconsumer fiber, depending on the paperboard source.

[3] Carrierboard made from unbleached kraft contains up to 25% recovered fiber, while carrierboard made from recycled paperboard contains up to 100% recovered fiber.

Section A–5—Miscellaneous Paper Products

Preference Program: EPA recommends that procuring agencies establish minimum content standards expressed as a percentage of recovered fiber, including a percentage of postconsumer fiber. EPA recommends that procuring agencies base their minimum content standards for the listed paper products on the content levels shown in Table A–5. Percentages are based on the fiber weight of the product. The content levels in the table should be read as 100% recovered fiber, including X% postconsumer fiber and *not* as 100% recovered fiber plus Y% postconsumer fiber.

TABLE A–5.—RECOMMENDED RECOVERED FIBER CONTENT LEVELS FOR MISCELLANEOUS PAPER PRODUCTS

Item	Recovered fiber (%)	Postconsumer fiber (%)
Tray liners	100	50–75

Section A–6—Other Recommendations for Paper and Paper Products

Measurement: EPA recommends that procuring agencies express their minimum content standards as a percentage of the fiber weight of the paper or paper product. EPA further recommends that procuring agencies specify that mill broke cannot be counted toward postconsumer or recovered fiber content, except that procuring agencies should permit mills to count mill broke generated in a papermaking process using postconsumer and/or recovered fiber as

feedstock toward ''postconsumer fiber'' or ''recovered fiber'' content, to the extent that the feedstock contained these materials. In other words, if a mill uses less than 100% postconsumer or recovered fiber, only a proportional amount of broke can be counted towards postconsumer or recovered fiber content.

Specifications: EPA recommends that procuring agencies review specifications provisions pertaining to performance and aesthetics and revise provisions that can impede use of postconsumer and recovered fiber, unless such provisions are related to reasonable performance standards. Agencies should determine whether performance provisions are unnecessarily stringent for a particular end use. Agencies also should revise aesthetics provisions—such as brightness, dirt count, or shade matching—if appropriate, consistent with the agencies' performance requirements, in order to allow for a higher use of postconsumer and recovered fiber.

EPA recommends that procuring agencies document determinations that paper products containing postconsumer and recovered fiber will not meet the agencies' reasonable performance standards. Any determination should be based on technical performance information related to a specific item, not a grade of paper or type of product.

EPA recommends that procuring agencies watch for changes in the use of postconsumer and recovered fiber in paper and paper products. When a paper or a paper product containing postconsumer and recovered fiber is produced in types and grades not previously available, at a competitive price, procuring agencies should either revise specifications to allow the use of such type or grade, or develop new specifications for such type or grade, consistent with the agencies' performance requirements.

Recyclability: EPA recommends that procuring agencies consider the effect of a procurement of a paper product containing recovered and postconsumer fiber on their paper collection programs by assessing the impact of their decision on their overall contribution to the solid waste stream.

Section A–7—Definitions

For purposes of the recommendations contained in this Part, terms shall have the following meanings:

''Postconsumer fiber'' means:

(1) Paper, paperboard, and fibrous wastes from retail stores, office buildings, homes, and so forth, after they have passed through their end-usage as a consumer item, including: used corrugated boxes; old newspapers; old magazines; mixed waste paper; tabulating cards; and used cordage; and

(2) All paper, paperboard, and fibrous wastes that enter and are collected from municipal solid waste.

Postconsumer fiber does not include fiber derived from printers' over-runs, converters' scrap, and over-issue publications.

''Recovered fiber'' means the following materials:

(1) Postconsumer fiber such as:

(A) Paper, paperboard, and fibrous materials from retail stores, office buildings, homes, and so forth, after they have passed through their end-usage as a consumer item, including: used corrugated boxes; old newspapers; old magazines; mixed waste paper; tabulating cards; and used cordage; and

(B) All paper, paperboard, and fibrous materials that enter and are collected from municipal solid waste, and

(2) Manufacturing wastes such as——

(A) Dry paper and paperboard waste generated after completion of the papermaking process (that is, those manufacturing operations up to and including the cutting and trimming of the paper machine reel into smaller rolls or rough sheets) including: envelope cuttings, bindery trimmings, and other paper and paperboard waste resulting from printing, cutting, forming, and other converting operations; bag, box, and carton manufacturing wastes; and butt rolls, mill wrappers, and rejected unused stock; and

(B) Repulped finished paper and paperboard from obsolete inventories of paper and paperboard manufacturers, merchants, wholesalers, dealers, printers, converters, or others.

''Mill broke'' means any paper waste generated in a paper mill prior to completion of the papermaking process. It is usually returned directly to the pulping process. Mill broke is excluded from the definition of ''recovered fiber.''

Appendix A–1.—Example Calculation of Postconsumer Fiber Content of a Corrugated Container

C-flute has a take-up factor of approximately 1.44, which means that for each one foot of combined corrugated board there is 1.44 feet of fluted medium. This factor is used to calculate the weight of paperboard in a given area of combined corrugated board, from which the basis weight of the board is derived. Each linerboard contributes 35% of the basis weight (42/121.4). The medium contributes 30% of the total basis weight (37.4/121.4).

BOARD BASIS WEIGHT

	lbs/MSF
Linerboard #1: 42 × 1.00 = ...	42.0
Medium: 26 × 1.44 = ...	37.4
Linerboard #2: 42 × 1.00 = ...	42.0
Combined Board Weight	121.4

If the linerboard used has 20% postconsumer fiber and the medium has 80% postconsumer fiber, the resulting total postconsumer fiber content of the containerboard is as follows:

Linerboard: .35 × .20 = .07 × 2 = .14 (or 14%)

Medium: .30 × .80 = .24 (or 24%)

Total postconsumer fiber: .14 + .24 = .38 (or 38%)

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federal register

Wednesday
May 29, 1996

Part V

Department of Education

Training Personnel for the Education of Individuals With Disabilities; Grants for Personnel Training; Notices

DEPARTMENT OF EDUCATION

[CFDA No.: 84.029J]

Training Personnel for the Education of Individuals With Disabilities—Grants for Personnel Training; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1996

PURPOSE OF PROGRAM: The Individuals With Disabilities Education Act (IDEA) recommends that the Secretary develop and implement a plan for providing outreach services to minority entities and underrepresented populations to assist them in participating more fully in the discretionary programs under the Act (section 610(j)(2)(C)).

This final priority supports the National Education Goals by improving understanding of how to enable children and youth with disabilities to reach higher levels of academic achievement.

ELIGIBLE APPLICANTS: Eligible applicants are institutions of higher education, State agencies, and other appropriate nonprofit agencies.

APPLICABLE REGULATIONS: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86.

Note: The regulations in 34 CFR Part 86 apply to institutions of higher education only.

Priority—Absolute Priority—Outreach Services to Minority Entities To Expand Research Capacity (84.029J)

The priority Outreach Services to Minority Entities to Expand Research Capacity in the notice of final priority for this program, published elsewhere in this issue of the Federal Register, applies to this competition.

SELECTION CRITERIA: In evaluating applications for grants under this program, the Secretary uses the EDGAR selection criteria in 34 CFR 75.210.

Applications Available: May 31, 1996.

Deadline for Transmittal of Applications: July 16, 1996.

Deadline for Intergovernmental Review: September 16, 1996.

Estimated Number of Awards: 1.

Project Period: Up to 36 months.

Available Funds: In FY 1996, approximately $996,000 will be available to support 1 project (cooperative agreement) under this absolute priority (competition). A multi-year project will be level funded unless there is an increase in costs attributable to significant changes in activity level, and funds are available.

Note: The Department of Education is not bound by any estimates in this notice.

FOR APPLICATIONS AND GENERAL INFORMATION CONTACT: Requests for applications and general information should be addressed to: Claudette Carey, U.S. Department of Education, 600 Independence Avenue, SW., Switzer Building, Room 3525, Washington, DC. 20202–2641. Telephone: (202) 205–9864. FAX: (202) 205–8105. Internet: Claudette__Carey@ed.gov

Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–8953.

FOR TECHNICAL INFORMATION CONTACT: Scott Brown, U.S. Department of Education, 600 Independence Avenue, SW., Room 3522, Switzer Building, Washington, DC. 20202–2641. Telephone: (202) 205–5509. FAX: (202) 205–8117. Internet: Scott__Brown@ed.gov

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins, and Press Releases); or on the World Wide Web at http://www.ed.gov/money.html However, the official application notice for a discretionary grant competition is the notice published in the Federal Register.

Program Authority: 20 U.S.C. 1431.

Dated: May 23, 1996.

Howard R. Moses,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 96–13428 Filed 5–28–96; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Training Personnel for the Education of Individuals With Disabilities—Grants for Personnel Training

AGENCY: Department of Education.

ACTION: Notice of Final Priority.

SUMMARY: The Secretary announces a final priority for the Training Personnel for the Education of Individuals with Disabilities—Grants for Personnel Training program administered by the Office of Special Education and Rehabilitative Services (OSERS) under the Individuals with Disabilities Education Act. The Secretary may use this priority in Fiscal Year 1996 and subsequent years. The Secretary takes this action to focus Federal assistance on identified needs to improve outcomes for children with disabilities. This final priority is intended to ensure wide and effective use of program funds.

EFFECTIVE DATE: This priority takes effect on June 28, 1996.

FOR FURTHER INFORMATION CONTACT: Scott Brown, U.S. Department of Education, 600 Independence Avenue SW., Room 3522, Switzer Building, Washington, DC. 20202–2641. Telephone: (202) 205–8117. FAX: (202) 205–8105. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–8953. Internet: Scott__Brown@ed.gov

SUPPLEMENTARY INFORMATION: The Individuals with Disabilities Education Act (IDEA) directs the Secretary to develop and implement a plan for providing outreach services to minority entities and underrepresented populations to assist them in participating more fully in the discretionary programs under the Act (section 610(j)(2)(C)).

On March 26, 1996, the Secretary published a notice of proposed priority for this program in the Federal Register (61 FR 13376–13377).

This final priority supports the National Education Goals by improving understanding of how to enable children and youth with disabilities to reach higher levels of academic achievement.

The publication of this priority does not preclude the Secretary from proposing additional priorities, nor does it limit the Secretary to funding only this priority, subject to meeting applicable rulemaking requirements. Funding of particular projects depends on the availability of funds, and the quality of the applications received. Further, FY 1996 priorities could be affected by enactment of legislation reauthorizing these programs.

Note: This notice of final priority does not solicit applications. A notice inviting applications under this competition is published in a separate notice in this issue of the Federal Register.

Analysis of Comments and Changes

In response to the Secretary's invitation in the notice of proposed priority, five parties submitted comments. An analysis of the comments and of the changes in the proposed priority follows. Technical and other minor changes—as well as suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

Priority—Outreach Services to Minority Entities To Expand Research Capacity

Comment: One commenter requested that the priority clarify whether the Historically Black Colleges and Universities (HBCUs), other minority institutions (OMIs), and other eligible institutions as defined under section 312 of the Higher Education Act of 1965 (OEIs) that are the target of the linkage activities specified in the priority need to be doctoral-degree granting institutions or providers of Ph.D.'s in joint programs with other universities. The commenter stated that, for a national effort whose major goal is to prepare scholars for careers in research on special education and related services, the focus should be on the doctoral-level programs since they are the ones that typically apply for and receive grants and contracts for research activities.

Discussion: The Secretary agrees that recipients of awards for research activities are predominantly institutions of higher education with doctoral-degree level programs. However, although many HBCUs, OMIs, and OEIs do not have doctoral-level programs for students, the project's linkage activities are also expected to target institutional faculty members. Many of the faculty at these institutions are very capable and experienced in conducting research. Strengthening the capacity of these individuals, and thereby that of institutions, is considered a useful component of strategies developed under the priority.

Changes: None.

Comment: One commenter requested clarification as to the priority's relative emphasis on building the capacity of individual minority researchers as opposed to entire faculties of HBCUs, OMIs and OEIs.

Discussion: The purpose of the project is two-fold. The priority is intended to increase the participation of HBCUs, OMIs, and OEIs in discretionary research and development grant programs authorized under the Individuals with Disabilities Education Act, and to increase the capacity of individuals at these institutions to conduct research and development activities in special education and related services. The dual emphasis is important, since the ability of individual students and faculty members to conduct research is a key contributing factor in an institution's capacity to successfully compete for IDEA research grants. The priority does not require the project to focus on entire faculties at these institutions. The priority is intended to allow the project to identify appropriate faculty members that will enhance the ability of HBCUs, OMIs, and OEIs to compete for grants.

Changes: The priority has been revised to clarify that its purpose is to increase the participation of HBCUs, OMIs, and OEIs in discretionary research and development grant programs under the IDEA consistent with Congress' direction, and to increase the capacity of individuals at these institutions to conduct research and development activities.

Comment: One commenter stated the an HBCU, OMI, or an OEI was the only appropriate institution to conduct the type of project required by the priority and suggested that eligibility for the grant award be restricted to minority institutions. The commenter also recommended that the language of the priority be strengthened to require the project to have actual experience and knowledge of how to identify and work with the strengths as well as overcome the barriers inherent in the infrastructure. The commenter stated that a project designed to recruit minority researchers and generate research in minority communities would be received more favorably and responded to more rapidly if conducted by a minority institution.

Discussion: The Secretary believes that limiting eligibility under the priority to minority institutions would be unduly restrictive. The critical factors that the performing entity must have are: (1) Experience and familiarity in research on children with disabilities in urban and high-poverty schools with predominately minority enrollment; (2) experience in capacity development in special education research; and, (3) a thorough understanding of the strengths and needs of HBCUs, OMIs, and OEIs with respect to carrying out research programs. These factors are included in the priority. Any advantage that a minority institution can demonstrate in these areas may be considered in the evaluation of applications.

Change: None.

Comment: One commenter recommended that the priority be revised to strengthen the requirement that findings, results, and/or products be communicated directly to SEAs with significant minority populations and to educational decision makers in urban areas.

Discussion: The Secretary believes that dissemination of findings should be carried out by the Department of Education's technical assistance, training, and dissemination projects that have been established specifically to accomplish this important task. To require this project to conduct dissemination activities would unnecessarily diffuse the project's focus, and would require it to conduct activities that are not necessarily compatible with research and capacity building activities.

Changes: None.

Comment: One commenter stated that the research agenda developed for the project's workscope must be relevant to local communities and address problems of real need. The commenter felt that needs assessments must be developed with the local communities' (LEAs, SEAs, and IHEs) participation, and complete articulation of research findings with these stakeholders should be guaranteed. Another commenter recommended that the project conduct a national assessment of needs and convene an Advisory Panel with representation from in-service and Comprehensive System for Personnel Development planning components with appropriate State educational agencies.

Discussion: The priority requires that the project conduct research on one or more specified issues. The Secretary believes that each of the suggested research topics are particularly relevant to the overall objectives of improving the delivery of special education services and educational results for children with disabilities in urban and high-poverty schools with predominately minority enrollments. The Department of Education has collected sufficient data to warrant the focus of research on these topics. Furthermore, the selection criteria that will be used to evaluate applications require applicants to describe the needs addressed by the project; how those needs were identified; and how the needs will be met by the project. In view of these factors, the Secretary believes that to require this project to conduct a national assessment of needs would be unnecessary, would diffuse the project's focus, and would impose requirements that are not necessarily compatible with research and capacity building activities.

Changes: None.

Comment: Two commenters requested that the priority specify the applicable indirect cost rate, and questioned whether the indirect cost rate would be that of a training or a research grant. Both commenters recommended that the project be considered personnel preparation and carry an 8 percent indirect cost rate.

Discussion: Because the priority is primarily a research training project, the grantee's negotiated cost rate applies to the priority. Although the Education Department General Administrative

Regulations (EDGAR) at § 75.562 authorizes an 8 percent cap on indirect costs for educational training grants, ''research training programs'' were specifically excluded from the scope of educational training grants under that section. Furthermore, the Secretary believes that the amount of the project budget that is devoted to direct grant activities will reflect the level of commitment and effort offered by each applicant, and will be considered in determining the relative merit of applications. For these reasons, the grantee's negotiated indirect cost rate used for research programs applies to the final priority.

Changes: None.

Comment: One commenter stated that the balance between urban and rural research agenda seems weighted toward inner city challenges. The commenter recommended that the priority should place equal emphasis on urban and rural problems.

Discussion: The priority requires that the project focus on issues related to improving the delivery of special education services and educational results for children with disabilities in urban and high poverty schools with predominantly minority enrollments. Relevant research indicates that approximately 47 percent of urban youth with disabilities live in households with an annual income of less that $12,000, compared to 34 percent of rural and 19 percent of suburban youth with disabilities. Consequently, the Secretary expects the project to emphasize the needs of children with disabilities in urban areas given the disproportionate representation of special education students who live in poverty and the high percentage of poor children in urban settings.

Changes: None.

Comment: One commenter suggested that the project demonstrate the high quality of its research through a peer or internal review, and through mentoring during implementation.

Discussion: The Secretary believes that the methods suggested by the commenter are two potentially useful approaches that a research project might employ to ensure high quality of research results. However, because there may be a variety of viable methodologies that may ensure high quality research, the Secretary believes that identifying two such methodologies would be unduly restrictive.

Changes: None.

Comment: One commenter noted that the priority does not mention the importance of linking research findings to application and practice at minority IHEs, and suggested that applicants describe the systems to be used to translate research to practice and to infuse new knowledge into existing personnel preparation programs.

Discussion: The priority requires that findings of importance to audiences other than researchers be made available to the Department of Education's technical assistance training and dissemination projects for distribution to those audiences. The Secretary believes that this approach, as opposed to requiring the grantee to undertake the entire process of translating research to practice, will allow for a more coherent research-to-practice effort, and a potentially larger, more inclusive audience.

Changes: None.

Comment: One commenter requested that a single existing policy research center for coordination or collaboration be omitted from the priority or, in the alternative, that the role of such a center be clearly defined.

Discussion: The Secretary agrees that it is not necessary to single out a specific policy research center for collaboration or coordination since the priority requires that the project collaborate with other relevant OSEP-funded projects. Also, the Secretary is concerned that referencing a specific policy coordination center could discourage the project from coordinating directly with other relevant projects.

Changes: The reference in the proposed priority to coordination with the ongoing Policy Research Institute has been deleted.

Priority

Under 34 CFR 75.105(c)(3), the Secretary gives an absolute preference to applications that meet the following priority. The Secretary will fund under this competition only applications that meet this absolute priority.

Absolute Priority—Outreach Services to Minority Entities To Expand Research Capacity

Background: The Congress has found that the Federal Government must be responsive to the growing needs of an increasingly diverse society and that a more equitable distribution of resources is essential for the Federal Government to meet its responsibility to provide an equal educational opportunity for all individuals. The Congress has concluded that the opportunity for full participation in awards for grants, cooperative agreements and contracts by Historically Black Colleges and Universities (HBCUs), other institutions of higher education whose minority enrollment is at least 25 percent (OMIs) and other eligible institutions as defined under section 312 of the Higher Education Act of 1965 (OEIs) is essential if we are to obtain greater success in the education of children from diverse backgrounds in special education.

This priority focuses on assisting HBCUs, OMIs and OEIs to prepare scholars for careers in research on special education and related services. This preparation shall consist of engaging both faculty and students at HBCUs, OMIs and OEIs in special education research activities. The activities focus on an area of critical emerging need which has material application in today's changing environment and will likely be the subject of future research efforts—*the special education of children in urban and high poverty schools with predominantly minority enrollments*. By building a cadre of experienced researchers on this important topic, the chances for full participation in awards for grants, cooperative agreements and contracts by HBCUs, OMIs and OEIs will be increased.

The association between socioeconomic status and enrollment in special education has been well documented. Available data from the National Longitudinal Transition Study (NLTS) show that 68 percent of students in special education live in a household where the income is less than $25,000 per year versus 39 percent of the general population of youth.

The problem of this association is heightened in urban school districts and, to a lesser extent, rural districts. NLTS data reveal that only 34 percent of students in special education live in suburban school districts compared to 48 percent of all youth. Data from the Office for Civil Rights indicate that 30 percent of all inner-city students live in poverty compared to 18 percent of students in non-inner city areas. Moreover, findings from the National Longitudinal Transition Study indicate that 47 percent of urban youth with disabilities live in households with an annual income of less than $12,000 (in 1986 dollars) compared to 34 percent of rural and 19 percent of suburban youth with disabilities (Valdes et al., 1990).

Urban school districts face a variety of challenges in meeting the educational needs of their students. Their schools often have high per student costs and limited financial resources. Their students are disproportionately poor and the population of individuals with limited English proficiency is among the fastest growing populations with special needs in some of these districts. This disproportionate representation of poor children in special education is also

likely to be uniquely influenced by culturally diverse and urban settings, posing both opportunities and problems in the provision of special education services.

Priority

The Secretary establishes an absolute priority for a project whose purpose is to increase the participation of HBCUs, OMIs, and OEIs in discretionary research and development grant programs authorized under the Individuals with Disabilities Education Act (IDEA), and to increase the capacity of individuals at these institutions to conduct research and development activities in special education and related services. Each research activity of the program must implement the Congress' direction in section 610(j)(2) to support outreach activities to HBCUs, OMIs and OEIs to increase their participation in competitions for research, demonstration and outreach grants, cooperative agreements and contracts funded under the IDEA. Activities shall include:

(1) Conducting research activities at HBCUs, OMIs and OEIs as explained below that link scholars at HBCUs, OMIs and OEIs with researchers at institutions with an established research capacity in a mentoring relationship to develop both individual and institutional research capacity at those HBCUs, OMIs and OEIs with a demonstrated need for capacity development; and

(2) Providing linkages between HBCUs, OMIs and OEIs with a demonstrated need for capacity development and institutions with an established research capacity to provide opportunities for researchers at those HBCUs, OMIs and OEIs to develop first hand experience in the grants and contracts application process.

All research activities must be conducted for the purpose of capacity building. The research program must include one or more projects that are focused on issues related to improving the delivery of special education services and educational results for children with disabilities in urban and high poverty schools with predominantly minority enrollments. The program must examine the association between minority status and identification for, evaluation for and placement in special education. Other possible research topics may include:

(1) Effective intervention strategies that make a difference in the provision of a Free Appropriate Public Education (FAPE);

(2) Practices to promote the successful inclusion of children with disabilities in a least restrictive environment (LRE);

(3) Strategies for establishing high expectations for children with disabilities and increasing their participation in the general curriculum provided to all children;

(4) Increasing effective parental participation in the educational process, especially for poor parents, minority parents, and parents with limited English proficiency;

(5) Effective disciplinary approaches, including behavioral management strategies, for ensuring a safe and disciplined learning environment;

(6) The effect of school-wide projects conducted under Title 1 of the Elementary and Secondary Education Act on the delivery of special education; or

(7) Effective practices for promoting the coordination of special education services with health and social services for children with disabilities and their families.

The program shall ensure that findings are communicated in appropriate formats for researchers. The program shall also ensure that if findings are of importance to other audiences, such as teachers, administrators and parents, they are made available to Department of Education's technical assistance, training and dissemination projects for distribution to those audiences.

Projects must demonstrate experience and familiarity in research on children with disabilities in urban and high poverty schools with predominantly minority enrollments. The project must also demonstrate experience in capacity development in special education research, as well as a thorough understanding of the strengths and needs of HBCUs, OMIs and OEIs.

The project must budget for two trips annually to Washington, D.C. for: (1) A two-day Research Project Directors' meeting; and (2) an additional meeting to meet and collaborate with the project officer of the Office of Special Education Programs (OSEP) and with other relevant OSEP funded projects.

Program Authority: 20 U.S.C. 1431.

(Catalog of Federal Domestic Assistance Number 84.029, Training Personnel for the Education of Individuals with Disabilities Program)

Dated: May 23, 1996.

Howard R. Moses,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 96–13429 Filed 5–28–96; 8:45 am]

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Prosulfuron; published 5-29-96

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Food and Drug Administration

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Sugar imports; tariff-rate quota implementation; published 5-29-96

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Limes grown in Florida and imported; comments due by 6-7-96; published 5-8-96

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