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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 96–053–1]

Mexican Fruit Fly Regulations; Removal of Regulated Area

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the regulations to remove the quarantined portion of San Diego County, CA, from the list of areas regulated because of the Mexican fruit fly. We have determined that the Mexican fruit fly has been eradicated from San Diego County, CA, and that restrictions on the interstate movement of regulated articles from San Diego County, CA, are no longer necessary to prevent the spread of the Mexican fruit fly into noninfested areas of the United States. This action relieves unnecessary restrictions on the interstate movement of regulated articles from the previously regulated area.

DATES: Interim rule effective July 19, 1996. Consideration will be given only to comments received on or before September 23, 1996.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 96–053–1, 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. 96–053–1. 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: Mr. Michael B. Stefan, Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236, (301) 734–8247; or e-mail: mstefan@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The Mexican fruit fly, *Anastrepha ludens* (Loew), is a destructive pest of citrus and other types of fruit. The short life cycle of the Mexican fruit fly allows rapid development of serious outbreaks that can cause severe economic losses in commercial citrus-producing areas. The Mexican fruit fly regulations, contained in 7 CFR 301.64 through 301.64–10 (referred to below as the regulations), quarantine infested States, designate regulated areas, and restrict the interstate movement of specified fruits and other regulated articles from regulated areas in order to prevent the spread of the Mexican fruit fly to noninfested areas of the United States. Quarantined States are listed in § 301.64(a), and regulated areas are listed in § 301.64–3(c).

In an interim rule effective January 22, 1996, and published in the Federal Register on January 26, 1996 (61 FR 2391–2393, Docket No. 95–089–1), we quarantined the State of California and designated portions of Los Angeles County and San Diego County as regulated areas because those areas had been found to be infested with the Mexican fruit fly.

Based on insect trapping surveys by inspectors of California State and county agencies and by inspectors of the Animal and Plant Health Inspection Service, we have determined that the Mexican fruit fly has been eradicated from San Diego County, CA. The last finding of Mexican fruit fly thought to be associated with the infestation in this area was made on January 9, 1996.

Since then no evidence of Mexican fruit fly infestations has been found in this area. Therefore, we are removing this area from the list of areas in § 301.64–3(c) regulated because of the Mexican fruit fly.

Immediate Action

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

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

Executive Order 12866 and Regulatory Flexibility Act

This 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.

This rule removes restrictions on the interstate movement of regulated articles from a portion of San Diego County, CA. Within this regulated area, there are 101 small entities that may be affected by this rule. These include 1 grower on two-tenths of an acre, 93 fruit sellers, and 4 nurseries. These 101 entities comprise less than 1 percent of the total number of similar enterprises operating in the State of California.

These small entities sell regulated articles primarily for local intrastate, not interstate movement, and the distribution of these articles was not affected by the regulatory provisions we are removing. Many of these entities also handle other items in addition to the previously regulated articles. The effect on those few entities that move regulated articles interstate was minimized by the availability of various treatments that, in most cases, allowed

these small entities to move regulated articles interstate with very little additional cost. Therefore, the effect, if any, of this rule on these entities appears to be minimal.

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

Executive Order 12372

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

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This document 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 7 CFR Part 301

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

Accordingly, 7 CFR part 301 is amended as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

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

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.22, 2.80, and 371.2(c).

§ 301.64–3 [Amended]

2. In § 301.64–3, paragraph (c) is amended by removing the description of the regulated area for San Diego County, CA.

Done in Washington, DC, this 19th day of July 1996.

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 96–18754 Filed 7–23–96; 8:45 am]

BILLING CODE 3410–34–P

Agricultural Marketing Service

7 CFR Part 905

[Docket No. FV96–905–1 IFR]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule establishes an assessment rate for the Citrus Administrative Committee (Committee) under Marketing Order No. 905 for the 1996–97 fiscal period and continuing until amended. The Committee is responsible for local administration of the marketing order which regulates the handling of citrus grown in Florida. Authorization to assess citrus handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program.

DATES: Effective on August 1, 1996. Comments received by August 23, 1996 will be considered prior to issuance of a final rule.

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

FOR FURTHER INFORMATION CONTACT: Doris Jamieson, Southeast Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, P.O. Box 2276, Winter Haven, FL 33883–2276, telephone (813) 299–4770, FAX (813) 299–5169, or Tershirra Yeager, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone (202) 720–8139, FAX (202) 720–5698. Small business may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2523–S, Washington, D.C. 20090–6456; telephone: (202) 720–2491, Fax # (202) 720–5698.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 84 and Order No. 905, as amended (7 CFR part 905), regulating the handling of Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida, hereinafter referred to as the ''order.'' The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order now in effect, Florida citrus handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable citrus beginning August 1, 1996, and continuing until amended suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

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

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

behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 11,000 producers of citrus in the production area and approximately 100 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of citrus producers and handlers may be classified as small entities.

The Florida citrus marketing order provides authority for the Committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

The Committee met on May 24, 1996, and unanimously recommended 1996–97 expenditures of approximately $230,000 and an assessment rate of $0.0035 per 4/5 bushel carton of citrus. In comparison, last year's budgeted expenditures were $215,000. The assessment rate of $0.0035 is $0.00025 higher than last year's assessment. Major expenditures recommended by the Committee for the 1996–97 year include $102,760 for salaries, $36,000 for the Manifest Department-FDACS, and $13,500 for insurance and bonds. Budgeted expenses for these items in 1995–96 were $101,740 for salaries, $36,000 for the Manifest Department-FDACS, and $13,350 for insurance and bonds.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Florida citrus. Citrus shipments for the year are estimated at 64,500,000 which should provide $225,750 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Any excess of revenues or expenses will be placed in the reserve fund. Funds in the reserve will be kept within the maximum permitted by the order.

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

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate is effective for an indefinite period, the Committee will continue to meet during each fiscal period to consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 1996–97 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by the Department.

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

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the Federal Register because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis: (2) the 1996–97 fiscal period begins on August 1, 1996, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable citrus handled during such fiscal period; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in part years; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 905

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

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

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

1.The authority citation for 7 CFR part 905 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. A new subpart—Assessment Rates consisting of a new § 905.235 and a new subpart heading—Grade and Size Requirements are added immediately preceding § 905.306 Orange, Grapefruit, Tangerine, and Tangelo regulation to read as follows:

Note: This section will appear in the Code of Federal Regulations.

Subpart—Assessment Rates

§ 905.235 Assessment rate.

On and after August 1, 1996, an assessment rate of $0.0035 per 4/5 bushel carton is established for assessable for Florida citrus covered under the order.

Subpart—Grade and Size Requirements

§ 905.306 Orange, Grapefruit, Tangerine and Tangelo Regulation.

* * * * *

Dated: July 15, 1996.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 96–18467 Filed 7–23–96; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 1240

[AMS–FV–96–701.C]

Honey Research, Promotion, and Consumer Information Order—Amendment of the Rules and Regulations to Add HTS Code for Flavored Honey; Correction

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Correction to final rule.

SUMMARY: This document contains a correction to the final rule which was published Tuesday, June 11, 1996 [61 FR 29461]. The final rule added a Harmonized Tariff Schedule code number for imported flavored honey to provide authority for the U.S. Customs Service to collect an assessment on all imported flavored honey.

EFFECTIVE DATE: June 12, 1996.

FOR FURTHER INFORMATION CONTACT: Richard B. Schultz, Research and Promotion Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2535–S, Washington, D.C. 29909–6456; telephone (202) 720–9915.

SUPPLEMENTARY INFORMATION:

Background

The Honey Research, Promotion, and Consumer Information Order (Order) provides that each producer and importer shall pay to the Honey Board (Board) a one cent per pound assessment rate on honey and honey products produced in or imported into the United States. Section 1240.5 of the Order defines honey products as products wherein honey is a principal ingredient.

In order for the U.S. Customs Service (Customs) to collect the assessments on imported honey and honey products, each product must be identified by a Harmonized Tariff Schedule (HTS) code number. Since the Board—s inception, honey has been assessed by Customs under HTS code number 0409.00.00. However, there were no HTS codes for honey products.

The Board identified flavored honey as a product containing approximately 99 percent honey and estimated that 500,000 pounds of flavored honey are imported into the United States annually without the importer paying the required assessment. At the recommendation of the Board, the Department of Agriculture (Department) requested the Committee for Statistical Annotation of Tariff Schedules (Committee) of the International Trade Commission to establish an HTS code for flavored honey. The Committee notified the Department on February 13, 1996, that a code had been established for flavored honey. On June 11, 1996, the Department published a final rule at 61 FR 29461 that added the new HTS code for flavored honey to the rules and regulations under the Order to provide authority for Customs to collect the assessment on all imported, flavored honey. However, the HTS code number published was incorrect, and Customs will be unable to collect assessments on imported, flavored honey until the correct number is published.

Need for Correction

In the final rule, the HTS code for flavored honey was incorrectly listed as 21006.90.9988 rather than as 2106.90.9988.

Correction of Publication

Accordingly, in the June 11, 1996, publication, FR Doc. 96–14758, page 29462, first column, 7 CFR Part 1240, § 1240.115, paragraph (e) is corrected by removing the figure ''21006.90.9988'' and adding in its place ''2106.90.9988''.

Dated: July 15, 1996.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 96–18463 Filed 7–23–96; 8:45 am]

BILLING CODE 3410–02–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 311

Rules Governing Public Observation of Meetings of the Corporation's Board of Directors

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule; technical amendments.

SUMMARY: The Federal Deposit Insurance Corporation (FDIC or Corporation) is amending its regulations, which implement the requirements of The Government in the Sunshine Act (Sunshine Act) regarding public observation of meetings of its Board of Directors (Public Observation Rules) to amend the definition of ''Board'' by deleting references to specific standing committees which no longer exist and eliminating otherwise superfluous language; make two minor technical changes; update delegations of authority to conform to a changed position structure in the Corporation's Legal Division; and include a cross-reference to the Corporation's Freedom of Information Act (FOIA) regulations to clarify that documents considered in connection with Board meetings may be made available to the public under FOIA.

EFFECTIVE DATE: July 24, 1996.

FOR FURTHER INFORMATION CONTACT: Leneta G. Gregorie, Counsel and Special Assistant to the Executive Secretary, Office of the Executive Secretary, (202) 898–3719.

SUPPLEMENTARY INFORMATION:

I. Background

Section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994, Pub. L. 103–325, 108 Stat. 2214, requires that each Federal banking agency conduct a review of its written regulations and policies for purposes of improving efficiency, reducing unnecessary costs, eliminating unwarranted constraints on credit availability, and removing inconsistencies and outmoded and duplicative requirements. The FDIC, in compliance with that mandate, has reviewed part 311 of its regulations and determined that, although it is statutorily mandated and imposes no unnecessary costs or unwarranted constraints on credit availability, several minor, technical amendments are necessary to ensure internal consistency and consistency with current organizational structure and the underlying statute, and to clarify the procedures under which certain documents may be made available.

The definition of ''Board'' at § 311.2(a) excludes any standing or special committee (such as the Board of Review, the Board of Review (Mergers), or the Committee on Liquidations, Loans and Purchases of Assets) which has been or may be created by the Board of Directors but whose membership consists primarily of Corporation employees, including not more than one Board member. This exclusionary language was originally included in the definition to make it clear that the Corporation's then existing standing committees, because of their functions and membership, did not constitute ''subdivisions'' of the Board. However, it has since been well established that Congress did not intend to bring agency employees within the meaning of the term ''subdivisions'', thereby rendering the exclusion unnecessary. In addition, all but one of the named committees have been abolished, and the Corporation's standing committee structure is always subject to change at the discretion of the Board. Substituting the names of currently existing committees would render the reference outdated each time a change was made to the committee structure. Therefore, in order to simplify the definition of ''Board'' and eliminate the need to make constant revisions to the regulation, the entire exclusionary clause has been deleted.

Under the Sunshine Act, a ''meeting'' is defined as the deliberations of at least the number of individual agency members required to take action on behalf of the agency where such deliberations determine or result in the joint conduct or disposition of official agency business. Although the Sunshine Act is silent on the issue of notational voting, judicial interpretations of the

term ''meeting'' have consistently held that it does not apply to a notational voting system in which agency members vote individually on matters circulated to them sequentially in writing. *See e.g., Railroad Comm'n of Texas* v. *U.S.,* 765 F.2d 221 (D.C. Cir. 1985); *Communications Systems, Inc.* v. *FCC,* 595 F.2d 797 (D.C. Cir. 1978). The Corporation, at § 311.2(b)(2) of its regulation, has attempted to include this judicial interpretation in its regulatory definition of what constitutes a ''meeting'' by excluding from the definition infrequent decisionmaking by the circulation of written material to individual Board members. However, the reference to ''[i]nfrequent'' use of notational voting is inconsistent with judicial interpretations which exclude notational voting from the definition of ''meeting'' without regard to the frequency with which such a procedure is used to make decisions. Therefore, the FDIC has removed the reference to ''[i]nfrequent'' at § 311.2(b)(3) to make the exclusion consistent with relevant court decisions. Despite this change, the FDIC contemplates no change in the frequency with which it has used notational voting procedures in the past.

The position structure of the Corporation's Legal Division has changed slightly since part 311 was initially implemented. Thus, the delegations of authority to certify that a meeting of the Board may be closed to the public has been amended in a way that reflects the changed structure and accommodates any future changes.

Although § 311.8 is currently titled in such a way as to limit its application to transcripts and minutes of ''closed'' Board meetings, it does in fact address minutes of meetings of open Board meetings as well. The heading has, therefore, been revised to read, ''Transcripts and minutes of meetings.''

Finally, at § 311.8, a new paragraph (e), entitled ''Procedures for obtaining documents identified in minutes'', has been added to clarify that, in addition to the availability under the Sunshine Act of transcripts and minutes of Board meetings, documents referred to in minutes or considered in connection with any action taken at Board meetings may be made available under the Corporation's FOIA regulations, to the extent permitted by FOIA.

II. Public Comment Waiver

The amendments are not substantive. Rather, they remove obsolete and superfluous provisions, make technical amendments, change a delegation of authority to make it consistent with current organizational structure; and clarify procedures for obtaining certain documents. The Board finds that because Part 311 addressses internal agency procedure and practice, public comment on these changes is unnecessary and contrary to the public interest. Thus, the Board has determined that there exists good cause for not following the provisions of 5 U.S.C. 553(b) relating to notice and public participation in connection with the adoption of these amendments.

III. Matters of Regulatory Procedure

Regulatory Flexibility Analysis

The requirements of Chapter 6 of Title 5 of the United States Code relative to ''The Analysis of Regulatory Functions'' does not apply to Part 311. Part 311 is not a ''rule'' for purposes of that statute (see 5 U.S.C. 601(2)) as it is not a rule for which the FDIC is required to publish a general notice of proposed rulemaking under section 553(b) of Title 5 of the United States Code. Part 311 is a rule of agency procedure and/or practice and is thus exempt under the statute.

Paperwork Reduction Act

No collections of information pursuant to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.) are contained in this notice. Consequently, no information has been submitted to the Office of Management and Budget for review.

List of Subjects in 12 CFR Part 311

Sunshine Act.

For the reasons set forth above, 12 CFR part 311 is amended as set forth below.

PART 311—RULES GOVERNING PUBLIC OBSERVATION OF MEETINGS OF THE CORPORATION'S BOARD OF DIRECTORS

1. The authority citation for Part 311 continues to read as follows:

Authority: 5 U.S.C. 552b and 12 U.S.C. 1819.

2. Section 311.2 is amended by revising paragraph (a) to read as follows:

§ 311.2 Definitions.

* * * * *

(a) *Board* means Board of Directors of the Federal Deposit Insurance Corporation and includes any subdivision of the Board authorized to act on behalf of the Corporation.

* * * * *

§ 311.2 [Amended]

3. Section 311.2(b)(3) is amended by removing the words ''Infrequent decisionmaking'' and adding in their place, the words ''Decision-making''.

4. Section 311.7 is amended by revising the second and third sentences to read as follows:

§ 311.7 General Counsel certification.

* * * In the absence of the General Counsel, the next ranking official in the Legal Division may perform the certification. If the General Counsel and such next ranking official in the Legal Division are both absent, the official in the Legal Division who is then next in rank may provide the required certification. * * *

5. Section 311.8 is amended by revising the heading; by revising the first sentence of paragraph (d)(1); and by adding a new paragraph (e) to read as follows:

§ 311.8 Transcripts and minutes of meetings.

* * * * *

(d) * * * (1) An individual may inspect materials made available under paragraph (c) of this section at the Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429, during normal business hours. * * *

* * * * *

(e) *Procedures for obtaining documents identified in minutes.* Copies of documents identified in minutes or considered by the Board in connection with any action identified in the minutes may be made available to the public upon request, to the extent permitted by the Freedom of Information Act, under the provisions of 12 CFR part 309, Disclosure of Information.

By order of the Board of Directors.

Dated at Washington, D.C. this 16th day of July, 1996.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 96–18656 Filed 7–23–96; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Part 679

[Docket No. 960503125–6191–02; I.D. 040996A]

RIN 0648–AH03

Fisheries of the Exclusive Economic Zone off Alaska; Salmon Donation Program

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

ACTION: Final rule.

SUMMARY: NMFS issues a final rule to implement Amendment 26 to the Fishery Management Plan (FMP) for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area and Amendment 29 to the Fishery Management Plan for Groundfish of the Gulf of Alaska. This rule authorizes a voluntary Salmon Donation Program (SDP) for distribution of Pacific salmon taken as bycatch in the groundfish trawl fisheries off Alaska to economically disadvantaged individuals by tax-exempt organizations through a NMFS-authorized distributor. This action is necessary to support industry initiatives to reduce waste from discard in the groundfish fisheries by processing salmon bycatch for human consumption. This action is intended to promote the goals and objectives of the FMPs that govern the commercial groundfish fisheries off Alaska.

EFFECTIVE DATE: July 19, 1996.

ADDRESSES: Copies of Amendments 26 and 29 and the Environmental Assessment/Regulatory Impact Review (EA/RIR) prepared for the amendments may be obtained from the North Pacific Fishery Management Council, Suite 306, 605 West 4th Ave., Anchorage, AK 99510–2252; telephone: 907–271–2809. Send comments regarding burden estimates or any other aspect of the data requirements, including suggestions for reducing the burdens, to Susan J. Salveson, Fisheries Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802.

FOR FURTHER INFORMATION CONTACT: Susan J. Salveson, 907–586–7228.

SUPPLEMENTARY INFORMATION: Fishing for groundfish by U.S. vessels in the exclusive economic zone of the Gulf of Alaska (GOA) and Bering Sea and Aleutian Islands management area (BSAI) is managed by NMFS according to the respective FMPs for the groundfish fisheries of the GOA and BSAI. The FMPs were prepared by the North Pacific Fishery Management Council under the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801, *et seq.*) (Magnuson Act) and are implemented by regulations governing the U.S. groundfish fisheries at 50 CFR part 679.

This action implements regulations authorized under Amendments 26 and 29 to the FMPs. These amendments were approved by NMFS on July 10, 1996, and authorize the distribution of Pacific salmon taken incidentally in the groundfish trawl fisheries off Alaska to economically disadvantaged individuals by tax-exempt organizations through a NMFS-authorized distributor. The SDP's objective is to reduce waste from discards in the groundfish trawl fisheries.

Under this final rule, the Director, Alaska Region, NMFS (Regional Director) will select one or more tax-exempt organizations to be authorized distributors based on the information submitted by applicants under § 679.26. After review of qualified applicants, NMFS will announce the selection of authorized distributor(s) in the Federal Register. NMFS anticipates that the selection process of (an) authorized distributor(s) will be completed prior to the beginning of the 1996 BSAI pollock nonroe season. Any vessel or processor wishing to retain and process salmon bycatch for delivery to an authorized distributor selected by NMFS must be listed by the authorized distributor as a participant. Any costs resulting from the handling, processing, storing, and delivery of donated salmon to an authorized distributor will be borne by participating vessels and processors. Participation in the SDP is voluntary.

A full description of, and background information on, the SDP may be found in the preamble to the proposed rule published in the Federal Register on May 16, 1996 (61 FR 24750) and in the EA/RIR prepared for this action. Public comment on the proposed rule was invited through July 1, 1996. The U.S. Coast Guard commented that no enforcement or safety concerns would result from the proposed SDP. No other written comments were received during the comment period.

No changes to the proposed rule are made in the final rule except to incorporate the regulatory format into the new consolidated regulations governing the fisheries in Federal waters off Alaska (50 CFR part 679).

Classification

The Regional Director has determined that Amendments 26 and 29 are necessary for the conservation and management of the groundfish fisheries of the BSAI and the GOA and that they are consistent with the Magnuson Act and other applicable laws.

This rule has been determined to be not significant for the purposes of E.O. 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule would not have a significant economic impact on a substantial number of small entities. The reasons were published in the notice of proposed rulemaking. As a result, a regulatory flexibility analysis was not prepared.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a currently valid Office of Management and Budget (OMB) control number.

This rule contains a collection-of-information requirements subject to the PRA. The collection of this information has been approved by the OMB, Control Number 0648–0316. The rule includes an application to participate as an authorized distributor in the SDP, documentation requirements for the authorized distributor(s) and processors participating in the SDP, packaging requirements for vessels and processors, and identification requirements. Public reporting burden for these collections of information are estimated to average 40, 40, 0.1, and 0.25 hours respectively, per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information. Send suggestions regarding burden estimates or any other aspect of the data requirements, including suggestions for reducing the burdens to Susan J. Salveson (see **ADDRESSES**) and to the Office of Information and Regulatory Affairs, OMB, Washington, D.C. 20503, Attn: NOAA Desk Officer.

NMFS has determined that this final rule should be effective immediately to provide adequate time for tax-exempt organizations to apply to NMFS to become authorized distributors and for NMFS to review applications, to issue

SDP permits to authorized distributors, and to notify the public in the Federal Register of authorized distributors prior to the beginning of the 1996 BSAI pollock nonroe season, currently scheduled for August 15. An infrastructure has been developed over the past 2 years to provide for the distribution of donated salmon taken incidentally in the BSAI pollock fishery to needy individuals under authority of three successive experimental fishing permits (EFPs). The last EFP expired at the end of the 1996 pollock roe season. The infrastructure for the distribution of donated salmon could be jeopardized if a hiatus occurs in the authority to retain and donate salmon during the upcoming pollock nonroe season. Therefore, the need to implement the final rule in a timely manner to provide adequate time to select authorized distributors prior to the 1996 pollock nonroe season and avoid a hiatus and the fact that participation in the SDP is voluntary constitute good cause under authority contained in 5 U.S.C. 553(d)(3) to make this rule effective immediately.

List of Subjects

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Part 679

Fisheries, Reporting and recordkeeping requirements.

Dated: July 18, 1996.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 15 CFR chapter IX and 50 CFR chapter VI are amended as follows:

15 CFR Chapter IX

PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS

1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

2. In § 902.1, paragraph (b), the table is amended by adding, in numerical order, the following entry to read as follows:

§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) * * *

CFR part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 0648-)
* * * * *	
50 CFR	
* * * * *	
679.26	0316
* * * * *	

50 CFR Chapter VI

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

3. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*

4. In § 679.2, the definitions of ''Authorized distributor'', ''Food bank distributor'', ''Food bank network'', ''Hunger relief agency'', ''SDP'', ''SDP permit'', and ''Tax-exempt Organization'' are added, in alphabetical order, to read as follows:

§ 679.2 Definitions.

* * * * *

Authorized distributor means a tax-exempt organization authorized by NMFS to coordinate the processing, storage, transportation, and distribution of salmon taken as bycatch in the groundfish trawl fisheries to tax-exempt hunger relief agencies, food bank networks, and food bank distributors.

* * * * *

Food bank distributor means a tax-exempt organization with the primary purpose of distributing food resources to hunger relief agencies.

Food bank network means a tax-exempt organization with the primary purpose of coordinating receipt and delivery of food resources to its member food bank distributors or hunger relief agencies.

* * * * *

Hunger relief agency means a tax-exempt organization with the primary purpose of feeding economically disadvantaged individuals free of charge.

* * * * *

SDP means the Salmon Donation Program established under this section.

SDP permit means a permit issued by NMFS to an applicant who qualifies as an authorized distributor for purposes of the SDP.

* * * * *

Tax-exempt organization means an organization that received a determination letter from the Internal Revenue Service recognizing tax exemption under 26 CFR part 1 (§§ 1.501 to 1.640).

* * * * *

5. In § 679.7, paragraph (a)(12) is added to read as follows:

§ 679.7 Prohibitions.

* * * * *

(a) * * *

(12) *Salmon donation program*. Retain or possess salmon, except as permitted to do so under the Salmon Donation Program as provided by § 679.26, or as authorized by other applicable law.

* * * * *

6. In § 679.21, paragraphs (b)(2)(ii) and (c)(1) are revised to read as follows:

§ 679.21 Prohibited species bycatch management.

* * * * *

(b) * * *

(2) * * *

(ii) Sort its catch as soon as possible after retrieval of the gear and, except as provided under paragraph (c) of this section or § 679.26, must return all prohibited species or parts thereof to the sea immediately, with a minimum of injury, regardless of its condition, after allowing for sampling by an observer if an observer is aboard.

* * * * *

(c) * * * (1) *Salmon discard*. Except as provided in paragraph (c)(3) of this section, the operator of a vessel and the manager of a shoreside processor must not discard any salmon or transfer or process any salmon under the SDP at § 679.26, if the salmon were taken incidental to a directed fishery for BSAI groundfish by vessels using trawl gear until the number of salmon has been determined by a NMFS-certified observer and the collection of any scientific data or biological samples from the salmon has been completed.

* * * * *

7. Section 679.26 is added to Subpart B to read as follows:

§ 679.26 Salmon Donation Program.

(a) *Authorized distributors*—(1) *Application*. An applicant seeking to become an authorized distributor must provide the Regional Director with the following information:

(i) Proof of the applicant's tax-exempt status.

(ii) A description of the arrangements for processing, shipping, storing, and transporting donated salmon and an estimate of the associated costs.

(iii) A statement describing the applicant's expertise in providing for the distribution of food product from remote Alaskan locations to hunger

relief agencies, food bank networks, or food bank distributors, including arrangements for transportation, distribution costs, and product quality control.

(iv) Documentation of support from cold storage and transportation facilities.

(v) A proposed operating budget that is adequate to ensure that salmon donated under this program will be distributed to hunger relief agencies, food bank networks, or food bank distributors and that the salmon will be maintained in a manner fit for human consumption.

(vi) Proof of the applicant's ability to obtain and maintain adequate funding for the distribution of salmon under the SDP.

(vii) A copy of the applicant's articles of incorporation and bylaws showing that the purpose of the applicant includes providing food resources to hunger relief agencies, food bank networks, or food bank distributors.

(viii) Proof of the applicant's ability to take full responsibility for the documentation and disposition of salmon received under the SDP, including sufficient liability insurance to cover public interests relating to the quality of salmon distributed for human consumption.

(ix) Quality control criteria to be followed by vessels, processors, hunger relief agencies, food bank networks, and food bank distributors.

(x) The number of vessels and processors that the applicant is capable of administering effectively.

(xi) A list of all vessels and processors, food bank networks and food bank distributors participating in the SDP. The list of vessels and processors must include:

(A) The vessel's or processor's Federal fisheries permit number or Federal processor permit number.

(B) The name of the vessel owner or responsible operator or the name of the owner or plant manager of the processor.

(C) The vessel's or processor's telephone number and fax number.

(D) The signature of the vessel owner or responsible operator or the owner or plant manager of the processor.

(xii) A signed statement from the applicant and all persons listed under paragraph (a)(1)(xi) of this section who would conduct activities pursuant to the SDP permit waiving any and all claims against the United States and its agents and employees for any liability for personal injury, death, sickness, damage to property directly or indirectly due to activities conducted under the SDP.

(xiii) A list of locations where salmon must be delivered by participating vessels and processors.

(2) *Selection.* The Regional Director may select one or more tax-exempt organizations to be authorized distributors under the SDP based on the information submitted by applicants under paragraph (a)(1) of this section. The number of authorized distributors selected by the Regional Director will be based on the following criteria:

(i) The number and qualifications of applicants for SDP permits.

(ii) The number of harvesters and the quantity of salmon that applicants can effectively administer.

(iii) The anticipated level of salmon bycatch based on the salmon bycatch from previous years.

(iv) The potential number of vessels and processors participating in the groundfish trawl fisheries.

(3) *SDP Permit.* (i) After review of qualified applicants, the Regional Director will announce the selection of authorized distributor(s) in the Federal Register and will issue SDP permit(s).

(ii) The Regional Director may impose additional terms and conditions on an SDP permit consistent with the objectives of the SDP.

(iii) An SDP permit may be suspended, modified, or revoked under 15 CFR part 904 for noncompliance with terms and conditions specified in the permit or for a violation of this section or other regulations in this part.

(iv) An SDP permit remains in effect for a 3-year period after the selection notice is published in the Federal Register unless suspended or revoked. An SDP permit may not be transferred. An SDP permit issued to an authorized distributor may be renewed following the application procedures in this section.

(v) If the authorized distributor modifies any information on the SDP permit application submitted under paragraph (a)(1)(xi) or (a)(1)(xiii) of this section, the authorized distributor must submit a modified list of participants or a modified list of delivery locations to the Regional Director.

(b) *Reporting and Recordkeeping Requirements.* (1) A vessel or processor retaining salmon under the SDP must comply with all applicable recordkeeping and reporting requirements. A vessel or processor participating in the SDP must comply with applicable regulations at §§ 679.7(c)(2), and 679.21(c) that allow for the collection of data and biological sampling by an NMFS-certified observer prior to processing any salmon under the SDP.

(2) Salmon retained under the SDP must be packaged, and all packages must be labeled with the date of processing, the name of the processing facility, the contents and the weight of the salmon contained in the package and the words, ''NMFS SALMON DONATION PROGRAM—NOT FOR SALE—PERISHABLE PRODUCT—KEEP FROZEN''.

(3) A processor retaining or receiving salmon under the SDP and an authorized distributor must keep on file and make available for inspection by an authorized officer all documentation including receipt and cargo manifests setting forth the origin, weight, and destination of all salmon. Such documentation must be retained until 1 year after the effective period of the SDP permit.

(c) *Processing, handling, and distribution.* (1) Processing and reprocessing of all salmon retained under the SDP must be carried out under the direction of the authorized distributor. A processor retaining or receiving salmon under the SDP, at a minimum, must head, gut, and freeze the salmon in a manner that makes it fit for human consumption.

(2) Salmon that are determined to be unfit for human consumption prior to delivery to an authorized distributor must be discarded under § 679.21(b). Salmon that are determined to be unfit for human consumption after delivery to the authorized distributor must be destroyed in accordance with applicable sanitation laws and regulations.

(3) Authorized distributors and persons conducting activities supervised by authorized distributors may retain salmon only for the purpose of processing and delivering the salmon to hunger relief agencies, food networks or food distributors as provided by this section. Such persons may not consume or retain salmon for personal use and may not sell, trade or barter, or attempt to sell, trade or barter any salmon that is retained under the SDP.

(4) No salmon bycatch may be retained by a vessel or processor, or delivered to a delivery location under this section, unless the vessel or processor and delivery location is included on the list provided to the Regional Director under paragraph (a)(1)(xi), (a)(1)(xiii), or (a)(3)(v) of this section.

[FR Doc. 96–18788 Filed 7–19–96; 2:23 pm]

BILLING CODE 3510–22–W

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 404

[Regulation No. 4]

RIN 0960–AE21

When You Are a Full-Time Elementary or Secondary School Student

AGENCY: Social Security Administration.

ACTION: Final rule.

SUMMARY: We are revising our rule on full-time elementary or secondary school students to include students enrolled in home schooling or independent study programs authorized by State or local law, e.g., political subdivision, tribal government, or the District of Columbia. The current rule covers only students in traditional institutional educational settings; however, many States (or other jurisdictions) provide for home schooling and independent study programs considered equivalent to traditional schools. We also are showing clearly that nonpayment provisions apply to certain prisoners and certain other inmates of publicly funded institutions who otherwise would meet student benefit requirements. In addition, we are removing outdated rules on student benefits relating to months before August 1982.

EFFECTIVE DATE: This final rule is effective July 24, 1996.

FOR FURTHER INFORMATION CONTACT: Daniel T. Bridgewater, Legal Assistant, Division of Regulations and Rulings, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–3298 for information about this rule. For information on eligibility or claiming benefits, call our national toll-free number, 1–800–772–1213.

SUPPLEMENTARY INFORMATION

Background

The Social Security Amendments of 1965, Public Law 89–97, section 306, defined a full-time student as ''an individual who is in full-time attendance as a student at an educational institution.'' An ''educational institution'' was defined as ''(i) a school or college or university operated or directly supported by the United States, or by any State or local government or political subdivision thereof, or (ii) a school or college or university which has been approved by a State or accredited by a State-recognized or nationally-recognized accrediting agency or body, or (iii) a non-accredited school or college or university whose credits are accepted, on transfer, by not less than three institutions which are so accredited * * *.'' This definition of an educational institution was chosen by Congress, as explained in the Senate report, ''to establish that the institution the child attends is a bona fide school.'' (See S. Rep. No. 404, 89th Cong., 1st Sess. 96–97, *reprinted in* 1965 U.S. Code Cong. & Admin. News 1943, 2036–37.)

The Senate report also stated: ''The committee believes that a child over age 18 who is attending school full time is dependent just as a child under 18 or a disabled older child is dependent, and that it is not realistic to stop such a child's benefit at age 18.'' *Ibid.* We understand this to mean that the committee believed that full-time students attending class are less likely to be able to support themselves through employment than are part-time or correspondence students.

The Omnibus Budget Reconciliation Act of 1981, Public Law 97–35, section 2210, replaced the term ''educational institution'' and its definition with the requirement that the student be in full-time attendance at an ''elementary or secondary school,'' which is defined as a ''school which provides elementary or secondary education, respectively, as determined under the law of the State or other jurisdiction in which it is located.'' (See section 202(d)(7)(C)(i) of the Social Security Act (the Act) as amended.) The purpose of this amendment was to eliminate child's insurance benefits in the case of children age 18 or older who attend postsecondary schools. Section 2210 also eliminated child's insurance benefits for children in elementary or secondary school after they attained age 19. (See S. Rep. No. 139, 97th Cong., 1st Sess. 427, *reprinted in* 1981 U.S. Code Cong. & Admin. News 396, 693.)

Present Policy

Child's insurance benefits under sections 202(d)(6) and (7) of the Act usually terminate when the child attains age 18. However, there is an exception that allows for continuation of entitlement to child's benefits for persons age 18 until attainment of age 19 who are full-time elementary or secondary school students.

Section 202(d)(7)(A) of the Act defines a full-time elementary or secondary school student as ''an individual who is in full-time attendance as a student at an elementary or secondary school, as determined by the Commissioner (in accordance with regulations prescribed by him) in the light of the standards and practices of the schools involved * * *.''

Section 404.367 of our current regulations states, in pertinent part:

> * * * You are a full-time elementary or secondary school student if you meet all the following conditions:
>
> (a) You attend a school which provides elementary or secondary education, respectively, as determined under the law of the State or other jurisdiction in which it is located;
>
> (b) You are in full-time attendance in a day or evening noncorrespondence course of at least 13 weeks duration and are carrying a subject load which is considered full-time for day students under the institution's standards and practices. Additionally, your scheduled attendance must be at the rate of at least 20 hours per week unless we find that:
>
> (1) The school attended does not schedule at least 20 hours per week and going to that particular school is your only reasonable alternative; or
>
> (2) Your medical condition prevents you from having scheduled attendance of at least 20 hours per week. To prove that your medical condition prevents you from scheduling 20 hours per week, we may request that you provide appropriate medical evidence or a statement from the school.

New Policy

Current regulations do not provide guidance on alternative education programs covered under the laws of the State (or other jurisdiction) in which a student resides. Before the development of such programs, our policy had been in keeping with the traditional definition of educational institutions. Such traditional institutional-type schools include public, private, and religious schools. Except for the two specific exceptions noted in the regulations, we also consistently have required that the student be scheduled to attend school for at least 20 hours per week to be considered a full-time student.

Because most States (or other jurisdictions) have begun providing for education based on alternative education methods, we evaluated cases involving home schooling or independent study programs on an individual basis. This evaluation has provided sufficient information to formulate these proposed regulations.

Many States or other jurisdictions have laws recognizing home schooling. Home schooling is an educational program in which the student is generally taught within the home by a parent/teacher. The State or other jurisdiction specifies the requirements that must be met and the procedures that must be followed in these situations. There must be a parent or other home school teacher participating in the home school instruction. This participation may be in the form of

actual instruction, answering questions, administering tests, keeping attendance records, etc. The student must be carrying a course load that is considered full-time using the same standards and practices used for full-time day students in the traditional setting, as determined under the law of the State or other jurisdiction in which the student resides.

The child's home schooling teacher must submit evidence that legal requirements for home schooling are met. Depending on these requirements, this evidence might include a copy of the certificate of intent that is filed with the local school or school district, documentation that State-mandated tests were taken, a list of the courses being taught, and a copy of the attendance log or chart.

Also, some States or other jurisdictions authorize the governing board of a school district or a county office of education to offer independent study to meet the educational needs of pupils in accordance with certain requirements. An independent study course could (but need not) include instruction in the student's home or elsewhere outside the classroom. The study program is conducted in accordance with written policies and rules. It is coordinated, evaluated, and under the supervision of an employee of the school district or county office of education who has been certified to act as a home teacher. Independent study programs which involve instruction and supervision by a teacher employed by the school (or local school district) include written agreements for each independent study student specifying, among other things, the duration of the agreement and a statement of the number of course credits to be earned by the pupil upon completion. The effect of the written agreement is to extend the educational setting beyond the traditional classroom. It is a situation similar to those students who are in school-approved work-study programs that extend the educational setting.

We therefore are revising § 404.367 to include students enrolled in home schooling or independent study programs authorized by State (or other jurisdiction) laws. The student must be carrying a course load considered to be full-time under the standards and practices used for day students who are in full-time attendance at traditional educational institutions. Students in these types of situations include a wide range of individuals. For example, home schooling students may be in that situation for religious reasons or because the parents do not agree with the local school curriculum.

Students in independent study programs may include those individuals who cannot take advantage of the traditional school setting, such as hard-to-keep-in-school students (unable to adjust or delinquents), single mothers, or expectant mothers. All students—those in traditional programs and those in alternative programs—who work are subject to the annual earnings test.

A home schooling program must meet the requirements set forth by the State (or other jurisdiction). An independent study program organized in accordance with the State (or other jurisdiction) requirements must be coordinated, evaluated and supervised by an employee of the school district or county office of education and must comply with the policies of the school district or county office of education. To be entitled to child's insurance benefits as a student, an individual enrolled in either type of program must meet both the Federal and the State (or other jurisdiction) full-time attendance (FTA) requirements.

When determining FTA, the home schooling teacher will be the certifying school official for FTA purposes. In independent study situations, the school teacher/official supervising the performance of the student under the written agreement between the school and the student will be the certifying official for FTA.

When determining the number of hours spent in school attendance for an approved independent study program, we will combine the number of agreed upon hours spent in independent study with the number of hours in actual school attendance. The course load must be equivalent to that of a student in the school's full-time day program.

We will continue to exclude from eligibility those individuals who are enrolled solely in correspondence courses. We do not believe that such courses satisfy the definition of an elementary or secondary school in the Act, and usually they would not meet State (or other jurisdiction) requirements.

We also are revising § 404.367 to clearly show that section 202(x) of the Act, regarding nonpayment of benefits to certain prisoners and certain other inmates of publicly funded institutions, applies to those individuals who otherwise meet student benefit requirements. Section 202(x) is applicable to those who otherwise would qualify for benefits under section 202(d)(7)(A) of the Act.

Further, we are removing § 404.369 since it applies only to child's benefits for full-time students for months before August 1982. This section has not been applicable for over 10 years and there is no longer a need to retain it. Sections that refer to § 404.369 (i.e., §§ 404.350–404.353) are revised to remove such references.

On December 7, 1995, we published this final rule as a proposed rule in the Federal Register at 60 FR 62783, and on December 18, 1995, a minor correction was published at 60 FR 65093. The proposed rule provided for a 60-day comment period; however, there were no public comments during this period. Therefore, we are publishing this final rule essentially unchanged from the proposed rule.

In addition, SSA is not providing a 30-day delay in the effective date of this final rule. The rule relieves a restriction on who may qualify for student benefits and meets the exception under 5 U.S.C. 553(d)(1).

Regulatory Procedures

Executive Order 12866

We have consulted with the Office of Management and Budget and determined that these rules do not meet the criteria for a significant regulatory action under Executive Order 12866.

Regulatory Flexibility Act

We certify that this final rule will not have a significant economic impact on a substantial number of small entities since it only affects individuals. Therefore, a regulatory flexibility analysis as provided in Public Law 96–354, the Regulatory Flexibility Act, is not required.

Paperwork Reduction Act

This rule imposes no additional reporting or recordkeeping requirements subject to Office of Management and Budget clearance.

(Catalog of Federal Domestic Assistance Program Nos. 96.001 Social Security—Disability Insurance; 96.002 Social Security—Retirement Insurance; 96.004 Social Security— Survivors Insurance)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors, and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

Dated: July 8, 1996.

Shirley S. Chater,

Commissioner of Social Security.

For the reasons set out in the preamble, subpart D of part 404 of Chapter III of Title 20 of the Code of Federal Regulations is amended as follows:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

Subpart D—[Amended]

1. The authority citation for subpart D of part 404 continues to read as follows:

Authority: Secs. 202, 203(a) and (b), 205(a), 216, 223, 225, 228(a)–(e), and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 403(a) and (b), 405(a), 416, 423, 425, 428(a)–(e), and 902(a)(5)).

2. Section 404.350 is amended by revising paragraph (a)(5) to read as follows:

§ 404.350 Who is entitled to child's benefits.

(a) * * *

(5) You are under age 18; you are 18 years old or older and have a disability that began before you became 22 years old; or you are 18 years or older and qualify for benefits as a full-time student as described in § 404.367.

* * * * *

3. Section 404.351 is amended by revising paragraph (a) to read as follows:

§ 404.351 Who may be reentitled to child's benefits.

* * * * *

(a) The first month in which you qualify as a full-time student. (See § 404.367.)

* * * * *

4. Section 404.352 is amended by revising the fourth sentence of paragraph (b)(1) to read as follows:

§ 404.352 When child's benefits begin and end.

* * * * *

(b) * * *

(1) * * * If you become 18 years old and you qualify as a full-time student who is not disabled, your entitlement ends with the last month you are a full-time student or, if earlier, the month before the month you become age 19. * * *

* * * * *

5. Section 404.353 is amended by revising the second sentence of paragraph (a) to read as follows:

§ 404.353 Child's benefit amounts.

(a) * * * The amount of your monthly benefit may change as explained in § 404.304.

* * * * *

6. Section 404.367 is amended by revising the first sentence of the introductory text; revising paragraphs (a) and (b); redesignating paragraphs (c), (d), and (e) as paragraphs (d), (e), and (f), respectively; adding paragraph (c); and, revising paragraph (f) to read as follows:

§ 404.367 When you are a ''full-time elementary or secondary school student''.

You may be eligible for child's benefits if you are a full-time elementary or secondary school student. * * *

(a) You attend a school which provides elementary or secondary education as determined under the law of the State or other jurisdiction in which it is located. Participation in the following programs also meets the requirements of this paragraph:

(1) You are instructed in elementary or secondary education at home in accordance with a home school law of the State or other jurisdiction in which you reside; or

(2) You are in an independent study elementary or secondary education program in accordance with the law of the State or other jurisdiction in which you reside which is administered by the local school or school district/jurisdiction.

(b) You are in full-time attendance in a day or evening noncorrespondence course of at least 13 weeks duration and you are carrying a subject load which is considered full-time for day students under the institution's standards and practices. If you are in a home schooling program as described in paragraph (a)(1) of this section, you must be carrying a subject load which is considered full-time for day students under standards and practices set by the State or other jurisdiction in which you reside;

(c) To be considered in full-time attendance, your scheduled attendance must be at the rate of at least 20 hours per week unless one of the exceptions in paragraphs (c)(1) and (2) of this section applies. If you are in an independent study program as described in paragraph (a)(2) of this section, your number of hours spent in school attendance are determined by combining the number of hours of attendance at a school facility with the agreed upon number of hours spent in independent study. You may still be considered in full-time attendance if your scheduled rate of attendance is below 20 hours per week if we find that:

(1) The school attended does not schedule at least 20 hours per week and going to that particular school is your only reasonable alternative; or

(2) Your medical condition prevents you from having scheduled attendance of at least 20 hours per week. To prove that your medical condition prevents you from scheduling 20 hours per week, we may request that you provide appropriate medical evidence or a statement from the school.

* * * * *

(f) You are not subject to the provisions in § 404.468 for nonpayment of benefits to certain prisoners and certain other inmates of publicly funded institutions.

§ 404.369 [Removed]

7. Section 404.369 is removed.

[FR Doc. 96–18357 Filed 7–23–96; 8:45 am]

BILLING CODE 4190–29–P

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20 CFR Part 404

RIN 0960–AE00

Miscellaneous Coverage Provisions of the Social Security Independence and Program Improvements Act of 1994; Coverage Provisions of the Social Security Domestic Employment Reform Act of 1994

AGENCY: Social Security Administration (SSA).

ACTION: Final rules.

SUMMARY: These final regulations reflect sections 303, 305, 319 and 320 of the Social Security Independence and Program Improvements Act of 1994, which made several amendments to the Social Security Act (the Act) concerning the Social Security coverage of State and local government election officials and election workers effective beginning January 1, 1995, police officers and firefighters effective with respect to modifications filed under section 218 of the Act on and after August 16, 1994, Federal employees transferred to international organizations effective January 1, 1995, and nonresident aliens who enter the United States under a cultural exchange program effective October 1, 1994. These final regulations also reflect section 1001(d)(2)(E) of the Technical and Miscellaneous Revenue Act of 1988, which excludes from coverage certain services performed by certain nonresident aliens temporarily in the United States to pursue a vocational or nonacademic technical education. In addition, these final regulations also reflect section 2 of the Social Security Domestic Employment Reform Act of 1994, which concerns the coverage of domestic services performed in a private home of the employer.

EFFECTIVE DATE: These regulations are effective July 24, 1996.

FOR FURTHER INFORMATION CONTACT: Lois Berg, Legal Assistant, Division of Regulations and Rulings, Social Security Administration, 3–B–1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–1713 for information about these rules. For information on eligibility, claiming benefits, or coverage of earnings, call

our national toll-free number, 1–800–772–1213.

SUPPLEMENTARY INFORMATION: Public Law 103–296, which established SSA as an independent agency, also made a number of miscellaneous program improvements. These final rules reflect sections 303, 305, 319 and 320 of Public Law 103–296, which amended sections 210 and 218 of the Act with respect to the Social Security coverage of certain workers.

Section 303 of Public Law 103–296 amended section 210(a)(7)(F)(iv) of the Act to provide that services performed by State and local government election officials and workers who earn less than $1000 in a calendar year for those services are excluded from the mandatory Social Security and Medicare coverage generally provided under section 210(a)(7)(F) for State and local government employees who are not members of a State or local government retirement system. Similarly, section 303 amended section 210(p)(2)(E) of the Act to provide that services of election officials and workers who earn less than the $1,000 annual amount also are excluded from the mandatory Medicare only coverage generally provided under section 210(p)(2) for State and local government employees hired after March 31, 1986. Section 303 also amended section 218(c)(8) of the Act to provide that services of election officials and workers who earn less than the $1,000 annual amount may, at the option of the State, be excluded from a voluntary section 218 coverage agreement entered into by a State. Finally, section 303 provides that the $1,000 amount will be adjusted for all three exclusions beginning in calendar year 2000 to reflect changes in wages in the economy. Prior to these statutory amendments, these three exclusions applied to election officials and workers who earned less than $100 in a calendar year, rather than $1,000. This increase in the threshold amount to $1000 for these exclusions is effective for services performed on or after January 1, 1995. However, the higher threshold for the optional exclusion from voluntary coverage under a section 218 agreement will apply only if the State executes a modification to its coverage agreement electing to take the exclusion with the increased $1000 based limit. We are amending §§ 404.1018b(c)(1)(v), 404.1020(a)(3)(iv) and 404.1210(e) to reflect the statutory changes made by section 303.

Section 305 of Public Law 103–296 amended section 218(l) of the Act to give all States the option to extend Social Security coverage to police officers and firefighters who are under the State or political subdivision employer's retirement system. This amendment is effective with respect to section 218 coverage modifications filed by States on or after August 16, 1994. Prior to this amendment, section 218(l) authorized only 23 named States to provide this coverage. We are amending §§ 404.1206 (a) and (f), 404.1211(d), and 404.1212 to reflect this amendment and to update the terminology so that ''policeman'' or ''policemen'' are now referred to as ''police officer(s)'', and ''fireman'' or ''firemen'' are now referred to as ''firefighter(s)''.

Section 319 of Public Law 103–296 amended section 210 of the Act by adding a new subsection, subsection (r), to provide for the continuation of Social Security coverage as employment of services performed by Federal civilian employees temporarily transferred to an international organization regardless of whether the international organization is within or outside the United States. Prior to this amendment, which is effective with respect to services performed on or after January 1, 1995, coverage would not continue if the services were performed outside the United States and it would continue as self-employment if performed within the United States. Specifically, under new subsection (r), work performed in the employ of an international organization, pursuant to a temporary transfer from a Federal agency under section 3582 of title 5 of the United States Code, is covered employment if the individual worked in covered employment for a Federal agency immediately prior to the transfer and would be entitled, upon separation from the international organization and proper application, to reemployment with the Federal agency under section 3582. We are amending §§ 404.1004, 404.1018, 404.1034 and 404.1068(d) to reflect this statutory change.

Section 320 of Public Law 103–296 amended section 210(a)(19) of the Act to exclude from Social Security coverage certain services performed by nonresident aliens who enter the United States on a temporary basis as part of a cultural exchange program under a visa issued under section 101(A)(15)(Q) of the Immigration and Nationality Act. This provision is effective October 1, 1994. We are revising § 404.1036 to reflect this statutory change. We also are revising § 404.1036 to reflect section 1001(d)(2)(E) of Public Law 100–647, the Technical and Miscellaneous Revenue Act of 1988, which, effective for remuneration for services received after December 31, 1986, amended section 210(a)(19) of the Act to exclude from coverage certain services performed by nonresident aliens temporarily in the United States as nonimmigrants to pursue a vocational or nonacademic technical education. These individuals are ''M'' visa holders under section 101(a)(15)(M) of the Immigration and Nationality Act. Finally, we are revising § 404.1036 to reflect section 9(a)(1) of Public Law 100–525 which in 1988 amended section 101(a)(15)(J) of the Immigration and Nationality Act by substituting ''Director of United States Information Agency'' for ''Secretary of State.''

Section 2 of Public Law 103–387, the Social Security Domestic Employment Reform Act of 1994, made several changes with respect to the coverage of domestic services which are also reflected in these final rules. First, section 2 amended section 209(a)(6)(B) of the Act to raise the threshold per employer for coverage of payments made to an employee for domestic services in the employer's private home from $50 per calendar quarter to $1,000 per calendar year beginning in 1994. However, under a special provision for calendar year 1994, if a domestic employee was paid less than $1,000 by an employer, the employer must report the earnings on form W–2 if the services would have been covered under the law as it existed prior to the enactment of Public Law 103–387. Although payment of Social Security taxes on such 1994 earnings is not required, the employee will receive Social Security coverage credit for those 1994 earnings which must be reported. In calendar years after 1995, the $1000 threshold will be subject to adjustment in $100 increments based on the formula in section 215(a)(1)(B)(i) of the Act to reflect changes in wages in the economy. We are amending §§ 404.1042(c)(2) and 404.1057(a) to reflect the statutory increase in the coverage threshold for domestic services.

Section 2 of Public Law 103–387 also amended section 209(a)(6)(B) to provide that, effective with respect to remuneration paid after 1993, the coverage of earnings for domestic services in the private home of an employer on a farm operated for profit is determined in the same manner as earnings for any other domestic services and those earnings are subject to the new threshold instead of the threshold applicable to other agricultural labor. Prior to the statutory amendment, which is subject to the special provision for 1994 discussed above, the coverage threshold generally applicable to domestic services did not apply to domestic services which also

constituted agricultural labor under section 210(f) of the Act. We are amending §§ 404.1055 and 404.1056(a)(6) to reflect this statutory change. In addition, we are amending § 404.1055(c)(1) to provide a technical clarification consistent with the example currently provided in that paragraph. We are also amending § 404.1056(a)(6) to update cross-references to §§ 404.1058 and 404.1059 to reflect the fact that those sections were redesignated as §§ 404.1057 and 404.1058, respectively, on March 1, 1990 (55 FR 7306, 7310).

Finally, section 2 of Public Law 103–387 added a new paragraph (21) to section 210(a) of the Act to provide that domestic services performed after December 31, 1994, in the private home of the employer are excluded from Social Security coverage, regardless of the amount earned, in any year in which the employee is under age 18 if the domestic service is not the employee's principal occupation. We are adding § 404.1038 to reflect this provision and we are also amending §§ 404.1001(d)(2), 404.1003, 404.1004(a) and 404.1012 to provide cross-references to new § 404.1038.

Regulatory Procedures

Justification for Final Rules

Pursuant to section 702(a)(5) of the Act, SSA follows the Administrative Procedure Act (APA) rulemaking procedures specified in 5 U.S.C. 553 in the development of its regulations. The APA provides exceptions to its notice and public comment procedures when an agency finds there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. We have determined that, under 5 U.S.C. 553(b)(B), good cause exists for waiver of the notice and public comment procedures for these regulations. Opportunity for prior public comment is unnecessary because these regulations contain no discretionary policy and only reflect provisions in Public Law 103–296, Public Law 103–387, and Public Law 100–647 and make nonsubstantive, technical changes. Therefore, we are issuing these changes to our regulations as final rules. Also, since these regulations reflect the statute, the 30-day delay in effectuating regulations, as provided in 5 U.S.C. 553(d), does not apply.

Regulatory Flexibility Act

We certify that these regulations will not have a significant economic impact on a substantial number of small entities, including small governmental jurisdictions. Any economic impact involved in the regulations results directly from the statutory amendments, not from the regulations. Therefore, a regulatory flexibility analysis as provided in Public Law 96–354, the Regulatory Flexibility Act, is not required.

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these rules do not meet the criteria for a significant regulatory action under Executive Order 12866. Thus, they were not subject to OMB review.

Paperwork Reduction Act

These regulations impose no reporting/recordkeeping requirements necessitating clearance by OMB.

(Catalog of Federal Domestic Assistance Program No. 96.001 Social Security—Disability Insurance; 96.002 Social Security—Retirement Insurance; and 96.004 Social Security—Survivors Insurance)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Blind benefits, Disability benefits, Old-Age, Survivors and disability insurance, Reporting and recordkeeping requirements, Social security.

Dated: July 8, 1996.

Approved:

Shirley S. Chater,

Commissioner of Social Security.

For the reasons set forth in the preamble, subparts K and M of part 404 of chapter III of title 20 of the Code of Federal Regulations are amended as set forth below.

PART 404—FEDERAL OLD–AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

Subpart K—[Amended]

1. The authority citation for subpart K of part 404 continues to read as follows:

Authority: Secs. 202(v), 205(a), 209, 210, 211, 229(a), 230, 231, and 702(a)(5) of the Social Security Act (42 U.S.C. 402(v), 405(a), 409, 410, 411, 429(a), 430, 431, and 902(a)(5)).

2. Section 404.1001 is amended by revising paragraph (d)(2) to read as follows:

§ 404.1001 Introduction.

* * * * *

(d) * * *

(2) In §§ 404.1012 through 404.1038 we discuss various types of work that are not covered as employment for social security purposes.

* * * * *

3. Section 404.1003 is amended by revising the fourth sentence to read as follows:

§ 404.1003 Employment.

* * * Exceptions to the general rule are contained in §§ 404.1012 through 404.1038 which explain the kinds of work excluded from employment. * * *

4. Section 404.1004 is amended by revising the introductory text of paragraph (a) and by adding a new paragraph (a)(5) to read as follows:

§ 404.1004 What work is covered as employment.

(a) *General requirements of employment.* Unless otherwise excluded from coverage under §§ 404.1012 through 404.1038, the work you perform as an employee for your employer is covered as employment under social security if one of the following situations applies:

* * * * *

(5) Your work performed after December 31, 1994, is in the employ of an international organization pursuant to a transfer from a Federal agency under section 3582 of title 5 of the United States Code and both the following are met:

(i) Immediately before the transfer, your work for the Federal agency was covered employment; and

(ii) You would be entitled, upon separation from the international organization and proper application, to reemployment with the Federal agency under section 3582.

* * * * *

5. Section 404.1012 is amended by revising the second sentence to read as follows:

§ 404.1012 Work excluded from employment.

* * * They are described in §§ 404.1014 through 404.1038 and are exceptions to the general rule in § 404.1004 on the kinds of work that are covered as employment. * * *

6. Section 404.1018 is amended by redesignating paragraph (g) as paragraph (h) and by adding a new paragraph (g) to read as follows:

§ 404.1018 Work by civilians for the United States Government or its instrumentalities—wages paid after 1983.

* * * * *

(g) *Work for international organizations.* Work performed for an international organization by an employee who was transferred from a Federal agency is generally covered as

employment if, immediately before the transfer, the employee's services for the Federal agency were covered. (See § 404.1004(a)(5) and § 404.1034(c).)

* * * * *

7. Section 404.1018b is amended by revising paragraph (c)(1)(v) to read as follows:

§ 404.1018b Medicare qualified government employment.

* * * * *

(c) * * *

(1) * * *

(v) By an election official or election worker paid less than $100 in a calendar year for such service prior to 1995, or less than $1,000 for service performed in any calendar year after 1994 and before 2000, or, for service performed in any calendar year after 1999, less than the $1,000 base amount, as adjusted pursuant to section 218(c)(8)(B) of the Social Security Act to reflect changes in wages in the economy. We will publish this adjustment of the $1,000 base amount in the Federal Register on or before November 1 preceding the year for which the adjustment is made.

* * * * *

8. Section 404.1020 is amended by revising paragraph (a)(3)(iv) to read as follows:

§ 404.1020 Work for States and their political subdivisions and instrumentalities.

(a) * * *

(3) * * *

(iv) As an election official or election worker if the remuneration paid in a calendar year for such service prior to 1995 is less than $100, or less than $1000 for service performed in any calendar year after 1994 and before 2000, or, for service performed in any calendar year after 1999, less than the $1000 base amount, as adjusted pursuant to section 218(c)(8)(B) of the Social Security Act to reflect changes in wages in the economy. We will publish this adjustment of the $1000 base amount in the Federal Register on or before November 1 preceding the year for which the adjustment is made.

9. Section 404.1034 is amended by revising the first sentence in the introductory text of paragraph (a), by redesignating paragraph (c) as paragraph (d) and revising it, and by adding a new paragraph (c) to read as follows:

§ 404.1034 Work for an international organization.

(a) If you work as an employee of an international organization entitled to enjoy privileges, exemptions, and immunities as an international organization under the International Organizations Immunities Act (59 Stat. 669), your work is excluded from employment except as described in paragraphs (b) and (c) of this section.

* * *

* * * * *

(c) Your work performed after December 31, 1994 will not be excluded under this section if you perform service in the employ of an international organization pursuant to a transfer from a Federal agency under section 3582 of title 5 of the United States Code and

(i) Immediately before such transfer you performed service with a Federal agency which was covered as employment; and

(ii) You would be entitled, upon separation from the international organization and proper application, to reemployment with the Federal agency under section 3582.

(d) If you are a citizen of the United States and work in the United States as an employee of an international organization that meets the conditions in paragraph (a) of this section and you are not subject to coverage based on paragraph (c) of this section, you are considered to be self-employed (§ 404.1068(d)).

10. Section 404.1036 is revised to read as follows:

§ 404.1036 Certain nonresident aliens.

(a) *Foreign students.* (1) Foreign students (nonimmigrant aliens) may be temporarily in the United States under subparagraph (F) of section 101(a)(15) of the Immigration and Nationality Act to attend a school or other recognized place of study approved by the Attorney General. On-campus work or work under permission granted by the Immigration and Naturalization Service which is done by these students is excluded from employment. Other work done by these foreign students is not excluded from employment under this section.

(2) Foreign students (nonimmigrant aliens) may be temporarily in the United States under subparagraph (M) of section 101(a)(15) of the Immigration and Nationality Act to pursue a vocational or nonacademic technical education approved by the Attorney General. Work done by these students to carry out the purpose for which they were admitted is excluded from employment. Other work done by these foreign students is not excluded from employment under this section.

(b) *Exchange visitors.* (1) Exchange visitors (nonimmigrant aliens) may be temporarily in the United States under subparagraph (J) of section 101(a)(15) of the Immigration and Nationality Act to participate in exchange visitor programs designated by the Director of the United States Information Agency. Work done by these exchange visitors to carry out the purpose for which they were admitted and for which permission has been granted by the sponsor, is excluded from employment. Other work done by these exchange visitors is not excluded from employment under this section.

(2) Exchange visitors (nonimmigrant aliens) may be temporarily in the United States under subparagraph (Q) of section 101(a)(15) of the Immigration and Nationality Act to participate in an international cultural exchange program approved by the Attorney General. Effective October 1, 1994, work done by these exchange visitors to carry out the purpose for which they were admitted is excluded from employment. Other work done by these exchange visitors is not excluded from employment under this section.

(c) *Spouse and children.* Work done by a foreign student's or exchange visitor's alien spouse or minor child who is also temporarily in the United States under subparagraph (F), (J), (M), or (Q) of section 101(a)(15) of the Immigration and Nationality Act is not excluded from employment under this section unless that spouse or child and the work that is done meets the conditions of paragraph (a) or (b) of this section.

11. Section 404.1038 is added under the undesignated center heading ''Work Excluded From Employment'' to read as follows:

§ 404.1038 Domestic employees under age 18.

Domestic services you perform in a private home of your employer are excluded from employment, regardless of the amount earned, in any year in which you are under age 18 if domestic service is not your principal occupation. The exclusion applies to the entire year if you are under age 18 in any part of the year. See § 404.1057.

12. In § 404.1042, paragraph (c)(2) is revised to read as follows:

§ 404.1042 Wages when paid and received.

* * * * *

(c) * * *

(2) We also apply this rule to domestic work in a private home of the employer, except see § 404.1057(a)(1) for the applicable dollar amount.

* * * * *

13. Section 404.1055 is amended by revising paragraph (a), the heading for paragraph (b), paragraph (b)(1), and the second sentence of paragraph (c)(1) to read as follows:

§ 404.1055 Payments for agricultural labor.

(a) *When cash payments are not wages.* We do not include as wages your cash payments in a calendar year after 1987 from an employer for agricultural labor (see § 404.1056) if your employer's total expenditures for agricultural labor are less than $2500 in that year and your employer paid you less than $150 cash remuneration in that year for your agricultural labor. If you perform domestic service in the private home of an employer on a farm operated for profit, we do not include as wages the cash payments for those services if they are less than the applicable dollar threshold described in § 404.1057(a).

(b) *Exclusions for noncash payments and payments for seasonal agricultural labor.* (1) Noncash payments for agricultural labor are not wages.

* * * * *

(c) * * *

(1) * * * If the amounts paid are less than $150, we count only those amounts paid for agricultural labor in determining if the $2500 expenditure test is met. * * *

* * * * *

14. Section 404.1056 is amended by revising paragraph (a)(6) to read as follows:

§ 404.1056 Explanation of agricultural labor.

(a) * * *

(6) If you do nonbusiness work or domestic work in the private home of your employer, it is agricultural labor if you do the work on a farm operated for profit. However, if you do domestic work in the private home of your employer on a farm operated for profit, coverage of your earnings for the domestic services is determined in the same manner as earnings for any other domestic employee. Whether those earnings are covered will be determined based on the threshold described in § 404.1057(a) and the other coverage rules applicable to domestic service instead of the threshold applicable to other agricultural employees. A farm is not operated for profit if the employer primarily uses it as a residence or for personal or family recreation or pleasure. (See § 404.1057 for an explanation of domestic work and § 404.1058(a) for an explanation of nonbusiness work.)

* * * * *

15. Section 404.1057 is amended by revising paragraphs (a) (1), (2) and (3) and the last sentence in paragraph (a)(4) to read as follows:

§ 404.1057 Domestic service in the employer's home.

(a) * * *

(1) *The applicable dollar threshold.* We do not include as wages cash payments that an employer makes to you in any calendar year for domestic service in the employer's private home if the cash pay in that calendar year is less than the applicable dollar threshold. The threshold per employer is $1000 in calendar year 1995. In calendar years after 1995, this amount will be subject to adjustment in $100 increments based on the formula in section 215(a)(1)(B)(i) of the Act to reflect changes in wages in the economy. Non-cash payments for domestic service are not counted as wages.

(2) *How evaluation is made.* We apply the applicable dollar threshold described in paragraph (a)(1) of this section based on when the payments are made to you rather than when the pay is earned. To count toward the applicable dollar threshold, payment must be made to you in cash (including checks or other forms of money). We apply the applicable dollar threshold only to services performed as a domestic employee. If an employer pays you for performing other work, the cash pay for the nondomestic work does not count toward the applicable dollar threshold domestic service pay required for the remuneration to count as wages.

(3) *More than one domestic employer.* The applicable dollar threshold as explained in paragraph (a)(1) of this section applies to each employer when you perform domestic services for more than one employer in a calendar year. The wages paid by more than one employer for domestic services may not be combined to decide whether you have been paid the applicable dollar threshold or more in a calendar year. The standard applies to each employee when an employer has two or more domestic employees during a calendar year.

(4) * * * If an employer uses this method to report a cash payment to you for domestic services in his or her private home in a calendar year, he or she must use the same method to report payments to other employees in that year for similar services.

* * * * *

16. Section 404.1068 is amended by revising paragraph (d) to read as follows:

§ 404.1068 Employees who are considered self-employed.

* * * * *

(d) *Employees of a foreign government, an instrumentality wholly owned by a foreign government, or an international organization.* If you are a United States citizen and perform the services that are described in § 404.1032, § 404.1033(a), or § 404.1034(a), you are engaged in a trade or business if the services are performed in the United States and are not covered as employment based upon § 404.1034(c).

* * * * *

Subpart M—[Amended]

17. The authority citation for subpart M of part 404 continues to read as follows:

Authority: Secs. 205, 210, 218, and 702(a)(5) of the Social Security Act (42 U.S.C. 405, 410, 418, and 902(a)(5)); sec. 12110, Pub. L. 99–272, 100 Stat. 287 (42 U.S.C. 418 note); sec. 9002, Pub. L. 99–509, 100 Stat. 1970.

18. Section 404.1206 is amended by revising the introductory text of paragraph (a), paragraphs (a)(6) and (a)(7), by adding a new paragraph (a)(8), and by revising the last sentence in paragraph (f)(2) to read as follows:

§ 404.1206 Retirement system coverage groups.

(a) *General.* Section 218(d) of the Act authorizes coverage of services of employees in positions under a retirement system. For purposes of obtaining coverage, a system may be considered a separate retirement system authorized by sections 218(d)(6) (A) or (B) or 218(l) of the Act. Under these sections of the Act a State may designate the positions of any one of the following groupings of employees as a separate retirement system:

* * * * *

(6) The employees of each institution of higher learning, including junior colleges and teachers colleges;

(7) The employees of a hospital which is an integral part of a political subdivision; or

(8) The employees in police officers' positions or firefighters' positions, or both.

* * * * *

(f) * * *

(2) * * * This rule also applies to the coverage of services in police officers' and firefighters' positions in States and interstate instrumentalities as discussed in § 404.1212(c).

19. Section 404.1210 is amended by revising paragraph (e) to read as follows:

§ 404.1210 Optionally excluded services.

* * * * *

(e) For modifications executed after 1994, services performed by election officials or election workers if the payments for those services in a calendar year are less than $1000 for calendar years after 1994 and before 2000, or, for calendar years after 1999,

are less than the $1000 base amount as adjusted pursuant to section 218(c)(8)(B) of the Act to reflect changes in wages in the economy. We will publish this adjustment of the $1000 base amount in the Federal Register on or before November 1 preceding the year for which the adjustment is made.

20. Section 404.1211 is amended by revising paragraph (d) to read as follows:

§ 404.1211 Interstate instrumentalities.

* * * * *

(d) They may provide coverage for firefighters and police officers in positions under a retirement system.

21. Section 404.1212 is revised to read as follows:

§ 404.1212 Police officers and firefighters.

(a) *General.* For Social Security coverage purposes under section 218 of the Act, a police officer's or firefighter's position is any position so classified under State statutes or court decisions. Generally, these positions are in the organized police and fire departments of incorporated cities, towns, and villages. In most States, a police officer is a member of the ''police'' which is an organized civil force for maintaining order, preventing and detecting crimes, and enforcing laws. The terms ''police officer'' and ''firefighter'' do not include services in positions which, although connected with police and firefighting functions, are not police officer or firefighter positions.

(b) *Providing coverage.* A State may provide coverage of:

(1) Police officers' and firefighters' positions not under a retirement system as part of an absolute coverage group; or

(2) Police officers' of firefighters' positions, or both, as part of a retirement system coverage group.

(c) *Police officers and firefighters in positions under a retirement system.* All States and interstate instrumentalities may provide coverage for employees in police officers' or firefighters' positions, or both, which are under a retirement system by following the majority vote referendum procedures in § 404.1206(d). In addition, all interstate instrumentalities and the States listed in § 404.1207 may use the desire for coverage procedures described in § 404.1207.

[FR Doc. 96–18358 Filed 7–23–96; 8:45 am]

BILLING CODE 4190–29–P

NATIONAL LABOR RELATIONS BOARD

29 CFR Part 102

Procedural Rules Governing Debt-Collection Procedures for Administrative Offset and Federal Income Tax Refund Offset

AGENCY: National Labor Relations Board.

ACTION: Interim rules with request for comments.

SUMMARY: The National Labor Relations Board (Board) is issuing interim regulations to implement debt-collection procedures for administrative offset and Federal income tax refund offset provided for under the Debt Collection Act of 1982. The Debt Collection Act of 1982 (Pub. L. 97365) amends the Federal Claims Collection Act of 1966 to authorize the federal government to employ various debt collection techniques commonly available to the private sector, including administrative offset and Federal income tax refund offset. These interim regulations, set forth as new Subparts U (administrative offset) and V (Federal income tax refund offset) to Part 102 of the Board's Rules and Regulations, Series 8, are required in order to enable the Board to utilize these debt collection procedures that have proven to be cost effective mechanisms for collection of delinquent debt.

The Debt Collection Act of 1982 (Pub. L. 97–365) authorizes the federal government to collect debts owed it by means of administrative offset from other payments due the debtor from the United States, without the debtor's consent, provided that the debtor is properly notified and given the opportunity to exercise certain administrative rights. In Subpart V of the interim rules, the Board establishes Agency procedures that will be followed to implement 31 U.S.C. 3716, so that delinquent debts owed to the Board may be collected by means of administrative offset.

In 1992, the Congress passed and the President signed into law the Cash Management Improvement Act Amendments of 1992 which requires federal agencies to participate in the Internal Revenue Service (IRS) income tax refund offset program in which federal agencies refer delinquent debt to the IRS for collection by offset from a federal income tax refund that may be due the delinquent debtor. In Subpart W of the interim rules, the Board establishes Agency procedures that will be followed to implement 26 U.S.C. 6402(d) of the Internal Revenue Code and 31 U.S.C. 3720A, so that delinquent debts owed to the Board may be referred to the Internal Revenue Service (IRS) for collection by offset against Federal income tax refunds.

DATES: Effective Date: These regulations are effective July 24, 1996.

Comments: Comments must be submitted on or before September 29, 1996.

ADDRESSES: Send or deliver written comments to John J. Toner, Executive Secretary, National Labor Relations Board, 1099 14th Street, NW., Room 11602, Washington, DC 20570–0001.

FOR FURTHER INFORMATION CONTACT: John J. Toner, (202) 273–1940.

SUPPLEMENTARY INFORMATION: Effective debt collection by the Board is a necessary tool for enforcement of the federal labor laws. Under the Federal Claims Collection Standards (FCCS), 4 CFR 101.2(9), a debt exists when an amount of money or property has been determined by an appropriate Agency official to be owed to the United States. The Board's General Counsel and Regional Office staffs are authorized to assert and settle claims on behalf of the Board. 29 CFR 101.7–101.9.

As an agency of the United States Government, the Board is entitled to utilize the offset provisions of Title 31, because debts owed pursuant to Board orders are in fact debts owed to the United States. This is because the Board is the public agent chosen by Congress to enforce the National Labor Relations Act and its backpay orders seek reparations designed to vindicate the public policy of the statute. NLRB v. Nathanson, 344 U.S. 25, 27 (1952). In short, the Board acts primarily in the public interest as the champion and enforcer of federal labor laws and policies. NLRB v. Deena Artware, 361 U.S. 398, 412 (1960) (Frankfurter, J., concurring) (''[the Board's] primary function . . . is to prevent the conduct defined as unfair labor practices.''); National Licorice Co. v. NLRB, 309 U.S. 350, 362 (1940) (''The Board acts in a public capacity to give effect to the declared public policy of the [National labor Relations] Act.''). Thus, judgments of the United States Circuit Courts of Appeals enforcing the make-whole orders of the Board are rendered exclusively in favor of the Board as the judgment creditor. Therefore, although the Board's debt collection actions may ultimately benefit wronged employees, the debts owed are in fact debts owed to the United States. NLRB v. E.D.P. Medical Computer Systems, Inc., 6 F.3d 951, 954–55 (2d Cir. 1993). Accord: General Accounting Office—Decision of

the General Counsel B–259532 (March 6, 1995) (holding that the Board is entitled to use the judgment offset provisions of 31 U.S.C. 3728(a), since the Board's backpay claims are debts owed to the Government and the Board is the only creditor entitled to pursue collection).

The Agency recently has studied means by which to facilitate its debt-collection programs. Section 10 of the Debt Collection Act of 1982 (Act) (Public Law 97365) makes several changes in the way Executive and Legislative agencies collect debts owed the Government. The purpose of the Act is to improve the ability of the Government to collect monies owed it.

Under the Act, administrative offset may be initiated when the head of an agency determines that an individual or entity is indebted to the United States, or is notified by the head of another agency that a person or entity is indebted to the United States and that the debtor is owed monies by the United States. Under the Act, before the Government may collect a debt by administrative offset, a debtor must be provided with notice that a debt is owed, the opportunity to inspect and copy Government records relating to the debt, the option to enter into a written repayment agreement, and an opportunity for review of the agency's determination concerning the existence or the amount of the debt, or the repayment terms. The debtor must notify the agency of his or her intent to exercise these rights within time periods prescribed by agency regulations.

The Act permits the agency to initiate an administrative offset prior to the completion of the due process requirements if failure to do so would substantially jeopardize the agency's ability to collect the debt and if the time remaining before payment is to be made does not reasonably permit completion of the due process procedures. Such prior offset must be followed by completion of the due process procedures.

The Act requires agencies to issue regulations for administrative offset. These interim rules establish the procedures the Board will follow in making an administrative offset. They are consistent with the Federal Claims Collection Standards on administrative offset issued jointly by the Department of Justice and the General Accounting Office as set forth in 4 CFR 102.3.

In 1992, the Congress passed and the President signed into law the Cash Management Improvement Act Amendments of 1992, which requires Federal agencies to participate in the IRS income tax refund offset program. These interim rules are necessary for the Board's participation in the IRS offset program. They specify the procedures the Board will follow with regard to its referral of past-due legally enforceable debts to IRS for collection by income tax refund offset.

The Board has determined that this document is interpretative because it merely implements a definitive statutory scheme and the requirements contained in regulations promulgated by the Department of Justice, the General Accounting Office, the Internal Revenue Service, and the Treasury Department. For this reason, and because these interim rules relate to Agency procedure and practice, the Board has determined that no notice of proposed rulemaking or a delayed effective date is required under Sec. 553 of the Administrative Procedure Act (5 U.S.C. 553), and that the provisions of the Regulatory Flexibility Act (5 U.S.C. 601) and the Congressional review provisions of the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801) do not apply.

The Board has also determined, pursuant to 5 U.S.C. 553(b)(B), that good cause exists for waiving public comment prior to implementation of these interim rules. This waiver is based upon the need to have the regulations in place by December 31, 1996, in order for the Agency to participate in the IRS income tax refund offset program for the 1997 offset year. The Board finds that the public interest will be served by participation in the program, and accordingly, good cause exists for waiving public comment. In addition, the Board finds that public comment is unnecessary because, as noted above, these rules merely implement a definite statutory scheme and its concomitant regulations, and relate to Agency procedure and practice. The Board will, however, consider any public comments before issuing any final rules.

In sum, to ensure that the Agency's debt collection procedures provide for the use of reasonable and feasible methods of collection available under law, and in order to ensure compliance with the requirements of that law, as further described below, the Board establishes the following interim regulations to facilitate collection of delinquent debts by way of administrative offset and Federal income tax refund offset.

The following is an outline of the contents of this notice.

I. Administrative Offset
A. Purpose
B. Legal Authority
II. Federal Income Tax Refund Offset
A. Purpose and Background
B. Legal Authority
III. Publication in Final
IV. Effective Date
V. Executive Order 12866
VI. Regulatory Flexibility Act
VII. Paperwork Reduction Act
VIII. Small Business Regulatory Enforcement Act
IX. List of Subjects in 29 CFR Part 102

I. Administrative Offset

A. Purpose

An administrative offset is a procedure that permits the withholding of money payable by the United States to, or held by the United States on behalf of, a person to satisfy a debt owed the United States by that person.

B. Legal Authority

The Debt Collection Act of 1982 (P.L. 97–365), 31 U.S.C. 3711, provides that the head of an executive or administrative agency shall try to collect a claim of the United States Government for money or property arising out of the activities of the agency. Section 31 U.S.C. 3716(a) provides that the head of the agency, after trying to collect a claim under section 3711, may collect by administrative offset only after affording the debtor notice and other procedural due process protections. Specifically, the agency head must give the debtor:

(1) written notice of the type and amount of the claim, the intention of the head of the agency to collect the claim by administrative offset, and an explanation of the rights of the debtor under this section;

(2) an opportunity to inspect and copy the records of the agency related to the claim;

(3) an opportunity for a review within the agency of the decision of the agency related to the claim; and

(4) an opportunity to make a written agreement with the head of the agency to repay the amount of the claim.

Section 31 U.S.C. 3716(b) provides for the creation of regulations to facilitate agency attempts to collect a claim by administrative offset. This statutory provision further provides that the agency regulations must be based on the best interests of the United States Government, the likelihood of collecting a claim by administrative offset, and, if the 6-year period for bringing a civil action on a claim under 28 U.S.C. 2415 has expired, the cost effectiveness of leaving the claim unresolved for more than 6 years. Pursuant to 31 U.S.C. 3716(c), no claim may be collected by administrative offset if (1) It has been outstanding for more than 10 years after the agency's right to collect the debt first accrued, or (2) when a statute explicitly provides for or prohibits using

administrative offset to collect the claim or type of claim at issue.

II. Federal Income Tax Refund Offset

A. Purpose and Background

Tax refund offset is the means by which a Federal agency may recoup a delinquent debt owed it by having the Internal Revenue Service (IRS) withhold payment of a debtor's income tax refund, up to the amount of the debt, and remit the amount offset to the agency. Authority for the Federal Tax Refund Offset Program is granted under 26 U.S.C. 6402(d) of the Internal Revenue Code, 31 U.S.C. 3720A, and section 301.6402–6 of the Treasury Regulations on Procedure and Administration (26 CFR 301.604–6).

The Program was initially authorized for the collection of delinquent state or court-ordered payments by absent parents for Aid to Families with Dependent Children (AFDC), and, later, by the Omnibus Budget Act of 1981 for non-AFDC child support. Money collected through the offset of income tax refunds by the IRS is sent to the states by the Office of Child Support Enforcement.

In 1984, the Deficit Reduction Act (P.L. 98–369) expanded the scope of the program to include the use of offset to recover delinquent debts owed by individuals to Federal agencies. The legislation granted the Secretary of the Treasury authority to conduct a two year pilot program, from January 1, 1986 through December 31, 1987, in order to determine the program's feasibility.

The Omnibus Budget Reconciliation Act of 1987 (P.L. 100–203) extended the Federal Tax Refund Offset Program for 6 months through June 30, 1988. The Family Support Act of 1988 (P.L. 100–485), which extended this period through January 10, 1994, provided the opportunity to expand the program beyond the pilot stage, and authorized corporate offset. The Emergency Unemployment Compensation Act of 1991 (P.L. 102–164) gave the program permanent authority. The Cash Management Improvement Act amendments of 1992 (P.L. 102–589) mandated that all Federal agencies use tax refund offset to collect consumer debt by January 1, 1994, and corporate debt by January 1, 1995.

Federal agency participation in the program is also mandated by the Office of Management and Budget's (OMB) Circular A–129 (Revised), ''Policies for Federal Credit programs and Non-Tax Receivables,'' and by the Financial Management Services' (FMS') Treasury Financial Manual Supplement, ''Managing Government Credit.'' The IRS and FMS are jointly responsible for the administration and operation of the program.

B. Legal Authority

Section 31 U.S.C. 3720A, and implementing regulations of the Internal Revenue Service (IRS) set forth at 26 CFR 301.6402–6, authorize the IRS to reduce a tax refund by the amount of a past-due legally enforceable debt that is owed to the United States by individuals and business entities.

Section 31 U.S.C. 3720A(a) provides that any Federal agency that is owed a past-due legally enforceable debt by a named person (individual or business entity) shall, in accordance with agency and Treasury regulations, notify the Secretary of the Treasury at least once a year, of the amount of all such debt. Section 31 U.S.C. 3120A(b) provides that prior to taking such action, the Federal agency must: (1) notify the debtor that the agency proposes to take such action; (2) give the debtor at least 60 days to present evidence that all or part of such debt is not pastdue or not legally enforceable; (3) consider any evidence presented by the debtor and determine that an amount of such debt is past due and legally enforceable; (4) satisfy such other conditions as the Secretary of the Treasury may prescribe to ensure that the agency's determination with respect to such debt is valid and that the agency has made reasonable efforts (determined on a government-wide basis) to obtain payment of such debt; and (5) certify that reasonable efforts have been made by the agency (pursuant to regulations) to obtain payment of such debt.

After receiving notice from a Federal agency that a named person owes to such agency a past due, legally enforceable debt, the Secretary of the Treasury determines whether any amounts, as refunds of Federal taxes paid, are owed to such person. If so, the Secretary reduces such refund by an amount equal to the amount of such debt, pays the amount of such reduction to the Federal agency, and notifies such agency of the person's home address. See 31 U.S.C. 3720A(c). The Secretary of the Treasury issues regulations prescribing the time or times when agencies must submit notices of past-due legally enforceable debts, the manner in which such notices must be submitted, and the necessary information that must be contained in or accompany such notices. These regulations specify the minimum amount of the debt to which the foregoing offset procedure is applicable and the fee that an agency must pay to reimburse the Secretary of the Treasury for the full cost of applying such procedure. See 31 U.S.C. 3720A(d).

Any Federal agency that receives notice from the Secretary that an erroneous payment has been made to such agency shall promptly remit to the Secretary, in accordance with regulations prescribed by the Secretary, the amount of such erroneous payment. See 31 U.S.C. 3720A(e).

The statute applies to refunds of business associations only if they are payable on or after January 1, 1995. The statute applies to refunds of individuals who owe debts to Federal agencies that have not participated in the Federal Tax Refund Offset Program prior to the November 10, 1992, only if such refunds are payable on or after January 1, 1994. See 31 U.S.C. 3720A(g).

III. Publication In Final

As indicated above, the Board has determined, pursuant to 5 U.S.C. 553(b)(B), that good cause exists for waiving public comment prior to implementation of these interim rules. This waiver is based, in part, upon the need to have the regulations in place by December 31, 1996, in order for the Board to participate in the IRS income tax refund offset program for the 1997 offset year. The Board finds that the public interest will be served by participation in the program, and accordingly, good cause exists for waiving public comment. In addition, the Board finds that public comment is unnecessary because these interim rules merely implement a definite statutory scheme and the requirements contained in the regulations promulgated by the Department of Justice, the General Accounting Office, the Internal Revenue Service and the Department of the Treasury, and relate to Agency procedure and practice. As indicated above, however, the Board will consider any public comments before issuing final rules.

IV. Effective Date

This document will become effective upon publication pursuant to 5 U.S.C. 553(d)(3). In order to participate in the IRS income tax refund offset program for the 1997 offset year, the Board must promulgate regulations that are effective by December 31, 1996. Therefore, pursuant to 5 U.S.C. 553(d)(3), good cause is found for making these interim rules effective immediately.

V. Executive Order 12866

These interim rules are not classified as ''significant rules'' under Executive Order 12866 on Federal regulations, because they will not result in (1) an annual effect on the economy of $100

million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or foreign markets. Accordingly, no regulatory impact assessment is required.

VI. Regulatory Flexibility Act

Because no notice of proposed rule-making is required for interim rules, the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) pertaining to regulatory flexibility analysis do not apply to these rules.

VII. Paperwork Reduction Act

These interim rules are not subject to Section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501) since they do not contain any new information collection requirements.

VIII. Small Business Regulatory Enforcement Act

Because these interim rules relate to Agency procedure and practice and merely implement a definitive statutory scheme and the requirements contained in regulations promulgated by the Department of Justice, the General Accounting Office, the Internal Revenue Service, and the Treasury Department, the Board has determined that the Congressional review provisions of the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801) do not apply.

IX. List of Subjects in 29 CFR Part 102

Administrative practice and procedure, labor management relations.

To enable the Agency to collect delinquent debts by way of administrative offset and Federal income tax refund offset, the Board amends 29 CFR Part 102 as follows:

PART 102—RULES AND REGULATIONS, SERIES 8

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

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

2. Subpart U is added to Part 102 to read as follows:

Subpart U—Debt-Collection Procedures By Administrative Offset

Sec.

102.156 Administrative offset; purpose of scope.
102.157 Definitions.
102.158 Agency requests for administrative offsets and cooperation with other Federal agencies.
102.159 Exclusions.
102.160 Agency responsibilities.
102.161 Notification.
102.162 Examination and copying of records related to the claim; opportunity for full explanation of the claim.
102.163 Opportunity for repayment.
102.164 Review of the obligation.
102.165 Cost shifting.
102.166 Additional administrative collection action.
102.167 Prior provision of rights with respect to debt.

§ 102.156 Administrative offset; purpose and scope.

The regulations in this subpart specify the Agency procedures that will be followed to implement the administrative offset procedures set forth in the Debt Collection Act of 1982 (Public Law 97–365), 31 U.S.C. 3716.

§ 102.157 Definitions.

For purposes of this subpart—

(a) The term *administrative offset* means the withholding of money payable by the United States to, or held by the United States on behalf of, a person to satisfy a debt owed the United States by that person; and

(b) The term *debtor* is any person against whom the Board has a claim.

(c) The term *person* does not include any agency of the United States, or any state or local government.

(d) The terms *claim* and *debt* are synonymous and interchangeable. They refer to an amount of money or property which has been determined by an appropriate Agency official to be owed to the United States from any person, organization, or entity, except another federal agency.

(e) A debt is considered *delinquent* if it has not been paid by the date specified in the Agency's initial demand letter (§ 102.161), unless satisfactory payment arrangements have been made by that date, or if, at any time thereafter, the debtor fails to satisfy his obligations under a payment agreement with the Agency.

§ 102.158 Agency requests for administrative offsets and cooperation with other Federal agencies.

Unless otherwise prohibited by law, the Agency may request that monies due and payable to a debtor by another Federal agency be administratively offset in order to collect debts owed the Agency by the debtor. In requesting an administrative offset, the Agency will provide the other Federal agency holding funds of the debtor with written certification stating

(a) That the debtor owes the Board a debt (including the amount of debt); and

(b) That the Agency has complied with the applicable Federal Claims Collection Standards, including any hearing or review.

§ 102.159 Exclusions.

(a)(1) The Agency is not authorized by the Debt Collection Act of 1982 (31 U.S.C. 3716) to use administrative offset with respect to:

(i) Debts owed by any State or local government;

(ii) Debts arising under or payments made under the Social Security Act, the Internal Revenue Code of 1954, or the tariff laws of the United States; or

(iii) When a statute explicitly provides for or prohibits using administrative offset to collect the claim or type of claim involved.

(2) No claim that has been outstanding for more than 10 years after the Board's right to collect the debt first accrued may be collected by means of administrative offset, unless facts material to the right to collect the debt were not known and could not reasonably have been known by the official of the Agency who was charged with the responsibility to discover and collect such debts until within 10 years of the initiation of the collection action. A determination of when the debt first accrued should be made according to existing laws regarding the accrual of debts, such as under 28 U.S.C. 2415. Unless otherwise provided by contract or law, debts or payments owed the Board which are not subject to administrative offset under 31 U.S.C. 3716 may be collected by administrative offset under the common law or other applicable statutory authority, pursuant to this paragraph or Board regulations established pursuant to such other statutory authority.

(b) Collection by offset against a judgment obtained by a debtor against the United States shall be accomplished in accordance with 31 U.S.C. 3728.

§ 102.160 Agency responsibilities.

(a) The Agency shall provide appropriate written or other guidance to Agency officials in carrying out this subpart, including the issuance of guidelines and instructions, which may be deemed appropriate. The Agency shall also take such administrative steps as may be appropriate to carry out the purposes and ensure the effective implementation of this subpart.

(b) Before collecting a claim by means of administrative offset, the Agency must ensure that administrative offset is feasible, allowable and appropriate, and must notify the debtor of the Agency's policies for collecting a claim by means of administrative offset.

(c) Whether collection by administrative offset is feasible is a determination to be made by the Agency on a case-by-case basis, in the exercise of sound discretion. The Agency shall consider not only whether administrative offset can be accomplished, both practically and legally, but also whether administrative offset will further and protect the best interests of the United States Government. In appropriate circumstances, the Agency may give due consideration to the debtor's financial condition, and it is not expected that administrative offset will be used in every available instance, particularly where there is an available source of funds. The Agency may also consider whether administrative offset would substantially interfere with or defeat the purposes of the program authorizing the payments against which offset is contemplated.

(d) Administrative offset shall be considered by the Agency only after attempting to collect a claim under 31 U.S.C. 3711(a).

§ 102.161 Notification.

(a) The Agency shall send a written demand to the debtor in terms which inform the debtor of the consequences of failure to cooperate. In the demand letter, the Agency shall provide the name of an Agency employee who can provide a full explanation of the claim. When the Agency deems it appropriate to protect the Government's interests (for example, to prevent the statute of limitations, 28 U.S.C. 2415, from expiring), written demand may be preceded by other appropriate actions.

(b) In accordance with guidelines established by the Agency, the Agency official responsible for collection of the debt shall send written notice to the debtor, informing such debtor as appropriate:

(1) Of the nature and amount of the Board's claim;

(2) Of the date by which payment is to be made (which normally should be not more than 30 days from the date that the initial notification was mailed or hand delivered);

(3) Of the Agency's intention to collect by administrative offset and of the debtor's rights in conjunction with such an offset;

(4) That the Agency intends to collect, as appropriate, interest, penalties, administrative costs and attorneys fees;

(5) Of the rights of such debtor to a full explanation of the claim, of the opportunity to inspect and copy Agency records with respect to the claim and to dispute any information in the Agency's records concerning the claim;

(6) Of the debtor's right to administrative appeal or review within the Agency concerning the Agency's claim and how such review shall be obtained;

(7) Of the debtor's opportunity to enter into a written agreement with the Agency to repay the debt; and

(8) Of the date on which, or after which, an administrative offset will begin.

§ 102.162 Examination and copying of records related to the claim; opportunity for full explanation of the claim.

Following receipt of the demand letter specified in § 102.161, and in conformity with Agency guidelines governing such requests, the debtor may request to examine and copy publicly available records pertaining to the debt, and may request a full explanation of the Agency's claim.

§ 102.163 Opportunity for repayment.

(a) The Agency shall afford the debtor the opportunity to repay the debt or enter into a repayment plan which is agreeable to the Agency and is in a written form signed by such debtor. The Agency may deem a repayment plan to be abrogated if the debtor should, after the repayment plan is signed, fail to comply with the terms of the plan.

(b) The Agency has discretion and should exercise sound judgment in determining whether to accept a repayment agreement in lieu of administrative offset.

§ 102.164 Review of the obligation.

(a) The debtor shall have the opportunity to obtain review by the Agency of the determination concerning the existence or amount of the debt as set forth in the notice. In cases where the amount of the debt has been fully liquidated, the review is limited to ensuring that the liquidated amount is correctly represented in the notice.

(b) The debtor seeking review shall make the request in writing to the Agency, not more than 15 days from the date the demand letter was received by the debtor. The request for review shall state the basis for challenging the determination. If the debtor alleges that the Agency's information relating to the debt is not accurate, timely, relevant or complete, the debtor shall provide information or documentation to support this allegation.

(c) The Agency may effect an administrative offset against a payment to be made to a debtor prior to the completion of the due process procedures required by this subpart, if failure to take the offset would substantially prejudice the Agency's ability to collect the debt; for example, if the time before the payment is to be made would not reasonably permit the completion of due process procedures. Administrative offset effected prior to completion of due process procedures must be promptly followed by the completion of those procedures. Amounts recovered by administrative offset, but later found not owed to the Agency, will be promptly refunded.

(d) Upon completion of the review, the Agency's reviewing official shall transmit to the debtor the Agency's decision. If appropriate, this decision shall inform the debtor of the scheduled date on or after which administrative offset will begin. The decision shall also, if appropriate, indicate any changes in information to the extent such information differs from that provided in the initial notification to the debtor under § 102.161.

(e) Nothing in this subpart shall preclude the Agency from *sua sponte* reviewing the obligation of the debtor, including a reconsideration of the Agency's determination concerning the debt, and the accuracy, timeliness, relevance, and completeness of the information on which the debt is based.

§ 102.165 Cost shifting.

Costs incurred by the Agency in connection with referral of debts for administrative offset will be added to the debt and thus increase the amount of the offset. Such costs may include administrative costs and attorneys fees.

§ 102.166 Additional administrative collection action.

Nothing contained in this subpart is intended to preclude the Agency from utilizing any other administrative or legal remedy which may be available.

§ 102.167 Prior provision of rights with respect to debt.

To the extent that the rights of the debtor in relation to the same debt have been previously provided for under some other statutory or regulatory authority, the Agency is not required to duplicate those efforts before effecting administrative offset.

Subpart V—Debt Collection Procedures By Federal Income Tax Refund Offset

Sec.
102.168 Federal income tax refund offset; purpose and scope.
102.169 Definitions.
102.170 Agency referral to IRS for tax referral effect; Agency responsibilities.
102.171 Cost shifting.
102.172 Minimum referral amount.
102.173 Relation to other collection efforts.
102.174 Debtor notification.
102.175 Agency review of the obligation.
102.176 Prior provision of rights with respect to debt.

§ 102.168 Federal income tax refund offset; purpose and scope.

The regulations in this subpart specify the Agency procedures that will be followed in order to implement the federal income tax refund offset procedures set forth in 26 U.S.C. 6402(d) of the Internal Revenue Code (Code), 31 U.S.C. 3720A, and section 301.6402–6 of the Treasury Regulations on Procedure and Administration (26 CFR 301.6402–6). This statute and the implementing regulations of the Internal Revenue Service (IRS) at 26 CFR 301.6402–6 authorize the IRS to reduce a tax refund by the amount of a past-due legally enforceable debt owed to the United States. The regulations apply to past-due legally enforceable debts owed to the Agency by individuals and business entities. The regulations are not intended to limit or restrict debtor access to any judicial remedies to which he or she may otherwise be entitled.

§ 102.169 Definitions.

For purposes of this subpart:

(a) *Tax refund offset* refers to the IRS income tax refund offset program operated under authority of 31 U.S.C. 3720A.

(b) *Past-due legally enforceable debt* is a delinquent debt administratively determined to be valid, whereon no more than 10 years have lapsed since the date of delinquency (unless reduced to judgment), and which is not discharged under a bankruptcy proceeding or subject to an automatic stay under 11 U.S.C. 362.

(c) *Individual* refers to a taxpayer identified by a social security number (SSN).

(d) *Business entity* refers to an entity identified by an employer identification number (EIN).

(e) *Taxpayer mailing address* refers to the debtor's current mailing address as obtained from IRS.

(f) *Memorandum of understanding* refers to the agreement between the Agency and IRS outlining the duties and responsibilities of the respective parties for participation in the tax refund offset program.

§ 102.170 Agency referral to IRS for tax referral effect; Agency responsibilities.

(a) As authorized and required by law, the Agency may refer past-due legally enforceable debts to the Internal Revenue Service (IRS) for collection by offset from any overpayment of income tax that may otherwise be due to be refunded to the taxpayer. By the date and in the manner prescribed by the IRS, the Agency may refer for tax refund offset past-due legally enforceable debts. Such referrals shall include the following information:

(1) Whether the debtor is an individual or a business entity;

(2) The name and taxpayer identification number (SSN or EIN) of the debtor who is responsible for the debt;

(3) The amount of the debt;

(4) A designation that the Agency is referring the debt and (as appropriate) Agency account identifiers.

(b) The Agency will ensure the confidentiality of taxpayer information as required by IRS in its Tax Information Security Guidelines.

(c) As necessary, the Agency will submit updated information at the times and in the manner prescribed by IRS to reflect changes in the status of debts or debtors referred for tax refund offset.

(d) Amounts erroneously offset will be refunded by the Agency or IRS in accordance with the Memorandum of Understanding.

§ 102.171 Cost shifting.

Costs incurred by the Agency in connection with referral of debts for tax refund offset will be added to the debt and thus increase the amount of the offset. Such costs may include administrative costs and attorneys fees.

§ 102.172 Minimum referral amount.

The minimum amount of a debt otherwise eligible for Agency referral to the IRS is $25 for individual debtors and $100 for business debtors. The amount referred may include the principal portion of the debt, as well as any accrued interest, penalties, administrative cost charges, and attorney fees.

§ 102.173 Relation to other collection efforts.

(a) Tax refund offset is intended to be an administrative collection remedy to be utilized consistent with IRS requirements for participation in the program, and the costs and benefits of pursuing alternative remedies when the tax refund offset program is readily available. To the extent practical, the requirements of the program will be met by merging IRS requirements into the Agency's overall requirements for delinquent debt collection.

(b) As appropriate, debts of an individual debtor of $100 or more will be reported to a consumer or commercial credit reporting agency before referral for tax refund offset.

(c) Debts owed by individuals will be screened for administrative offset potential using the most current information reasonably available to the Agency, and will not be referred for tax refund offset where administrative offset potential is found to exist.

§ 102.174 Debtor notification.

(a) The Agency shall send appropriate written demand to the debtor in terms which inform the debtor of the consequences of failure to repay debts or claims owed the Board.

(b) Before the Agency refers a debt to IRS for tax refund offset, it will make a reasonable attempt to notify the debtor that:

(1) The debt is past-due;

(2) Unless the debt is repaid or a satisfactory repayment agreement is established within 60 days thereafter, the debt will be referred to IRS for offset from any overpayment of tax remaining after taxpayer liabilities of greater priority have been satisfied; and

(3) The debtor will have a minimum of 60 days from the date of notification to present evidence that all or part of the debt is not past due or legally enforceable, and the Agency will consider this evidence in a review of its determination that the debt is past due and legally enforceable. The debtor will be advised where and to whom evidence is to be submitted.

(c) The Agency will make a reasonable attempt to notify the debtor by using the most recent address information available to the Agency or obtained from the IRS, unless written notification to the Agency is received from the debtor stating that notices from the Agency are to be sent to a different address.

(d) The notification required by paragraph (b) of this section and sent to the address specified in paragraph (c) of this section may, at the option of the Agency, be incorporated into demand letters required by paragraph (a) of this section.

§ 102.175 Agency review of the obligation.

(a) The Agency official responsible for collection of the debt will consider any evidence submitted by the debtor as a result of the notification required by § 102.174 and notify the debtor of the result. If appropriate, the debtor will also be advised where and to whom to

request a review of any unresolved dispute.

(b) The debtor will be granted 30 days from the date of the notification required by paragraph (a) of this section to request a review of the determination of the Agency official responsible for collection of the debt on any unresolved dispute. The debtor will be advised of the result.

§ 102.176 Prior provision of rights with respect to debt.

To the extent that the rights of the debtor in relation to the same debt have been previously provided under some other statutory or regulatory authority, including administrative offset procedures set forth in Subpart U, the Agency is not required to duplicate those efforts before referring a debt for tax refund offset.

Dated, Washington, DC, July 9, 1996.

By Direction of the Board.

John J. Toner,

Executive Secretary, National Labor Relations Board.

[FR Doc. 96–18029 Filed 7–23–96; 8:45 am]

BILLING CODE 7545–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 925

[SPATS No. MO–029–FOR]

Missouri 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 Missouri regulatory program (hereinafter referred to as the ''Missouri program'') under the Surface Mining Reclamation Act of 1977 (SMCRA). Missouri proposed revisions to its statutes pertaining to requirements and procedures for adoption of new or amended rules. The amendment is intended to revise the Missouri program to be consistent with SMCRA, clarify ambiguities, and improve operational efficiency.

EFFECTIVE DATE: July 24, 1996.

FOR FURTHER INFORMATION CONTACT: Michael Wolfrom, Regulatory Program Specialist, Mid-Continent Regional Coordinating Center, Alton Federal Building, 501 Belle Street, Alton, Illinois 62002. Telephone: (618) 463–6460.

SUPPLEMENTARY INFORMATION:

I. Background on the Missouri 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 Missouri Program

On November 21, 1980, the Secretary of the Interior conditionally approved the Missouri program. General background information on the Missouri program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Missouri program can be found in the November 21, 1980, Federal Register (45 FR 77017). Subsequent actions concerning Missouri's program and program amendments can be found at 30 CFR 925.12, 925.15, and 925.16.

II. Submission of the Proposed Amendment

By letter dated March 20, 1996 (Administrative Record No. MO–637), Missouri submitted a proposed amendment to its program pursuant to SMCRA. Missouri submitted the proposed amendment at its own initiative. The proposed amendment concerns changes to the Missouri Surface Coal Mining Law authorized by Senate Bill No. 3. Missouri proposed to amend the Revised Statutes of Missouri (RSMo) at sections 444.800.5, Procedures for suspension and reinstatement of rules; 444.810.2 through 444.810.8, Powers of the commission; and 444.950.2 through 444.950.8, Requirements and procedures for adoption of new or amended rules.

OSM announced receipt of the proposed amendment in the April 2, 1996, Federal Register (61 FR 14517), 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 May 2, 1996.

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.

1. RSMo 444.800.5 Procedures for Suspension and Reinstatement of Rules

Missouri proposed to remove the provision at section 444.800.5 concerning the authority of the joint committee on administrative rules to suspend and reinstate a rule based upon specified circumstances. This provision is duplicative of provisions contained in RSMo 536.024. Chapter 536, RSMo, Administrative Procedure and Review, contains the procedures State agencies must follow when adopting, amending, or rescinding administrative rules or regulations in Missouri.

Since there is no direct Federal counterpart to the deleted provision, the Director finds that the removal of section 444.800.5 will not render the Missouri program less stringent than SMCRA or less effective than the Federal regulations.

2. RSMo 444.810.2 Through 444.810.8 Powers of the Commission

Missouri proposed to remove the existing provisions at sections 444.810.2 through 444.810.8 concerning requirements and procedures for adoption of new or amended rules and to add the following new provision at section 444.810.2.

> No rule or portion of a rule promulgated under the authority of sections 444.800 to 444.970 shall become effective unless it has been promulgated pursuant to the provisions of section 536.024, RSMo.

The existing provisions proposed for removal are duplicative of provisions contained in RSMo 536.024. Missouri's proposed new provision appropriately references section 536.024 since all Missouri agencies that are authorized by constitution or statute to make rules must comply with the provisions of Chapter 536, RSMo when adopting, amending, or rescinding administrative rules or regulations.

While there is no direct Federal counterpart to the removed provisions or to the new provision, SMCRA and the Federal regulation at 30 CFR 732.15(b)(10) require State programs to provide for public participation in the development and revision of State regulations. Chapter 536, RSMo provides for the publication in the Missouri Register of proposed rulemaking and subsequent final orders of rulemaking and provides for public participation in the rulemaking process.

Therefore, the Director finds that the deletion of the existing provisions at sections 444.810.2 through 444.810.8 and the addition of the new provision at section 444.810.2 do not render the Missouri program less stringent than SMCRA or less effective than the Federal regulations.

3. RSMo 444.950.2 Requirements and Procedures for Adoption of New or Amended Rules

Missouri proposed to remove the existing provisions at sections 444.950.2 through 444.950.8 concerning requirements and procedures for

adoption of new or amended rules; to redesignate sections 444.950.9 through 444.950.11 as 444.950.3 through 444.950.5; and to add the following new provision at section 444.950.2.

No rule or portion of a rule promulgated under the authority of sections 444.800 to 444.970 shall become effective unless it has been promulgated pursuant to the provisions of section 536.024, RSMo.

The existing provisions proposed for removal are duplicative of provisions contained in RSMo 536.024. Missouri's proposal new provision appropriately references section 536.024 since all Missouri agencies that are authorized by constitution or statute to make rules must comply with the provisions of Chapter 536, RSMo when adopting, amending, or rescinding administrative rules or regulations.

While there is no direct Federal counterpart to the removed provisions or to the new provision, SMCRA and the Federal regulations at 30 CFR 732.15(b)(10) require State programs to provide for public participation in the development and revision of State regulations. Chapter 536, RSMo provides for the publication in the Missouri Register of proposed rulemaking and subsequent final orders of rulemaking and provides for public participation in the rulemaking process. Therefore, the Director finds that the deletion of the existing provisions at sections 444.950.2 through 444.950.8, the redesignation of sections, and the addition of the new provision at section 444.950.2 do not render the Missouri program less stringent than SMCRA or less effective than the Federal regulations.

IV. Summary and Disposition of Comments

Public Comments

The Director solicited public comments and provided an opportunity for a public hearing on the proposed amendment. No public comments were received; and because no one requested an opportunity to speak at a public hearing, no hearing was held.

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 Missouri program. No comments were received.

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 Missouri 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 No. MO–638). EPA did not respond to OSM's request.

State Historical Preservative 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. Since the proposed amendment would not have any effect on historic properties, OSM did not solicit comment from the SHPO or ACHP.

V. Director's Decision

Based on the above findings, the Director approves the proposed amendment as submitted by Missouri on March 20, 1996.

The Federal regulations at 30 CFR Part 925, codifying decisions concerning the Missouri 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 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 925

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 3, 1996.

Brent Wahlquist,

Regional Director, Mid-Continent Regional Coordinating Center.

For the reasons set out in the preamble, 30 CFR Part 925 is amended as set forth below:

PART 925—MISSOURI

1. The authority citation for Part 925 continues to read as follows:

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

2. Section 925.15 is amended by adding paragraph (v) to read as follows:

§ 925.15 Approval of regulatory program amendments.

* * * * *

(v) Revisions to the Revised Statutes of Missouri (RSMo) at sections 444.800, 444.810, and 444.950 as submitted to OSM on March 20, 1996, are approved effective July 24, 1996.

[FR Doc. 96–18613 Filed 7–23–96; 8:45 am]

BILLING CODE 4310–05–M

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30 CFR Part 931

[NM–035–FOR]

New Mexico Abandoned Mine Land Reclamation Plan

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, with certain exceptions and additional requirements, a proposed amendment to the New Mexico abandoned mine land reclamation (AMLR) plan (hereinafter, the ''New Mexico plan'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). New Mexico proposed to amend its plan by adding plan provisions pertaining to contractor responsibilities, exclusion of certain sites from eligibility for reclamation, and reports. In addition, New Mexico proposed revising the State AMLR statute pertaining to its purpose, definition, creation of the abandoned mine reclamation fund, objectives of the fund, acquisition and reclamation of land adversely affected by past mining practices, liens, and emergency powers. The amendment was intended to revise the New Mexico plan to be consistent with SMCRA and meet the requirements of the corresponding Federal regulations, and to improve operational efficiency.

EFFECTIVE DATE: July 24, 1996.

FOR FURTHER INFORMATION CONTACT: Guy Padgett, Telephone: (505) 248–5070, Internet address: GPADGETT@CWYGW.OSMRE.GOV.

SUPPLEMENTARY INFORMATION:

I. Background on the New Mexico Plan

On June 17, 1981, the Secretary of the Interior approved the New Mexico. General background information on the New Mexico plan, including the Secretary's findings and the disposition of comments, can be found in the June 17, 1981, Federal Register (46 FR 31641). Subsequent actions concerning New Mexico's plan and plan amendments can be found at 30 CFR 931.25 and 931.26.

II. Proposed Amendment

By letter dated July 24, 1995, New Mexico submitted a proposed amendment to its plan (administrative record No. NM–758) pursuant to SMCRA (30 U.S.C. 1201 *et seq.*). New Mexico submitted the proposed amendment in response to a September 26, 1994, letter (administrative record No. NM–732) that OSM sent it in accordance with 30 CFR 884.15(d), and at its own initiative.

The provisions of the New Mexico plan that New Mexico proposed to add were: section 874.16, contractor responsibility; 875.16, exclusion of certain sites from eligibility for reclamation; 875.20, contractor responsibility; and 886.23(c), reports. The provisions of the New Mexico Abandoned Mine Reclamation Act that New Mexico proposed to revise were: New Mexico Statute Annotated (NMSA) 69–25B–2, purpose of the act; NMSA 69–25B–3, definitions; NMSA 69–25B–4, creation of the abandoned mine reclamation fund; NMSA 69–25B–6, objective of the fund; NMSA 69–25B–7, acquisition and reclamation of land adversely affected by past mining practices; NMSA 69–25B–8, liens; and NMSA 69–25B–12, emergency powers.

OSM announced receipt of the proposed amendment in the August 22, 1995, Federal Register (60 FR 43576), provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy (administrative record No. NM–760). Because no one requested a public hearing or meeting, none was held. The public comment period ended on September 21, 1995.

During its review of the amendment, OSM identified concerns relating to the provisions of the New Mexico Abandoned Mine Reclamation Act at NMSA 69–25B–2 and 69–25B–3.B, lands and water eligible for reclamation; NMSA 69–25B–6.C, construction of public facilities; and NMSA 69–25B–12, emergency powers. OSM notified New Mexico of these concerns by letter dated September 27, 1995 (administrative record No. NM–764).

New Mexico responded by telephone on April 10, 1995 (administrative record No. NM–778), that it would not submit revisions to the amendment and that OSM should proceed with the publication of this final rule Federal Register document.

III. Director's Findings

As discussed below, the Director, in accordance with SMCRA and 30 CFR 884.14 and 884.15, finds, with certain exceptions and additional requirements, that the proposed plan amendment submitted by New Mexico on July 24, 1995, meets the requirements of the corresponding Federal regulations and is consistent with SMCRA. Thus, the Director approves the proposed amendment.

1. Nonsubstantive Revisions to New Mexico's Statutes

New Mexico proposed revisions to the following previously approved statutes that are nonsubstantive in nature and consist of minor editorial, recodification, and State agency name changes (corresponding SMCRA provisions are listed in parentheses):

NMSA 69–25B–3.A and D (section 401(a) of SMCRA), definitions for the terms ''director'' and ''fund,''

NMSA 69–25B–4 (section 401(a) of SMCRA), creation of abandoned mine reclamation fund, and

NMSA 69–25B–6.B (section 409 (a) and (d) of SMCRA), filling voids and sealing tunnels.

Because the proposed revisions to these previously-approved statutes are nonsubstantive in nature, the Director finds that they are consistent with the corresponding provisions of SMCRA. The Director approved the proposed revisions to these statutes.

2. Substantive Revisions to New Mexico's Plan Provisions and Statutes That Are Substantively Identical to the Corresponding Provisions of SMCRA and the Federal Regulations

New Mexico proposed revisions to the following plan provisions and statutes that are substantive in nature and contain language that is substantively identical to the requirements of the corresponding Federal regulations and SMCRA provisions (listed in parentheses):

Plan section 875.16 (30 CFR 875.16), exclusion of certain noncoal reclamation sites,

Plan section 886.23(c) (30 CFR 886.23 (b)), reports,

NMSA 69–25B–3.C (30 CFR 870.5), definition of the term ''emergency,''

NMSA 69–25B–7 (sections 407 and 411 (g) of SMCRA), acquisition and reclamation of land adversely affected by past mining practices, and

NMSA 69–25B–8, (section 408 and 411(g) of SMCRA), liens.

Because these proposed New Mexico plan provisions and statutes are substantively identical to the corresponding provisions of the Federal regulations and SMCRA, the Director finds that they meet the requirements of the Federal regulations and are consistent with SMCRA. The Director approves the proposed revisions to these plan provisions and statutes.

3. Plan Sections 874.16 and 875.20, Contractor Responsibility

New Mexico proposed plan sections 874.16 and 875.20 to provide procedures that require the low bidders for abandoned mine land (AML) coal and noncoal project contracts to clear OSM's Applicant/Violator System (AVS) prior to the New Mexico AML office awarding project contracts to any such bidders. AVS is a computer system used to track the ownership and control relationships of parties involved in surface coal mining and reclamation operations.

The counterpart Federal regulations at 30 CFR 874.16 for coal and 875.20 for noncoal, require that in order to receive AML funds, every successful bidder for an AML contract must be eligible under 30 CFR 773.15(b)(1) at the time of contract award to receive a permit or conditional permit to conduct surface coal mining operations, and that bidder eligibility must be confirmed by OSM's automated AVS for each contract to be awarded.

As proposed in sections 874.16 and 875.20 of the New Mexico plan, successful bidders for AML contracts would have to clear AVS before receiving a contract. A bidder could not clear AVS if, at the time of contract award, the bidder could not qualify to receive a surface coal mining and reclamation permit because the surface coal mining and reclamation operation owned or controlled by either the bidder, or by any person who owns or controls the bidder, was in violation of SMCRA, any Federal rule or regulation promulgated pursuant thereto, a State program, or any Federal or State law, rule, or regulation pertaining to air or water environmental protection.

Unlike the Federal regulations at 30 CFR 874.16 and 875.20, New Mexico's proposed plan provisions concerning contractor responsibility contain details on how the AVS checks will be carried out. These details include procedures that require New Mexico to provide OSM with the information submitted by the apparent low bidder in order for OSM to conduct the AVS check. This procedure is consistent with the preamble for OSM's May 31, 1994, regulations, which states that ''[i]n order to provide information that will allow the States to meet this requirement, potential contractors may submit to OSM or the State regulatory authority that ownership and control information enumerated at 30 CFR 778.13 (c) and (d)'' (59 FR 28136, 28158). By the State passing the bidder information to OSM for processing, the bidder is in effect submitting the information to OSM for the AVS check. These proposed procedural requirements meet the requirements of the Federal regulations at 30 CFR 874.16 and 875.20.

In addition, New Mexico proposed at plan sections 874.16 and 875.20 that any subcontractor receiving 10 percent or more of the total contract funding, and any contract inspector, would have to receive AVS clearance before being allowed to work on an AML contract. No counterpart requirements to these proposed provisions exist in the Federal regulations, and the preamble for the Federal regulations at 30 CFR 874.16 and 875.20 does not address whether subcontractors and contract inspectors must also clear AVS (May 31, 1994; 59 FR 28136, 28158 and 28164). Absent any specific requirements for subcontractors and contract inspectors in the Federal regulations or the preamble language for these regulations, New Mexico's proposed provisions concerning subcontractors and contract inspectors are not inconsistent with the Federal regulations at 30 CFR 874.16 and 875.20.

If, at any time in the future, OSM decides to promulgate regulations or an interpretive rule to address subcontractors or contract inspectors, it would notify New Mexico in accordance with 30 CFR Part 884.15(b) of any needed revisions to these plan sections.

For the above reasons, the Director finds that New Mexico's plan provisions at sections 874.16 and 875.20 are consistent with the Federal regulations at 30 CFR 874.16 and 875.20. The Director approves these New Mexico plan provisions.

4. NMSA 69–25B–2 and NMSA 69–25B–3.B, Purpose of the New Mexico Abandoned Mine Reclamation Act and Definition of ''Eligible Lands and Water''.

New Mexico proposed at NMSA 69–25B–2 to delete the legal citation for SMCRA and refer to it as ''SMCRA, as amended.'' This is a stylistic revision that has no substantive effect on the New Mexico plan. Therefore, the Director approves this proposed revision to the statute.

OSM addresses below substantive revisions to NMSA 69–25B–2 and NMSA 69–25B–3.B.

a. *Deletion of ''prior to the enactment of that act and which'' and deletion of ''prior to August 3, 1977''.*—New Mexico also proposed at NMSA 69–25B–2 to delete the phrase ''prior to the enactment of that act and which'' from the provision which indicates that the purpose of New Mexico's Abandoned Mine Reclamation Act (Act) is ''to promote the reclamation of mined areas left without adequate reclamation prior to the enactment of that act [SMCRA] and which continue, in their unreclaimed condition, to substantially degrade the quality of the environment.'' In addition, New Mexico proposed in its definition for ''eligible lands and water'' at NMSA 69–25B–3.B to delete the phrase ''prior to August 3, 1977.'' The effect of the proposed deletions from NMSA 69–25B–2 and NMSA 69–25B–3.B makes coal lands and water affected after August 3, 1977, eligible for reclamation under New Mexico's statute.

Counterpart section 404 of SMCRA indicates that sites eligible for reclamation are those left in an inadequate state ''prior to the date [(August 3, 1977)] of enactment of this Act'' [(SMCRA)]. It provides, as well, through its reference to section 402(g)(4) of SMCRA, for the reclamation of certain sites affected by surface coal mining operations between August 4, 1977, and December 31, 1980, and certain other sites affected by surface coal mining operations between August 4, 1977, and November 5, 1990. Through its reference to section 403(b)(1), it also provides in a State that has not certified to the completion of all known coal-related projects for the reclamation of the adverse effects on water supplies that occurred both prior to and after August 3, 1977, when such effects occurred predominantly prior to August 3, 1977, or the dates and under the criteria set forth at section 402(g)(4)(B). Therefore, under section 404 of SMCRA, only those post-August 3, 1977, sites addressed by selections

402(g)(4) and 403(b) of SMCRA are allowed to be reclaimed under a State plan. New Mexico has not proposed to revise its statute to add counterparts to sections 402(g)(4) and 403(b) of SMCRA.

Because New Mexico at proposed NMSA 69–25B–2 and 69–25B-3.B has in effect, through its deletion of the two phrases, revised its statute to allow the reclamation of post-August 3, 1977, sites beyond those allowed by sections 402(g)(4) and 403(b)(2) of SMCRA, these proposed statutory provisions are not in compliance with section 404 of SMCRA. Therefore, the Director does not approve these revisions, and requires New Mexico to revise NMSA 69–25B–2 and NMSA 69–25B–3.B to preclude the reclamation of post-SMCRA sites, with the only two possible exceptions being that New Mexico may allow the reclamation of post-SMCRA sites if it adopts counterparts to sections 402(g)(4) and/or 403(b) of SMCRA.

b. *Deletion of the word ''coal''.*—At NMSA 69–25B–3.B, New Mexico proposed to delete the word ''coal'' from the phrases ''mined for coal,'' ''coal processing,'' and ''other coal mining processes.'' The effect of the deletion of the word ''coal'' (1) makes lands affected by any type of mining operation, not just coal mining operations, eligible for reclamation under the New Mexico plan and (2) allows New Mexico to reclaim noncoal lands and water prior to reclaiming all coal lands and water. These revisions also make the statute inconsistent with the unrevised corresponding ''Ranking and Selection'' section of New Mexico's plan, which continues to rank coal projects ahead of noncoal projects.

Counterpart section 404 of SMCRA indicates that sites eligible for reclamation are those affected by coal mining. It also provides, through its reference to section 409 of SMCRA and the reference of section 403(a)(1) in section 409(c)(1), for the reclamation of sites affected by noncoal mining in States such as New Mexico that have not certified completion of coal projects if the Governor makes a request for reclamation of a noncoal site on the basis that the site poses an extreme danger to public health, safety, general welfare, or property.

New Mexico's proposed deletion of the word ''coal'' from its definition for ''eligible lands and water'' at NMSA 69–25B–3.B causes the State's AML program not to be in compliance with section 404 of SMCRA. The Director does not approve the deletion of the word ''coal'' at NMSA 69–25B–3.B and requires New Mexico to reinsert the word ''coal'' or otherwise revise its statute to preclude reclamation of noncoal sites before coal sites, except in those limited circumstances allowed by section 404 of SMCRA.

5. NMSA 69–25B–6, Objectives of the Fund

At NMSA 69–25B–6, New Mexico proposed to make stylistic changes (use of ''the'' and ''those,'' instead of ''such'') and delete the legal citation for the New Mexico Abandoned Mine Reclamation Act. None of these revisions are substantive in nature. Therefore, the Director approves these changes to this statute.

OSM addresses below substantive revisions to NMSA 69–25B–6.

a. *NMSA 69–25B–6.A, Expenditure Priorities.*—New Mexico proposed at NMSA 69–25B–6.A (1) through (3), (5) and (6) to delete the word ''coal'' in several instances so that the objectives of the State abandoned mine reclamation fund are to protect the public against the adverse effects of ''mining practices'' and ''mining development'' respectively rather than ''coal mining practices'' and ''coal development.'' Except for the proposed deletion of the word ''coal,'' these provisions are substantively identical to the provisions at section Counterpart section 403(a) of SMCRA indicates that sites eligible for reclamation are those affected by coal mining. New Mexico's proposed deletion of the word ''coal'' at NMSA 69–25B–6.A causes this provision to be not in compliance with section 403(a) of SMCRA. (See finding No. 4.6.) Therefore, the Director does not approve the deletion of the word ''coal'' at NMSA 69–25B–6.A, and requires New Mexico to revise its provisions to reflect the priorities for expenditures at counterpart 403(a) of the SMCRA.

In addition, New Mexico still retains, at NMSA 69–25B–6.A(4) and in item No. I(d) of the ''Ranking and Selection'' section of its plan, as its fourth priority, the expenditure of funds for ''research and demonstration projects relating to the development of surface mining reclamation and water quality control program methods and techniques.'' The counterpart provision at section 403(a)(4) of SMCRA was elected by the Energy Policy Act of 1992, Pub. L. 102–486 (October 24, 1992), and the subsequent paragraphs (5) and (6) were renumbered accordingly. To be in compliance with section 403(a) of SMCRA, the Director requires New Mexico to delete NMSA 69–25B–6.A(4) and item No. I(d) of the ''Ranking and Selection'' section of its plan. In the intervening period until New Mexico revises its statute and plan to be consistent with section 403(a) of SMCRA, OSM cannot approve any New Mexico grant applications for research and demonstration projects relating to the development of surface mining reclamation and water control program methods and techniques.

The Director notes that New Mexico has not inserted into its statute a counterpart to section 403(b) of SMCRA, which provides for mitigation of adverse effects to water supplies caused by coal mining practices. Lack of a counterpart provision in the New Mexico plan does not make the plan inconsistent with SMCRA or the Federal regulations, but if New Mexico wished to expend funds for a water project as defined at 403(b)(1) of SMCRA, it would be prevented from utilizing up to 30 percent of the AML funds allocated to the State under 402(g)(1) and (5) for this purpose, because it appears that the plan lacks the statutory authority. If such projects have been identified in the State's ranking and selection process, New Mexico may wish to amend its plan so that it has the proper authority to proceed with such water projects.

b. *NMSA 69–25B–6.C, Public Facilities.*—New Mexico proposed at NMSA 69–25B–6.C to delete the word ''coal'' as used in ''communities impacted by coal mining development,'' where money in the fund may be expended for the purpose of constructing specific public facilities if certain criteria are met. Prior to the Abandoned Mine Reclamation Act (AMRA) of 1990, Pub. L. 101–508 (November 5, 1990), a counterpart provision in SMCRA existed at section 402(g)(2). However, AMRA deleted the provision there and created a new provision at section 411(e). This newly-created section addresses the priority of reclamation projects *after the State has certified completion of coal projects* and provides that ''[r]eclamation projects involving * * * the construction of public facilities in communities impacted by coal or other mineral mining and processing practices, shall be deemed part of the objects set forth, and undertaken as they relate to, the priorities stated in subsection (c).''

Proposed NMSA 69–25B–6.C is deficient by allowing, through the deletion of the word ''coal,'' for the undertaking of noncoal projects prior to New Mexico's certification of completion of coal projects and, through its reference to NMSA 69–25B–6.A, which includes NMSA 69–25B–6.A(4), and as discussed above, no longer has a counterpart at section 403(a) of SMCRA. Therefore, the Director requires New Mexico to reinsert the word ''coal'' at NMSA 69–25B–6.C. The Director also reiterates that to the extent that the

provisions of NMSA 69–25B–6.A(4) apply by reference, New Mexico would not receive OSM's approval to expend funds for research and demonstration projects relating to the development of surface mining reclamation and water control program methods and techniques. (See finding No. 5.a.)

6. NMSA 69–25B–12, Emergency Powers

New Mexico proposed at NMSA 69–25B–12 to delete the word ''coal'' from its provisions setting forth emergency powers for the Director of the Mining and Minerals Division.

Counterpart section 410 of SMCRA provides for an emergency program to restore, reclaim, abate, control, or prevent the adverse effects of coal mining practices on eligible lands. This emergency program extends only to coal lands and water and is a Federal responsibility except in those cases where a State has sought and been given such authority.

In 1985, New Mexico enacted into law NMSA 69–25B–12, which is the State counterpart to section 410 of SMCRA for the assumption by New Mexico of an emergency program. On May 9, 1986, New Mexico of an emergency program. On May 9, 1986, New Mexico submitted a formal amendment in which it requested approval of a State emergency program (administrative record Nos. NM–AML–36 and 37). New Mexico subsequently withdrew its request on August 22, 1988 (administrative record NO. NM–AML–51).

The amendment currently under review by OSM still includes NMSA 69–25B–12, but OSM understands that New Mexico's intent at this time is not to assume an emergency program. Therefore, the Director reluctantly cannot approve NMSA 69–25B–12. Even though OSM strongly supports and encourages State assumption of emergency programs, NMSA 69–25B–12 will have no effect in New Mexico's AML program until such time as New Mexico requests, with supporting documentation, an emergency program limited to coal reclamation only, and OSM approves it.

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 30 CFR 884.15(a) and 884.14(a)(2), OSM solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the New Mexico plan (administrative record No. NM–759).

U.S. Bureau of Mines.—The U.S. Bureau of Mines, in a telephone conversation on September 7, 1955, responded that it had no comments on the proposed amendment (administrative record No. NM–761).

U.S. Environmental Protection Agency (EPA).—EPA responded on September 7, 1995 (administrative record No. NM–762), with comments on the proposed amendments to the New Mexico plan and New Mexico Abandoned Mine Reclamation Act.

EPA agreed with the deletion of specific references to ''coal'' mining throughout the amendments because the State's act should not be restricted to coal mining, as the references to ''coal'' would suggest. OSM agrees that in some instances deletion of the word ''coal'' is appropriate, but as discussed at finding Nos. 4.a and 5.a and b above, the proposed deletions cause certain statutes of New Mexico's act to be deficient.

EPA commented that NMSA 69–25B–6.C should specify the types of public facilities that may be built with money from the Abandoned Mine Reclamation Fund. The counterpart provisions at sections 411 (e) and (f) of SMCRA allow for the construction of public facilities in communities impacted by coal or other mineral mining and processing practices and for activities or construction of specific public facilities related to the coal or minerals industry in States impacted by coal or minerals development when a need is established and the Secretary of the Interior concurs in the need. ''Public facilities'' are not specifically defined in SMCRA. The scope of public facilities funded under section 411 of SMCRA is very broad and covers facilities related in some way to the coal or minerals industry in a State. OSM is not requiring New Mexico to revise NMSA 69–25B–6.C to list types of public facilities addressed by the statute.

EPA commented that NMSA 69–25B–7.D, which provides in part that ''the price paid for land acquired under this section shall reflect the market value of the land as adversely affected by past mining practices,'' is inconsistent with the Federal land acquisition regulations. EPA commented further that the price to be paid for land acquired pursuant to the New Mexico Abandoned Mine Reclamation Act should reflect the fair market value of land as ''unaffected by contamination.'' This change could cause New Mexico to pay a higher price for lands acquired under NMSA 69–25B–7, and would cause NMSA 69–25B–7.D to be inconsistent with SMCRA. Counterpart sections 407(d) and 411(g) of SMCRA require that the price paid for acquired lands reflect the market value of the lands as ''adversely affected by past mining practices.'' Because the price to be paid for acquired lands at NMSA 69–25B–7.D is consistent with section 407(d) of SMCRA, OSM is not requiring New Mexico to make any additional changes to this statute.

Lastly, EPA commented that NMSA 69–25B–8 should provide for the disposition of monies collected through liens (i.e., deposit monies in the Abandoned Mine Reclamation Fund or use them to reimburse the Federal government). New Mexico, at unrevised plan section 884.13(c)(5), requires that ''monies derived from the satisfaction of liens established under this part shall be deposited in the Abandoned Mine Reclamation Fund.'' This provision already satisfies EPA's concern.

Bureau of Land Management (BLM)—The BLM New Mexico State Office suggested on August 24, 1995, two changes to the proposed amendment (administrative record No. NM–765). BLM suggested that the ownership and control information proposed at plan sections 874.16 and 875.20 could be changed by adding ''[i]f the Apparent Low Bidder is unqualifiable, the AML office may process a subsequent Low Bidder without reinitiating the bidding process.'' This suggestion was offered as an option to allow for a streamlined bidding process and cost savings in the event of an unqualifiable low bidder rejection.

OSM responds that the requirements proposed by New Mexico at plan sections 874.16 and 875.20 are consistent with the requirements of the Federal regulations concerning contractor responsibility at 30 CFR 874.16 and 875.20. (See finding No. 3.) OSM has passed BLM's comment on to the New Mexico Mining and Minerals Division. It is left to the State to determine whether it will adopt the suggestion.

BLM also suggested that the amendment does not assert that funds available for reclamation through the abandoned mine act should address coal reclamation before noncoal reclamation. BLM stated that including wording that requires AML funds to be used for coal reclamation before noncoal reclamation would assure that the amendment is

fully compatible with the Federal statute.

OSM agrees that New Mexico's statute does not require this (see finding No. 4.b). New Mexico's plan section 884.13(c)(2), which is not proposed for revisions in this amendment, does require that coal reclamation be completed before noncoal reclamation, except, upon the request of the Governor of New Mexico, reclamation can occur on noncoal sites to protect the public from extreme hazards endangering life and property resulting from the adverse effects of past noncoal mining practices. This plan provision is consistent with sections 403 and 409 of SMCRA and the implementing Federal regulations at 30 CFR 874.13 and 875.12. Therefore, OSM is not requiring New Mexico to provide a statement as suggested by BLM that requires AML funds to be used for coal reclamation before noncoal reclamation, but as discussed in finding No. 4.b. above, OSM is requiring New Mexico to reinsert the word ''coal'' at NMSA 69–25B–3.B or otherwise revise its statute to preclude reclamation of noncoal sites before coal sites, except in those limited circumstances allowed by section 404 of SMCRA.

V. Director's Decision

Based on the above findings, the Director approves, with certain exceptions and/or additional requirements, New Mexico's proposed plan amendment as submitted on July 24, 1995.

With the requirement that New Mexico further revise its statutes, the Director does not approve, as discussed in: finding Nos. 4.a and b, NMSA 69–25B–2 and 3.B, concerning the purpose of the New Mexico Abandoned Mine Land Reclamation Act and definition of the term ''eligible lands and water;'' finding No. 5.a, NMSA 69–25B–6.A, concerning objectives of the fund; finding No. 5.b, NMSA 69–25B–6.C, concerning public facilities; and finding No. 6, NMSA 69–25B–12, concerning emergency powers.

The Director approves, as discussed in: finding No. 1, NMSA 69–25B–3.A and D, concerning definitions of ''director'' and ''fund,'' NMSA 69–25B–4, concerning creation of abandoned mine reclamation fund, and NMSA 69–25B–6.B, concerning filling voids and sealing tunnels; finding No. 2, plan section 875.16, concerning exclusion of certain noncoal reclamation sites, plan section 886.23(c), concerning reports, NMSA 69–25B–3.C, concerning definition of ''emergency,'' NMSA 69–25B–7, concerning acquisition and reclamation of land adversely affected by past mining practices, and NMSA 69–25B–8, concerning liens; and finding No. 3, plan sections 874.16 and 875.20, concerning contractor responsibility.

The Director approves the plan provisions and statutes as proposed by New Mexico with the provision that they be fully promulgated in identical form to the plan provisions and statutes submitted to and reviewed by OSM and the public.

The Federal regulations at 30 CFR Part 931, codifying decisions concerning the New Mexico plan, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State plan amendment process and to encourage States to bring their plans into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. 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 analyses for the corresponding Federal regulations.

6. Unfunded Mandates Act

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

List of Subjects in 30 CFR Part 931

Abandoned mine reclamation programs, Intergovernmental relations, Surface mining, Underground mining.

Dated: June 26, 1996.

Peter A. Rutledge,

Acting 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 931.25 is added to read as follows:

§ 931.25 Approval of abandoned mine land reclamation plan amendments.

(a) With the exception of New Mexico Statute Annotated (NMSA) 69–25B–2, concerning the purpose of the New Mexico Abandoned Mine Land Reclamation Act, NMSA 69–25B–3.B, concerning the definition of ''eligible lands and water,'' NMSA 69–25B–6.A, concerning objectives of the fund, NMSA 69–25B–6.C, concerning public facilities, and NMSA 69–25B–12,

concerning emergency powers, the addition of and revisions to the following plan provisions and statutes, as submitted to OSM on July 24, 1995, are approved effective July 24, 1996:

Plan sections 874.16 and 875.20, contractor responsibility.
Plan section 875.16, exclusion of certain noncoal reclamation sites.
Plan section 886.23(c), reports.
NMSA 69–25B–3.A, C, and D, definitions of ''director,'' ''emergency'', and ''fund.''
NMSA 69–25B–4, creation of abandoned mine reclamation fund.
NMSA 69–25B–6.B, filling voids and sealing tunnels.
NMSA 69–25B–7, acquisition and reclamation of land adversely affected by past mining practices.
NMSA 69–25B–8, liens.

(b) [Reserved]

3. Section 931.26 is added to read as follows:

§ 931.26 Required plan amendments.

Pursuant to 30 CFR 884.15, New Mexico is required to submit for OSM's approval the following proposed plan amendments by the date specified.

(a) By January 21, 1997, New Mexico shall revise NMSA 69–25B–2 and 3.B to provide references to August 3, 1977, the effective date of SMCRA, or otherwise modify its plan, to ensure that the reclamation of post-August 3, 1977, sites is specifically provided for with counterpart provisions to sections 402(g)(4) and 403(b)(2).

(b) By January 21, 1997, New Mexico shall further revise NMSA 69–25B–3.B to provide a definition for ''eligible lands and water'' that is consistent with the term as defined at section 404 of SMCRA.

(c) By January 21, 1997, New Mexico shall revise NMSA 69–25B–6.A, or otherwise modify its plan, to reflect the same expenditure priorities as counterpart section 403(a) of SMCRA.

(d) By January 21, 1997 New Mexico shall revise NMSA 69–25B–6.A by deleting NMSA 69–25B–6.A(4) and item No. I (d) of the ''Ranking and Selection'' section of its plan.

(e) By January 21, 1997, New Mexico shall revise NMSA 69–25B–6.C by reinserting the word ''coal.''

[FR Doc. 96–18612 Filed 7–23–96; 8:45 am]
BILLING CODE 4310–05–M

30 CFR Part 936

[SPATS No. OK–018–FOR]

Oklahoma 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 Oklahoma regulatory program (hereinafter referred to as the ''Oklahoma program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Oklahoma proposed to recodify and reinstate regulations pertaining to an exemption for coal extraction incidental to government-financed or other construction. The amendment is intended to revise the Oklahoma program to be consistent with the corresponding Federal regulations.

EFFECTIVE DATE: July 24, 1996.

FOR FURTHER INFORMATION CONTACT: Jack R. Carson, Acting Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 East Skelly Drive, Suite 470, Tulsa, Oklahoma 74135–6548, Telephone: (918) 581–6430.

SUPPLEMENTARY INFORMATION:

I. Background on the Oklahoma 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 Oklahoma Program

On January 19, 1981, the Secretary of the Interior conditionally approved the Oklahoma program. Background information on the Oklahoma program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the January 19, 1981, Federal Register (46 FR 4902). Subsequent actions concerning the conditions of approval and program amendments can be found at 30 CFR 936.15 and 936.16.

II. Submission of the Proposed Amendment

By letter dated April 26, 1996 (Administrative Record No. OK–974), Oklahoma submitted a proposed amendment to its program pursuant to SMCRA. Oklahoma submitted the proposed amendment at its own initiative. Oklahoma, in accordance with the standards set forth by the Oklahoma State Legislature and the Oklahoma Office of Administrative Code, proposed to recodify and reinstate regulations pertaining to an exemption for coal extraction incidental to government-financed or other construction at Oklahoma Administrative Code (OAC) 460, Chapter 20, Subchapter 6 as follows: OAC 460:20–6–1, Purpose; 460:20–6–2, Responsibility; 460:20–6–3, Definitions; 460:20–6–4, Applicability; and 460:20–6–5, Information to be maintained on site. These regulations were previously codified as Part 707, and they were inadvertently omitted from the Oklahoma program during Oklahoma's promulgation of its regulations after a previous rulemaking.

OSM announced receipt of the proposed amendment in the May 21, 1996, Federal Register (61 FR 25426), and in the same document opened the public comment period and provided and opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on June 20, 1996.

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.

OAC 460:20–6–1 through 460:20–6–5 Exemption for Coal Extraction Incidental to Government-Financed or Other Construction

The proposed regulations contain language that is substantively identical to the provisions of the corresponding Federal regulations shown in brackets. OAC 460:20–6–1 [30 CFR 707.1] specifies the purpose of the regulations as establishing procedures for determining those surface coal mining and reclamation operations that meet the exemption criteria for coal extraction as an incidental part of government-financed construction. OAC 460:20–6–2 [30 CFR 707.4] sets out the State's responsibility for enforcing the requirements of the regulations. It also provides that persons conducting coal extraction as an incidental part of government-financed construction are responsible for keeping specified documentation on the site of the extraction operation. OAC 460:20–6–3 [30 CFR 707.5] contains definitions for the terms ''Extraction of coal as an incidental part''; ''Government financing agency''; and ''Government-financed construction.'' OAC 460:20–6–4 [30 CFR 707.11] specifies that a permit must be obtained unless the coal extraction is an incidental part of government-financed construction. OAC 460:20–6–5 [30 CFR 707.12] specifies the information that must be maintained on the site of the extraction operation.

Because the proposed regulations are identical in meaning to the corresponding Federal regulations, the Director finds that they are no less effective than the Federal regulations. Therefore, the Director is approving the

proposed recodification and reinstatement of Oklahoma's regulations at OAC 460:20–6–1 through 460:20–6–5.

IV. Summary and Disposition of Comments

Public Comments

The Director solicited public comments and provided an opportunity for a public hearing on the proposed amendment. No public comments were received, and because no one requested an opportunity to speak at a public hearing, no hearing was held.

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 Oklahoma program. No comments were received.

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 Oklahoma 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 form EPA (Administrative Record No. OK–974.02). EPA did not respond to OSM's request.

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. OK–974.02). Neither SHPO nor ACHP responded to OSM's request.

V. Director's Decision

Based on the above findings, the Director approves the proposed amendment as submitted by Oklahoma on April 26, 1996.

The Federal regulations at 30 CFR Part 936, codifying decisions concerning the Oklahoma 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 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 936

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 3, 1996.

Brent Wahlquist,

Regional Director, Mid-Continent Regional Coordinating Center.

For the reasons set out in the preamble, 30 CFR Part 936 is amended as set forth below:

PART 936—OKLAHOMA

1. The authority citation for Part 936 continues to read as follows:

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

2. Section 936.15 is amended by adding paragraph (r) to read as follows:

§ 936.15 Approval of regulatory program amendments.

* * * * *

(r) The additions of OAC 460:20–6–1 through 460:20–6–5 to the Oklahoma Coal Rules and Regulations, concerning an exemption for coal extraction incidental to government-financed or other construction as submitted to OSM on April 26, 1996, are approved effective July 24, 1996.

[FR Doc. 96–18611 Filed 7–23–96; 8:45 am]

BILLING CODE 4310–05–M

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30 CFR Part 948

[WV–075–FOR]

West Virginia Permanent Regulatory Program

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

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing the approval, with certain exceptions, of

amendments to the West Virginia permanent regulatory program (hereinafter referred to as the West Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA Act). The amendments concern revisions to the West Virginia Surface Mining Reclamation Regulations. The amendments are intended to improve the clarity and effectiveness of the West Virginia program, and to revise the State program to be consistent with the corresponding Federal regulations.

EFFECTIVE DATE: July 24, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. James C. Blankenship, Jr., Director, Charleston Field Office, Office of Surface Mining Reclamation and Enforcement, 1027 Virginia Street, East, Charleston, West Virginia 25301. Telephone: (304) 347–7158.

SUPPLEMENTARY INFORMATION:

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

I. Background on the West Virginia Program

On January 21, 1981, the Secretary of the Interior conditionally approved the West Virginia program. Background information on the West Virginia program, including the Secretary's findings, the disposition of comments, and the conditions of the approval can be found in the January 21, 1981, Federal Register (46 FR 5915–5956). Subsequent actions concerning the West Virginia program and previous amendments are codified at 30 CFR 948.10, 948.12, 948.13, 948.15, and 948.16.

II. Submission of the Amendment

By letter dated April 2, 1996 (Administrative Record Number WV–1024), the West Virginia Division of Environmental Protection (WVDEP) submitted an amendment to its approved permanent regulatory program pursuant to 30 CFR 732.17. The amendment contains revisions to the West Virginia Surface Mining Reclamation Regulations (CSR § 38–2–1 *et seq.*).

The proposed amendment was published in the April 23, 1996, Federal Register (61 FR 17859), 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 May 23, 1996.

The last time the State regulations were significantly revised was on February 21, 1996. The Director partially approved the revisions in the February 21, 1996, Federal Register (61 FR 6511–6537). See 30 CFR 948.15 for the provisions partially approved, and 30 CFR 948.16 for the required amendments.

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 West Virginia program.

1. § 38–2–2.106 Definition of ''Safety factor.'' This definition is revised to mean the ratio of the sum of the resisting forces to the sum of the loading or driving forces as determined by acceptable engineering practices. Prior to this change, the term was defined as the ratio of the sum of the resisting forces to the sum of the loading forces in a constructed valley fill, backfill, dam, or refuse pile. The Director finds the term as revised to be substantively identical to and no less effective than one of the two options contained in the counterpart Federal definition at 30 CFR 701.5

2. § 38–2–3.2(e) Readvertisement of permit applications. This provision is amended by adding the phrase, ''that do not significantly affect the health, safety or welfare of the public and,'' to the first sentence. With this change, a limited number of minor changes may be grouped and readvertised if the changes do not significantly affect the health, safety or welfare of the public and do not significantly affect the method of operation, the reclamation plan, and/or the original advertisement. This notice is in addition to the original advertisement requirement of one advertisement per week, for four successive weeks. The Director finds the added language does not render the provision less effective than the Federal regulations at 30 CFR 773.13 concerning public participation in permit processing.

3. § 38–2–3.6(h)(5) Certification of drainage/sediment control structure designs. This provision is amended by changing a cited reference concerning dams. ''Article 5D of Chapter 20'' is deleted and replaced by ''Article 14 of Chapter 22.'' The Director finds that the citation change does not render the provision less effective than the Federal regulations at 30 CFR 780.25(a) concerning preparation and certification of plans.

4. § 38–2–3.8(c) Revision or reconstruction of existing structures and support facilities. This provision is amended by adding the following language: ''Provided, that those [existing] structures and facilities, where it can be demonstrated that reconstruction or revision would result in greater environmental harm and the performance standards set forth in the Act and these regulations can otherwise be met, may be exempt from revision or construction.'' This amendment, in effect, provides an alternative to requiring revision or reconstruction of structures or support facilities in cases where greater environmental harm would result from the revisions or reconstruction.

The Federal regulations at 30 CFR 701.11(e)(1), provide for a similar exemption. Such exemptions to design requirements for existing structures can be granted as part of the permit application process after obtaining the information required by the State counterparts to 30 CFR 780.12 or 784.12 and after making the findings required in the State counterparts to 30 CFR 773.15. Proposed subsection 3.8(c) does not refer to these State counterparts. However, since these counterparts are, indeed, part of the State's program (see § 38–2–3.8(b), 3.32(d)(6)), cross-references to those provisions in subsection 3.8(c) are unnecessary.

The Federal regulations at 30 CFR 701.11(e)(2) provide that such exemptions shall not apply to (a) the requirements for existing and new coal mine waste disposal facilities; and (b) the requirements to restore the approximate original contour of the land. The West Virginia program, however, lacks a counterpart to these Federal limitations concerning the applicability of the proposed exemption.

The Director is approving the amendments to CSR 38–2–3.8(c). In addition, the Director is requiring that West Virginia further amend the West Virginia program to be consistent with 30 CFR 701.11(e)(2) by clarifying that the exemption at CSR 38–2–3.8(c) does not apply to 1) the requirements for new and existing coal mine waste disposal facilities; and 2) the requirements to restore the land to approximate original contour.

5. § 38–2–3.27 Permit renewals and extensions. The introductory paragraph of this provision is amended by deleting the word ''may'' and adding in its place the word ''shall.'' In addition, language has been deleted that required all backfilling and grading be completed within 60 days prior to the expiration date of the permit, and that an application for Phase I bond release be filed prior to the expiration date of the

permit. As amended, the provision provides that the Director of the WVDEP shall waive the requirements for renewal if the permittee certifies in writing that all coal extraction is completed, that all backfilling and regrading will be completed and reclamation activities are ongoing. The Director finds that the proposed provision is substantively identical to and no less effective than the Federal regulations at 30 CFR 773.11, which provides that an operator does not have to renew a permit to conduct reclamation activities.

6. § 38–2–4.4 Infrequently used access roads. This provision is revised by deleting and adding rule citations. As amended, infrequently used access roads may not be exempt from the requirements of §§ 38–2–4.2, 4.7(a), 4.8, 4.9, and 5.3. The Director finds the changes to be consistent with the Federal regulations at 30 CFR 816/817.150. In addition, the amendments satisfy the required program amendments codified at 30 CFR 948.16(rr). 30 CFR 948.16(rrr) required that West Virginia revise § 38–2–4.4 to require that all infrequently used access roads comply with § 38–2–4.9. Since this required amendment has been satisfied, it is hereby removed.

7. § 38–2–4.12 Certification of primary roads. This provision is amended by deleting the requirement that changes documented in the as-built plans be submitted to the Director of WVDEP as a permit revision. In its place, the following language is added: ''If as-built plans are submitted, the certification shall describe how and to what extent the construction deviates from the proposed design, and shall explain how and certify that the road will meet performance standards.'' In effect, these amendments replaces a requirement that all changes documented as as-built plans be submitted as a permit revision, with a requirement that when such changes are submitted, the submittal shall include an explanation of the changes, and a certification that the changes will meet performance standards

The Director finds that the deletion of the requirement to submit as-built plans to the Director of the WVDEP renders the amendment provision less effective than the Federal regulations at 30 CFR 774.11(c) concerning regulatory review of permits. In effect, the automatic acceptance of certified as-built plans removes the regulatory authority from its responsibility under 30 CFR 774.11(c) which requires a finding for even minor permit revisions. This finding by the regulatory authority must address all program requirements, not just performance standards.

Therefore, the Director is approving the proposed changes, except to the extent that the Director of the WVDEP is removed from the responsibility of reviewing permit revisions (such as as-built plans changes) as is required under 30 CFR 774.11(c). In addition, the Director is requiring that the State further amend CSR 38–2–4.12 to reinstate the following deleted language: ''and submitted for approval to the Director as a permit revision.''

8. § 38–2–5.4(c) Safety standards for embankment type structures. The first paragraph of this provision is amended by deleting the phrase ''which may include slurry impoundments.'' With this amendment, the provision's safety standards apply to all embankment type sediment control or other water retention structures. The Director finds that the removal of the reference to slurry impoundments renders the States provision unclear as to its application to slurry impoundments. If, the provision does not apply to slurry impoundments (which appears to be the purpose of the deletion), the provision is rendered less effective than the Federal regulations at 30 CFR 816/817.49 and cannot be approved. Therefore, the Director is approving the provision except to the extent that the provision does not apply to slurry impoundments. In addition, the Director is requiring that the State further amend the West Virginia program by clarifying that the requirements at CSR 38–2–5.4(c) also apply to slurry impoundments. The Director notes that this can be accomplished either by reinstating the deleted language or be replacing the term ''water retention structure'' with the term ''impoundment.''

9. § 38–2–11.6(a) Review of permits for adequacy of bond. This provision is amended to relocate the site-specific bonding requirements applicable to all four categories of mining at the time of permit renewal or mid-term review, whichever occurs first. These requirements also do not allow a permit to be renewed until the appropriate amount of bond has been posted. However, the Director finds the proposed revision, which is merely for organizational purposes, is not inconsistent with the Federal bonding requirements at 30 CFR 800.13 and 30 CFR 774.15(c).

10. § 38–2–11.6(c)(6), (d)(6), (e)(5), (f)(5) Bond reduction credits. These provisions are being amended to delete, in various places, the phrase ''within five (5) years of the date of SMA approval.'' In effect, activities for which a permittee may receive bond reduction credits are no longer required to be performed within five years from the date of SMA approval. The Director finds that, although there are no direct Federal counterparts, the proposed provisions would have no significant financial impacts and, therefore, would not adversely affect the findings that formed the basis for the Secretary's approval of the alternative bonding system pursuant to 30 CFR 800.11(e).

11. § 38–2–12.2(e) Bond release—chemical treatment. The existing language of this provision is deleted and replaced by the following:

Notwithstanding any other provisions of this rule, no bond release or reduction will be granted if, at the time, water discharged from or affected by the operation requires chemical treatment in order to comply with applicable effluent limitations or water quality standards; Provided, that the Director may approve a request for Phase I but not Phase II or III, release if the applicant demonstrates to the satisfaction of the Director that either:

(A) The remaining bond is adequate to assure long term treatment of the drainage; or

(B) The operator has irrevocably committed other financial resources which are adequate to assure long term treatment of the drainage; Provided, that the alternate financial resources must be in acceptable form, and meet the standards set forth in Section 11 of the Act and Section 11 of these regulations; provided, however, that the alternate financial arrangements shall provide a mechanism whereby the Director can assume management of the resources and treatment work in the event that the operator defaults for any reason; and provided further, that default on a treatment obligation under this paragraph shall be considered equivalent to a bond forfeiture, and the operator will be subject to penalties and sanctions, including permit blocking, as if a bond forfeiture had occurred.

In order to make such demonstration as referenced above, the applicant shall address, at a minimum, the current and projected quantity and quality of drainage to be treated, the anticipated duration of treatment, the estimated capital and operating cost of the treatment facility, and the calculations which demonstrate the adequacy of the remaining bond or of the alternate financial resources.

In effect, the added language would allow, under the specified circumstances, Phase I bond release on operations which require chemical treatment in order to comply with applicable effluent limitations or water quality standards.

The Director notes that the State's definition of ''chemical treatment'' at § 38–2–2.20 has only been partially approved by OSM. Specifically, the language of the definition that excludes passive treatment systems from being considered ''chemical treatment'' was not approved to the extent that such passive treatment systems would be applied in the context of § 38–2–12.2(e) to authorize bond release for sites with discharges that require passive treatment to meet discharge standards. For a complete explanation of the partial disapproval of the State's definition of ''chemical treatment,'' see Finding B–2, in the February 21, 1996, Federal Register (61 FR 6511) at page 6517.

The proposed language concerning incremental bond release could be implemented in a manner that is no less effective than the Federal requirements at 30 CFR 800.40(c) concerning bond release. The proposed language provides that the bond remaining after Phase I release, or the other financial resources committed to the treatment, must be adequate to assure long-term treatment of this discharge. In addition, the new language provides that the other financial resources committed to long-term treatment must be irrevocably committed, and the currently approved bonding requirements continue to apply. Finally, while these new provisions will provide bond monies for long-term treatment, they in no way eliminate the currently approved provisions that provide for adequate bond monies to assure completion of the approved reclamation plan (for example, to assure revegetation).

Therefore, the Director is approving the proposed revisions at CSR 38–2–12.2(e) to the extent that passive treatment, where it is implemented to achieve compliance with effluent limitations or water quality standards, is chemical treatment under the West Virginia program definition of chemical treatment at CFR 38–2–2.20.

12. § 38–2–14.3(c) Topsoil substitutes. The Director is deferring action on this proposed amendment because it was inadvertently omitted from the proposed rule notice published on April 23, 1996 (61 FR 17859) that announced the changes submitted by the State and requested public comment. The Director will provide opportunity for public comment on this change in the near future by notice in the Federal Register.

13. § 38–2–14.14(e)(4) Valley fills—rock core chimney drains. This provision is being amended by deleting the third sentence, which concerns the control of surface water runoff, and replacing that language with the following:

Surface water runoff from areas above and adjacent to the fill shall be diverted into properly designed and constructed stabilized diversion channels which have been designed using best current technology to safely pass the peak runoff from a 100 year, 24-hour precipitation event. The channel shall be designed and constructed to ensure stability of the fill, control erosion, and minimize water infiltration into the fill.

The Federal regulations prohibit uncontrolled flow onto excess spoil fills and require that diversion channels be constructed off the fills. OSM's technical committee agreed that such diversions could be constructed on durable rock fills, but it never addressed their use on valley fills. (See the August 16, 1995, Federal Register (60 FR 42437) for a discussion of OSM's approval of West Virginia's recently revised provisions concerning durable rock fills.) Given the differences in the construction techniques of the two types of fills, OSM cannot say with any confidence that the proposal, which would allow the construction of diversions on valley fills, its environmentally sound. The State needs to submit scientific evidence to OSM demonstrating that the proposed method of construction will not harm the long-term integrity of valley fills. A technical evaluation of this issue must occur before OSM can find the proposed State requirements at subsection 14.14(e)(4) to be no less effective than 30 CFR 816/817.72(a)(2). Therefore, the Director is not approving the proposed amendments at this time. Since this requirement is to take effect on July 1, 1996, OSM requests that its implementation be delayed and the WVDEP continue to require that runoff be diverted around valley fills until the study can be completed and a final determination is rendered by OSM.

14. § 38–2–14.15(m) Coal processing waste disposal. This provision is being amended by deleting the prohibition at 14.15(m)(1) that coal processing waste ''will not contain acid producing or toxic forming material.'' A new provision at 14.15(m)(2) is added to provide as follows:

(2) The coal processing waste will not be placed in the backfill unless it has been demonstrated to the satisfaction of the Director that: (A) the coal processing waste to be placed based upon laboratory testing (sic) to be non-toxic and/or non-acid producing; or (B) an adequate handling plan including alkaline additives has been developed and the material after alkaline addition is non-toxic and/or non-acid producing.

The Director finds, that in accordance with 30 CFR 816/817.102(e), except for the requirements concerning disposal, foundation investigations, and emergency procedures, the proposed language is consistent with and no less effective than the Federal regulations at 30 CFR 816/817.81 concerning coal mine waste. The Director is approving this amendment only to the extent that, with the disposal of coal processing waste in the backfill, the backfill will not exceed the approximate original contour (AOC). If AOC is exceeded, then the disposal of coal processing waste in the backfill must comply with the West Virginia program counterparts to 30 CFR 816/817.83 concerning coal mine waste—refuse piles. In addition, the Director is requiring that the State further amend the West Virginia program to require compliance with 30 CFR 816/817.81 (b), (d), and (e) regarding coal refuse disposal, foundation investigations and emergency procedures and to clarify that where the coal processing waste proposed to be placed in the backfill contains acid- or toxic-producing materials, such material must not be buried or stored in proximity to any drainage course such as springs and seeps, must be protected from groundwater by the appropriate use of rock drains under the backfill and along the highwall, and be protected from water infiltration into the backfill by the use of appropriate methods such as diversion drains for surface runoff or encapsulation with clay or other material of low permeability. That is, such acid- or toxic-producing materials must be hydraulically separated from any groundwater and from water infiltration into the backfill.

IV. Summary and Disposition of Comments

Federal Agency Comments

Pursuant to section 503(b) of SMCRA and 30 CFR 732.17(h)(11)(i), on May 1, 1996, comments were solicited from various interested Federal agencies (Administrative Record Number WV–1030). The U.S. Army Corps of Engineers responded that they found the amendments to be satisfactory. The U.S. Department of Labor, Mine Safety and Health Administration (MSHA) responded with several comments. However, non of the comments MSHA submitted pertain to the provisions that are being amended by the State. Therefore, those comments will not be discussed in this notice.

Public Comments

A public comment period and opportunity to request a public hearing was announced in the April 23, 1996, Federal Register (61 FR 17859). The comment period closed on May 23, 1996. No one requested an opportunity to testify at the scheduled public hearing so no hearing was held. The West Virginia Mining and Reclamation Association and the West Virginia Coal Association responded and urged approval of the amendments. No other public comments were received.

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 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 Clear Air Act (42 U.S.C. 7401 *et seq.*). On May 1, 1996, the Director requested EPA's concurrence and comments (Administrative Record Numbers WV–1029, 1030).

EPA responded on June 27, 1996 (Administrative Record No. WV–1037) and commented on two provisions. Concerning CSR 38–2–12.2(e), EPA conditionally concurred, and stated that the proposed revision for allowing bond release could result in a situation where less funds would be available for long term treatment unless three critical areas are addressed: (1)An accurate determination of the effectiveness, duration, and long term costs of treatment must be made to avoid underestimating abatement needs; (2) An assurance that the alternate financial resources, which are described by the proposed revision, will be irrevocably committed (such as in a trust fund, dedicated escrow account, or other similar manner) to assure its availability for treatment in case of bankruptcy; and (3) Assurance that the bond monies set aside for long term water treatment are in addition to the bond monies needed to assure the completion of the reclamation plan (such as for revegetation).

In response, the Director acknowledges the EPA's concerns, but believes that these results are not likely to occur. The proposed language provides that the bond remaining after Phase I release, or the other financial resources committed to the treatment, must be adequate to assure long term treatment of the discharge. In addition, the new language provides that the other financial resources committed to long term treatment must be irrevocably committed, and the currently approved bonding requirements continue to apply. Finally, while these new provisions will provide bond monies for long term treatment, they in no way eliminate the currently approved provisions that provide for adequate bond monies to assure completion of the approved reclamation plan (for example, to assure revegetation). Therefore, the Director is approving the provisions.

The EPA commented that the revisions at CSR 38–2–14.15(m) could result in acid seepage unless the approved handling plans include diversion drains for surface runoff, refuse encapsulation with clay or other material of low permeability, and rock drains under the backfill and along the highwall, to intercept and convey groundwater away from the refuse. As discussed above in Finding 14, the Director agrees and is requiring that the State further amend the West Virginia program to clarify that where the coal processing waste proposed to be placed in the backfill contains acid- or toxic-producing materials, such material must not be buried or stored in proximity to any drainage course such as springs and seeps, must be protected from groundwater by the appropriate use of rock drains under the backfill and along the highwall, and be protected from water infiltration into the backfill by the use of appropriate methods such as diversion drains for surface runoff, encapsulation with clay or other material of low permeability. That is, such acid- or toxic-producing materials must be hydraulically separated from any groundwater and from water infiltration into the backfill.

V. Director's Decision

Based on the findings above, the Director is approving the amendment submitted by West Virginia on April 2, 1996, except as noted below.

The Director is requiring that WVDEP further amend the West Virginia program to be consistent with 30 CFR 701.11(e)(2) by clarifying that the exemption at CSR 38–2–3.8(c) does not apply to (1) the requirements for new and existing coal mine waste disposal facilities; and (2) the requirements to restore the land to approximate original contour.

The amendments at CSR 38–2–4.4 satisfy the required program amendment codified at 30 CFR 948.16(rrr), which is hereby removed.

CSR 38–2–4.12 is approved except to the extent that the Director of the WVDEP is removed from its responsibility (under 30 CFR 774.11(c)) of reviewing permit revisions (such as reviewing as-built plans changes). In addition, the Director is requiring that the State further amend CSR 38–2–4.12 to reinstate the following deleted language: ''and submitted for approval to the Director as a permit revision.''

CSR 38–2–5.4(c) is approved except to the extent that the provision does not apply to slurry impoundments. In addition, the Director is requiring that the State further amend the West Virginia program by clarifying that the requirements at CSR 38–2–5.4(c) also apply to slurry impoundments.

CSR 38–2–12.2(e) is approved to the extent that passive treatment, where it is implemented to achieve compliance with effluent limitations or water quality standards is chemical treatment under the West Virginia program definition of chemical treatment at CFR 38–2–2.20.

§ 38–2–14.3(c) Topsoil substitutes. The Director is deferring action on this proposed amendment because it was inadvertently omitted from the proposed rule notice published on April 23, 1996 (61 FR 17859) that announced the changes submitted by the State.

CSR 38–2–14.14(e)(4) which would allow drainage to be diverted onto valley fills is not approved and its implementation is to be delayed pending the submission and approval of scientific evidence showing that the proposed construction of diversions on valley fills will not adversely affect their long-term stability.

CSR 38–2–14.15(m) is approved only to the extent that, with the disposal of coal processing waste in the backfill, the backfill will not exceed the approximate original contour (AOC). If AOC is exceeded, then the disposal of coal processing waste in the backfill must comply with the West Virginia program counterparts to 30 CFR 816.83 concerning coal processing waste—refuse piles. In addition, the Director is requiring that the State further amend the West Virginia program to require compliance with the State counterparts to 30 CFR 816/817.81 (b), (d) and (e) regarding disposal, foundation investigations and emergency procedures and to clarify that where the coal processing waste proposed to be placed in the backfill contains acid-or toxic-producing materials, such material must not be buried or stored in proximity to any drainage course such as springs and seeps, must be protected from groundwater by the appropriate use of rock drains under the backfill and along the highwall, and be protected from water infiltration into the backfill by the use of appropriate methods such as diversion drains for surface runoff or encapsulation with clay or other

material of low permeability. That is, such acid- or toxic-producing materials must be hydraulically separated from any groundwater and from water infiltration into the backfill.

The Federal regulations at 30 CFR Part 948 codifying decisions concerning the West 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.

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 his oversight of the West Virginia program, the Director will recognize only the statutes, regulations and other materials approved by him, together with any consistent implementing policies, directives and other materials, and will require the enforcement by West Virginia 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 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 948

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 10, 1996.

Tim L. Dieringer,

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 948—WEST VIRGINIA

1. The authority citation for Part 948 continues to read as follows:

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

2. In Section 948.15, paragraph (q) is added to read as follows:

§ 948.15 Approval of regulatory program amendments.

* * * * *

(q) The amendment to the West Virginia program concerning changes to the West Virginia regulations as submitted to OSM on April 2, 1996, is approved effective July 24, 1996 except as noted below:

CSR 38–2–4.12 is approved except to the extent that the Director of the WVDEP is removed from the responsibility (as is required by 30 CFR 774.11(c)) of reviewing permit revisions (such as reviewing as-built plans changes).

CSR 38–2–5.4(c) is approved except to the extent that the provision does not apply to slurry impoundments.

CSR 38–2–12.2(e) is approved to the extent that passive treatment, where it is implemented to achieve compliance with effluent limitations or water quality standards is chemical treatment under the West Virginia program definition of chemical treatment at CFR 38–2–2.20.

§ 38–2–14.3(c) Topsoil substitutes. The Director is deferring action on this proposed amendment because it was inadvertently omitted from the proposed rule notice published on April 23, 1996 (61 FR 17859) that announced the changes submitted by the State.

CSR 38–2–14.14(e)(4) which would allow drainage to be diverted onto valley fills is not approved.

CSR 38–2–14.15(m) is approved to the extent that, with the disposal of coal processing waste in the backfill, the backfill will not exceed the approximate original contour (AOC). If AOC is exceeded, then the disposal of coal processing waste—refuse piles.

3. Section 948.16 is amended by removing and reserving paragraph (rrr), and adding paragraph (vvv) to read as follows:

§ 948.16 Required regulatory program amendments.

* * * * *

(vvv) By January 15, 1997, West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption, to revise the West Virginia program as follows:

(1) Amend the West Virginia program to be consistent with 30 CFR 701.11(e)(2) by clarifying that the exemption at CSR 38–2–3.8(c) does not apply to (1) the requirements for new and existing coal mine waste disposal facilities; and (2) the requirements to

restore the land to approximate original contour.

(2) Amend CSR 38–2–4.12 to reinstate the following deleted language: ''and submitted for approval to the Director as a permit revision.''

(3) Amend the West Virginia program by clarifying that the requirements at CSR 38–2–5.4(c) also apply to slurry impoundments.

(4) Amend CSR 38–2–14.15(m), or otherwise amend the West Virginia program to require compliance with 30 CFR 816/817.81 (b), (d), and (e) regarding coal refuse disposal, foundation investigations and emergency procedures and to clarify that where the coal processing waste proposed to be placed in the backfill contains acid- or toxic-producing materials, such material must not be buried or stored in proximity to any drainage course such as springs and seeps, must be protected from groundwater by the appropriate use of rock drains under the backfill and along the highwall, and be protected from water infiltration into the backfill by the use of appropriate methods such as diversion drains for surface runoff or encapsulation with clay or other material of low permeability.

[FR Doc. 96–18610 Filed 7–23–96; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[VA032–5013, VA030–5014; FRL–5534–4]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Approval of Revised Confidentiality Provisions; Approval and Disapproval of Minor New Source Permit Provisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving in part and disapproving in part State Implementation Plan (SIP) revisions submitted by the Commonwealth of Virginia. This action proposes approval of changes submitted by Virginia in March 1993 to the provisions governing confidentiality of information. This action disapproves the public participation requirements associated with the permitting of minor new sources, and approves all other revisions to Virginia's revised new source permit provisions. The intended effect of this action is to approve those State provisions which meet the requirements of the Clean Air Act, and disapprove those State provisions which do not. This action is being taken under section 110 of the Clean Air Act.

EFFECTIVE DATE: This final rule is effective on August 23, 1996.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia, 23219.

FOR FURTHER INFORMATION CONTACT: Harold A. Frankford, (215) 566–2108 or FRANKFORD.HAROLD@EPAMAIL.EPA.GOV.

SUPPLEMENTARY INFORMATION: On September 12, 1995 (60 FR 47320), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of Virginia. The NPR proposed approval of revised provisions of the Virginia Regulations for the Control and Abatement of Air Pollution, Sections 120–02–30 and 120–08–01 (except for Sections 120–08–01G.1 and –01G.4.b), as well as the definition of ''confidential information.'' EPA also proposed approval of the revised exemption levels of Appendix R, provided that Virginia supply additional documentation that the exemptions provided for wood manufacturing operations and wood sawmills are consistent with all applicable Agency criteria for minor new source permit programs. At the same time, EPA proposed to disapprove the public participation requirements set forth in Sections 120–08–01G.1 and –01G.4.b, and retain in its place the current Virginia SIP-approved public participation provisions of Section 120–08–01C.4.a. The formal SIP revisions were submitted by Virginia on March 18, 1993 and March 29, 1993.

Other specific requirements of Sections 120–01–02C, 120–02–30, 120–08–01, and Appendix R submitted March 18, 1993 and March 29, 1993, and the rationale for EPA's proposed action are explained in the NPR and will not be restated here. In addition, the following provisions of Section 120–08–01 govern sources that are not covered by the SIP, and have neither been reviewed nor evaluated as part of this SIP revision action:

Sections 120–08–01C.1.b, 120–08–01G.4.a, 120–08–01H.1, 120–08–01I.2, and 120–08–01J.2.

Summary of Public Comments and EPA Response

During the public comment period, which ended on October 12, 1995, EPA received two comments. One commenter supported EPA's proposed action to disapprove the revised public participation requirements set forth in Section 120–08–01G.1 and 01G.4. The other commenter raised two issues regarding (1) The scope of the public participation provisions that the SIP should require and (2) the issue of federal enforceability in the definitions of ''allowable emissions'' and ''potential to emit.''

The second commenter urged EPA to approve in its entirety the revised provisions to Section 120–08–01. With regard to the public participation issue, the commenter stated that the public participation provisions in 40 CFR section 51.161 should only apply to federally required new source review programs; they should not apply to the less environmentally significant sources subject to new source review. The commenter further stated its opinion that Virginia has provided reasonable public participation provisions in its proposed revised SIP, allowing public comment or hearing only for the most environmentally significant sources or modifications or sources which have the potential for public interest concerning air quality issues.

However, this commenter also raised the issue that the wording of the definitions ''allowable emissions'' and ''potential to emit'' found in Section 120–08–01B is inconsistent with a recent U. S. Court of Appeals decision on the issue of federal enforceability [*National Mining Association* v. *United States Environmental Protection Agency*, 59 F.3d 1351 (D.C. Cir. 1995)], and that EPA should address this issue. The SIP language requires that control requirements be both state and federally enforceable, while the Court decision holds that such control requirements are acceptable as long as they are either state enforceable or federally enforceable.

EPA provides the following response:

(1) With regard to the commenter's statement regarding EPA's disapproval action, EPA has determined that the thresholds which constitute environmentally significant modifications are specified in the definition of ''significant'' found in both 40 CFR section 51.165(a)(1)(x) and Section 120–08–03C of Virginia's air pollution control regulations. The term

''significant'' is found in the definition of ''major modification,'' which is spelled out in Section 120–08–03C and cross-referenced in Section 120–08–01B. EPA had approved these definitions as a revision to the Virginia SIP on May 4, 1982 (47 FR 19134), and codified them into the SIP at § 52.2420(c)(69). The effective date of this action was June 3, 1982. The exemptions specified in the revised wording of revised Sections 120–08–01G.1 and .01G.4.b exceed both EPA and Virginia's stated thresholds of ''significant''. In this same action, EPA had approved the current public participation provisions found in SIP Section 120–08–01C.4. Since these SIP-approved public participation provisions apply to the public participation requirements for all major modifications, while the wording of revised Sections 120–08–01G.1 and .01G.4.b do not, EPA's decision to disapprove the exemptions specified in Section 120–08–01G and retain the provisions of SIP Section 120–08–01C.4 is not inconsistent with the commenter's recommendations.

The wording of the definitions ''allowable emissions'' and ''potential to emit'' found in revised Section 120–08–01 is consistent with the wording that has been part of the Virginia SIP since it was codified into the Virginia SIP at § 52.2420(c)(69) [see above]. Accordingly, the court decision referred to by the commenter does not require EPA to revise these provisions in this action, since they represent both current State law and currently Federally-enforceable SIP wording.

Additional Information Provided by Virginia

Virginia has also supplied the additional documentation requested by EPA pertaining to the impact of the exemptions provided for wood manufacturing operations and wood sawmills on the applicable Agency criteria for minor new source permit programs. In a March 18, 1996 letter, Virginia stated that the sawmills and wood manufacturing operations being exempted from the permitting requirements will not significantly contribute to ambient levels of PM_{10} standards. Virginia reached this conclusion on the basis that (1) Most sawmill operations are located in highly rural areas, and (2) such operations would emit particulate matter whose size would exceed 10 microns, and therefore would not contribute to ambient PM_{10} levels. Currently, there are no PM_{10} nonattainment areas in Virginia.

EPA has reviewed the emissions inventory available from the Aerometric Information Retrieval System (AIRS) database, and agrees with these conclusions. The inventory reveals the presence of 68 sources that fall under SIC code 2491 [Sawmills and Planing Mills-General]. However, fewer than 15 sources in the entire Commonwealth are classified solely as wood sawmills. All of these sources are classified as ''B'' or minor sources. Therefore, EPA is satisfied with Virginia's explanation that the exemptions found in Appendix R will not affect applicable ambient air quality levels or PSD increments.

Final Action

EPA is approving the revisions to Virginia Regulations 120–08–02C (definition of ''confidential information'') and 120–02–30 submitted by Virginia on March 18, 1993, as well as the revisions to Section 120–08–01 (except as noted below) and Appendix R submitted by Virginia on March 29, 1993 as revisions to the Virginia SIP. At the same time, EPA is disapproving the revisions to Section 120–08–01G.1 and G.4.b submitted by Virginia on March 29, 1993 as revisions of the Virginia SIP.

Accordingly, EPA is revising 40 CFR 52.2420 (Identification of plan) to reflect EPA's approval action. At the same time, EPA is revising 40 CFR 52.2423 (Approval status) to (1) Make the public aware that in addition to Virginia's criteria, EPA has its own criteria (40 CFR part 2) for determining what information submitted by a State in support of a Federal action (such as a SIP revision request) can be kept confidential; and (2) announce EPA's disapproval of revised provisions to Section 120–08–01G.1 and .01G.4.b as revisions of the Virginia SIP.

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

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal approval action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. This Federal disapproval action maintains pre-existing Federal requirements that have been in effect since June 3, 1982. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

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

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

Similarly, EPA's disapproval of portions of the State request under Section 110 and subchapter I, part D of the CAA does not affect any existing requirements applicable to small entities. Any pre-existing federal requirements remain in place after this disapproval. Federal disapproval of the state submittal does not affect its state-enforceability. Moreover, EPA's disapproval of the submittal does not impose any new Federal requirements. Therefore, EPA certifies that this

disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements and impose any new Federal requirements.

Under section 801(a)(1)(A) of the Administrative Procedures Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a ''major rule'' as defined by section 804(2) of the APA as amended.

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 23, 1996. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action to approve Virginia's air quality provisions governing confidentiality of information requirements, as well as to partially approve and partially disapprove Virginia's air quality provisions governing minor new source permitting, may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: June 21, 1996.

Stanely L. Laskowski,

Acting Regional Administrator, Region III.

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

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart VV—Virginia

2. Section 52.2420 is amended by adding paragraphs (c)(108) and (c)(109) to read as follows:

§ 52.2420 Identification of plan.

* * * * *

(c) * * *

(108) Revisions to the Virginia Regulations for the Control and Abatement of Air Pollution submitted on March 18, 1993 by the Virginia Department of Air Pollution Control:

(i) Incorporation by reference.

(A) Letter of March 18, 1993 from the Virginia Department of Air Pollution Control transmitting revisions governing confidentiality of information.

(B) Revisions to Virginia regulations sections 120–01–02C. (definition of ''confidential information'') and 120–02–30 (revisions to paragraphs 30A. and 30B.; addition of paragraphs 120–02–30C. through 30E.), adopted October 30, 1992 and effective February 1, 1993.

(ii) Additional material.

(A) Remainder of the March 18, 1993 State submittal pertaining to both the definition of ''confidential information'' and the revised provisions to Section 120–02–30.

(109) Revisions to the Virginia Regulations for the Control and Abatement of Air Pollution submitted on March 29, 1993 by the Virginia Department of Air Pollution Control:

(i) Incorporation by reference.

(A) Letter of March 29, 1993 from the Virginia Department of Air Pollution Control transmitting revisions governing confidentiality of information.

(B) The following provisions of the Virginia regulations, adopted October 30, 1992 and effective January 1, 1993.

(*1*) Revisions to Sections 120–08–01A.; 120–08–01C.4; 120–08–01D.; 120–08–01F. [former SIP Section 120–08–01G.]; 120–08–01G. (except for paragraphs .01G.1, .01G.4.a, and .01G.4.b); 120–08–01H. (except for paragraph .01H.1) [former SIP Section 120–08–01F, except for paragraph .01F.2]; 120–08–01I. (except for paragraph .01I.2) [former SIP Section 120–08–01L., except for paragraph .01L.2]; 120–08–01J. [former SIP Section 120–08–01H.]; 120–08–01K.; 120–08–01L. [former SIP Section 120–08–01J.]; 120–08–01M. [former SIP Section 120–08–01K.]; 120–08–01P. [former SIP Section 120–08–01M.]; Addition of Sections 120–08–01N and 120–08–01O.

(*2*) Revisions to to following definitions in Section 120–08–01B.: ''allowable emissions,'' ''commence,'' ''federally enforceable,'' ''modification,'' ''potential to emit,'' ''secondary emissions'' and ''stationary source.''

(*3*) Revisions to Appendix R, Sections I (title only), II.A, II.P, II.Q (added), II.R (added), III.A, III.C, III.E, III.G, III.I, III.L, III.T, III.U, IV., V., and VIII.

(ii) Additional material.

(A) Remainder of the March 29, 1993 State submittal pertaining to the revisions to Section 120–08–01 (except for paragraphs .01G.1, .01G.4.a, .01G.4.b, .01H.1, .01I.2, and .01J.2) and Appendix R listed in paragraphs (c)(109)(i)(B) (*1*) through (*3*) of this section.

(B) Letter of March 18, 1996 from the Virginia Department of Environmental Quality, Air Division, clarifying the effect of the exemption of wood sawmills from the provisions of Section 120–08–01 (Appendix R, Section II.R).

* * * * *

3. Section 52.2423 is amended by adding paragraphs (o) and (p) to read as follows:

§ 52.2423 Approval status.

* * * * *

(o) EPA approves the revised confidentiality of information provisions of Sections 120–02–30, submitted by the Virginia Department of Air Pollution Control on March 18, 1993, as revisions to the Virginia SIP. However, should Virginia submit a SIP revision request on behalf of a source, which contains information that has been judged confidential under the provisions of Section 120–02–30, Virginia must request EPA to consider confidentiality according to the provisions of 40 CFR part 2. EPA is obligated to keep such information confidential only if the criteria of 40 CFR part 2 are met.

(p) EPA disapproves the revised public participation provisions of Sections 120–08–01G.1 and 120–08–01G.4.b, submitted by the Virginia Department of Air Pollution Control on March 29, 1993, as revisions to the Virginia SIP. These revised provisions do not meet the requirements of 40 CFR 51.160 and 51.161. In its place, EPA retains the SIP provisions of Section 120–08–01C.1.a and 01C.4.b through d. as originally approved at §§ 52.2420(c)(69) [SIP section 2.33(a)(5)(ii)] and subsequently revised, due to format changes, at §§ 52.2420(c)(89)(i)(B)(*7*) [SIP section 120–08–01C.4.b].

[FR Doc. 96–18645 Filed 7–23–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[TN–173–9637a; FRL–5538–2]

Approval and Promulgation of Implementation Plans Tennessee: Approval of Source Specific Nitrogen Oxide Permits Into the Tennessee State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: In this action, EPA is approving two source specific permits into the Tennessee State Implementation Plan (SIP) submitted to EPA by Tennessee, through the Tennessee Department of Air Pollution Control (TDAPC) which limit nitrogen oxide (NO_X) emissions for certain engines at the Tenneco Energy Portland facility located in Sumner County, Tennessee. These permits are necessary because NO_X reductions from the Tenneco Energy Portland facility were used in calculating the NO_X emissions projections in the maintenance plan for the Middle Tennessee ozone nonattainment area. EPA is proposing approval of the ozone redesignation request in a separate action.

DATES: This final rule is effective September 23, 1996 unless adverse or critical comments are received by August 23, 1996. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Written comments on this action should be addressed to William Denman at the Environmental Protection Agency, Region 4 Air Programs Branch, 345 Courtland Street, NE, Atlanta, Georgia 30365. Copies of documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day. Reference file TN173–01–9637. The Region 4 office may have additional background documents not available at the other locations.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Environmental Protection Agency, Region 4 Air Programs Branch, 345 Courtland Street, NE, Atlanta, Georgia 30365, William Denman, 404/347–3555 extension 4208.

Tennessee Department of Environment and Conservation, Division of Air Pollution Control, L & C Annex, 9th Floor, 401 Church Street, Nashville, Tennessee 37243–1531, 615/532–0554.

FOR FURTHER INFORMATION CONTACT: William Denman 404/347–3555 extension 4208.

SUPPLEMENTARY INFORMATION: On May 31, 1996, Tennessee, through the Tennessee Department of Air Pollution Control (TDAPC), submitted to EPA for incorporation into the SIP, two permits which limit nitrogen oxide (NO_X) emissions for certain engines at the Tenneco Energy Portland facility located in Sumner County, Tennessee. The permits contain requirements and emission limits for reciprocating engines and auxiliary generators which are used for the purpose of pumping natural gas.

The first permit (#045022F) was issued to the Midwestern Gas Transmission Company, Compressor Station 2101 which operates 3 Ingersoll Rand KVS–412 (2000 horsepower [hp]), 1 Ingersoll Rand KVT–512 (3000 hp), and 1 Cooper-Bessemer 8V–250 (2700 hp) reciprocating engines at the Portland facility. This operating permit contains a provision which requires clean-burn retrofit to be utilized on Ingersoll-Rand KVS–412 engine 1A and Cooper-Bessemer 8V–250 engine 5A. Engine 1A is required to have an emission rate not exceeding 18.01 grams per hp-hour and engine 5A is required to have an emission rate not exceeding 8.55 grams per hp-hour.

The second permit (#045025F) was issued to Tennessee Gas Pipeline which operates 33 Cooper-Bessemer two-cycle reciprocating engines with a total of 49,700 hp and 7 Ingersoll Rand four-cycle auxiliary generators with a total of 2,704 hp. This permit prohibits engine number three (Cooper-Bessemer 16V–250 rated at 550 hp) from operating without installing a clean-burn retrofit modification and limits the emission rate to not exceed 3.6 grams per hp-hour. Also, this permit requires that parametric controls be used on engines 1 and 2 (Cooper-Bessemer GMWC–10 rated at 3400 hp each) and limits the emission rate of these engines to 37.3 grams per hp-hour.

The NO_X controls and limits in these two permits must be approved into the Tennessee SIP prior to the approval of the Middle Tennessee ozone redesignation request because NO_X reductions from the Tenneco Energy Portland facility were used in calculating the NO_X emissions projections in the maintenance plan for the Middle Tennessee ozone nonattainment area.

These permits, which provide NO_X emission controls, are not being approved as meeting the NO_X Reasonably Available Control Technology (RACT) requirements of the Clean Air Act (CAA) because EPA is granting a NO_X RACT exemption for the Middle Tennessee ozone nonattainment area under 182(f) of the CAA in a separate action. If the Middle Tennessee ozone nonattainment area violates the ozone standard prior to the final approval of the ozone redesignation request, the NO_X RACT exemption will become void and all major NO_X sources located in the nonattainment area will be subject to the federal NO_X RACT requirements of the CAA.

Final Action

The EPA is approving the aforementioned permits into the Tennessee SIP because they are consistent with the CAA and EPA policy. This rule making is being published without a prior proposal for approval because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this Federal Register publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective September 23, 1996 unless, by August 23, 1996, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the separate proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective September 23, 1996.

Under section 307(b)(1) of the Clean Air Act (CAA), 42 U.S.C. 7607(b)(1), petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 23, 1996. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section

307(b)(2) of the CAA, 42 U.S.C. 7607(b)(2).)

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

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

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2) and 7410(k)(3).

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

Through submission of this state implementation plan or plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under Section 182 of the CAA. These rules may bind State, local and tribal governments to perform certain actions and also require the private sector to perform certain duties. EPA has examined whether the rules being approved by this action will impose any new requirements. Since such sources are already subject to these regulations under State law, no new requirements are imposed by this approval. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action, and therefore there will be no significant impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: July 2, 1996.

A. Stanley Meiburg,

Acting Regional Administrator.

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

PART 52—[AMENDED]

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

Authority: 42.U.S.C. 7401–7671q.

Subpart RR—Tennessee

2. Section 52.2220 is amended by adding paragraph (c)(142) to read as follows:

§ 52.2220 Identification of plan.

* * * * *

(c) * * *

(142) Addition of two source specific nitrogen oxide (NOx) permits for certain engines at Tenneco Energy's Portland facility located in Sumner County, Tennessee, submitted by the Tennessee Department of Air Pollution Control (TDAPC) to EPA on May 31, 1996.

(i) Incorporation by reference.

(A) Operating Permit number 045022F, approved on May 31, 1996, except conditions 2, 3, 6, and 7.

(B) Operating Permit number 045025F, approved on May 31, 1996, except conditions 2, 4, and 5.

(ii) Other material. None.

[FR Doc. 96–18646 Filed 7–23–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 271

[FRL–5534–2]

South Dakota: Final/Interim Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency.

ACTION: Final rule on application of South Dakota for program revision.

SUMMARY: South Dakota has applied for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) has reviewed South Dakota's application and has reached a decision that South Dakota's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Thus, EPA is granting final authorization to South Dakota to operate its expanded program, subject to the authority retained by EPA in accordance with the Hazardous and Solid Waste Amendments of 1984.

EFFECTIVE DATE: Final authorization for South Dakota shall be effective at 1:00 p.m. on September 23, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. Kris Shurr (8P2–SA), State Assistance Program, 999 18th Street, Ste 500, Denver, Colorado 80202–2466, Phone: 303/312–6139.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under Section 3006(b) of the Resource Conservation and Recovery Act (''RCRA''), 42 U.S.C. 6929(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. In addition, as an interim measure, the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98–616, November 8, 1984, hereinafter ''HSWA'') allows States to revise their programs to become substantially equivalent instead of equivalent to RCRA requirements promulgated under HSWA authority. States exercising the latter option receive ''interim authorization'' for the HSWA requirements under Section 3006(g) of RCRA, 42 U.S.C. 6926(g), and later apply for final authorization for the HSWA requirements.

Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes

occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR Parts 260–266 and 124 and 270.

B. South Dakota

South Dakota initially received final authorization on November 2, 1984. South Dakota received authorization for revisions to its program on June 17, 1991, November 8, 1993, and March 11, 1994. On October 2, 1995, South Dakota submitted a final program revision application for additional program approval.

EPA has reviewed South Dakota's application and has made a final decision that South Dakota's hazardous waste program revisions, which adopt Federal rules by reference, satisfy all of the requirements necessary to qualify for final authorization. Consequently, EPA is granting final authorization for the additional program modifications listed in Table 1 to South Dakota.

Today, South Dakota is seeking approval of its program revision in accordance with 40 CFR 271.21(b)(3). Specific provisions which are included in the South Dakota program authorization revision sought today are listed in Table 1 below.

TABLE 1

HSWA or FR reference	State equivalent [1]
Land Disposal Restrictions (Solvents and Dioxins), 51 *FR* 40572, 11/07/86; 52 *FR* 25760, 07/08/87; and 53 *FR* 31138, 08/17/88.	74:28:01:02, 74:28:22:01, 74:28:23:01, 74:28:24:01, 74:28:25:01, 74:28:26:01, 74:28:28:01, and 74:28:30:01.
California List Waste Restrictions, 51 *FR* 40572, 11/07/86; 52 *FR* 25760, 07/08/87; and 53 *FR* 31138, 08/17/88.	74:28:21:02, 74:28:23:01, 74:28:25:01, 74:28:26:01, 74:28:28:01, and 74:28:30:01.
Land Disposal Restrictions for First Third Scheduled Wastes, 51 *FR* 40572, 11/07/86; 52 *FR* 25760, 07/08/87; and 53 *FR* 31138, 08/17/88.	74:28:25:01, 74:28:27:01, 74:28:28:01, and 74:28:30:01.
Changes to Interim Status Facilities for Hazardous Waste Management Permits; Modifications of Hazardous Waste Management Permits; Procedures for Post-Closure Permitting, 54 *FR* 9596, 03/07/89.	74:28:26:01, and Memorandum of Agreement.
Land Disposal Restrictions Amendments to First Third Scheduled Wastes, 54 *FR* 18836, 05/02/89.	74:28:30:01.
Delay of Closure Period for Hazardous Waste Management Facilities, 54 *FR* 33376, 08/14/89.	74:28:25:01, 74:28:26:01, and 74:28:28:01.
Land Disposal Restrictions for Second Third Scheduled Wastes, 54 *FR* 26594, 6/23/89.	74:28:30:01.
Land Disposal Restrictions; Correction to the First Third Scheduled Wastes, 54 *FR* 36967, 09/06/89.	74:28:27:01, and 74:28:30:01.
Land Disposal Restrictions for Third Third Scheduled Wastes, 55 *FR* 22520, 6/01/90.	74:28:22:01, 74:28:23:01, 74:28:25:01, 74:28:26:01, 74:28:28:01, and 74:28:30:01.
Petroleum Refinery Primary and Secondary Oil/Water/Solids Separation Sludge Listings (F037 & F038), 55 *FR* 46354, 11/02/90 and 55 *FR* 51707, 12/17/90.	74:28:22:01.
Land Disposal Restrictions for Third Third Scheduled Wastes; Technical Amendment, 56 *FR* 3864, 01/31/91.	74:28:22:01, 74:28:23:01, 74:28:26:01, and 74:28:30:01.
Burning of Hazardous Waste in Boilers and Industrial Furnaces, 56 *FR* 7134, 02/21/91.	74:28:21:01, 74:28:22:01, 74:28:25:01, 74:28:26:01, 74:28:27:01, and 74:28:28:01.
Removal of Strontium Sulfide from the List of Hazardous Waste; Technical Amendment, 56 *FR* 7567, 02/25/91.	74:28:22:01.
Organic Air Emission Standards for Process Vents & Equipment Leaks; Technical Amendment, 56 *FR* 19290, 04/26/91.	74:28:25:01, 74:28:26:01, and 74:28:28:01.
Administrative Stay for K069 Listing, 56 *FR* 19951, 05/01/91.	74:28:22:01.
Revision to the Petroleum Refinery Primary and Secondary Oil/Water/Solids Separation Sludge Listings (F037 and F038), 56 *FR* 21955, 05/13/91.	74:28:22:01.
Mining Waste Exclusion III, 56 *FR* 27300, 06/13/91.	74:28:22:01.
Wood Preserving Listings, 56 *FR* 27332, 06/13/91.	74:28:22:01, 74:28:25:01, and 74:28:28:01.
Surface Impoundment Requirements—3005(j).	74:28:29:01.

[1] References are to the South Dakota Department of Environment and Natural Resources Title 74, Article 74:28 Hazardous Waste.

During EPA review of South Dakota's program revision application, EPA had two (2) concerns, which South Dakota has subsequently addressed to EPA's satisfaction.

The first issue dealt with public access to information. In previous program revision applications and in its Memorandum of Agreement (MOA) with EPA, the state has agreed to make records available to the fullest extent possible, subject to state law and federal Freedom of Information Act exemptions. However, South Dakota Codified Law 1–26–2 states: ''An agency shall hold confidential materials derogatory to a person but such information shall be available to the person to whom it relates.'' EPA's concern was that there is no standard set forth in the statute explaining derogatory or who is to make such a determination. South Dakota has made a change in its MOA which states that South Dakota will notify EPA if SDCL 1–26–2 is used to deny access to information. Further, the Attorney General's office has agreed to address this issue in its next program revision application.

The second issue was contained in South Dakota's recently passed self-audit immunity law. One of the statements contained in the law states: ''If a state program is required in writing by a federal agency to assess penalties for a violation in order to maintain primacy over a federally-delegated program, or if violations caused damage to human health or the environment, the * * * Act does not apply.'' South Dakota confirmed on June 6, 1996, that the state considers Enforcement Agreements with EPA as meeting the

definition of ''in writing by a federal agency''. The Attorney General's Office has agreed to also address this issue in the next program revision application submitted by South Dakota.

Indian Reservations

The program revision does not extend to ''Indian Country'' as defined in 18 U.S.C. Section 1151, including lands within the exterior boundaries of the following Indian reservations located within or abutting the State of South Dakota:

1. Cheyenne River Indian Reservation.
2. Crow Creek Indian Reservation.
3. Flandreau Indian Reservation.
4. Lake Traverse Indian Reservation.
5. Lower Brule Indian Reservation.
6. Pine Ridge Indian Reservation.
7. Rosebud Indian Reservation.
8. Standing Rock Indian Reservation.
9. Yankton Indian Reservation.

In excluding Indian Country from the scope of this program revision, EPA is not making a determination that the State either has adequate jurisdiction or lacks jurisdiction over sources in Indian Country. Should the State of South Dakota choose to seek program authorization within Indian Country, it may do so without prejudice. Before EPA would approve the State's program for any portion of Indian Country, EPA would have to be satisfied that the State has authority, either pursuant to explicit Congressional authorization or applicable principles of Federal Indian law, to enforce its laws against existing and potential pollution sources within any geographical area for which it seeks program approval and that such approval would constitute sound administrative practice.

There are no EPA-issued RCRA permits in Indian Country at this time.

C. Decision

I conclude that South Dakota's application for program revision meets all of the statutory and regulatory requirements established by RCRA. Accordingly, South Dakota is granted final authorization to operate its hazardous waste program as revised. South Dakota now has responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out other aspects of the RCRA program described in its revised program application, subject to the limitations of the HSWA. South Dakota also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under Section 3007 of RCRA and to take enforcement actions under Sections 3008, 3013 and 7003 of RCRA.

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of Section 6 of Executive Order 12866.

Certification Under the Regulatory Flexibility Act

EPA has determined that this authorization will not have a significant economic impact on a substantial number of small entities. EPA recognizes that small entities may own and/or operate TSDFs that will become subject to the requirements of an approved state hazardous waste program. However, since such small entities which own and/or operate TSDFs are already subject to the requirements in 40 CFR Parts 264, 265 and 270, this authorization does not impose any additional burdens on these small entities. This is because EPA's authorization would result in an administrative change (i.e., whether EPA or the state administers the RCRA Subtitle C program in that state), rather than result in a change in the substantive requirements imposed on small entities. Once EPA authorizes a state to administer its own hazardous waste program and any revisions to that program, these same small entities will be able to own and operate their TSDFs under the approved state program, in lieu of the federal program. Moreover, this authorization, in approving a state program to operate in lieu of the federal program, eliminates duplicative requirements for owners and operators of TSDFs in that particular state.

Therefore, EPA provides the following certification under the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act. Pursuant to the provision at 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively approves the South Dakota program to operate in lieu of the federal program, thereby eliminating duplicative requirements for handlers of hazardous waste in the state. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Submission to Congress and the General Accounting Office

Under section 801(a)(1)(A) of the Administrative Procedures Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a ''major rule'' as defined by section 804(2) of the APA as amended.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UNRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no Federal mandates for State, local or tribal governments or the private sector. The Act excludes from the definition of a ''Federal mandate'' duties that arise from participation in a voluntary Federal program, except in certain cases where a ''federal intergovernmental mandate'' affects an annual federal entitlement program of $500 million or more that are not applicable here. South

Dakota's request for approval of RCRA program revisions to its authorized hazardous waste program is voluntary and imposes no Federal mandate within the meaning of the Act. Rather, by having its hazardous waste program revision approved, the State will gain the authority to implement the program within its jurisdiction, in lieu of EPA thereby eliminating duplicative State and Federal requirements. If a State chooses not to seek authorization for administration of a hazardous waste program under RCRA Subtitle C, RCRA regulation is left to EPA.

In any event, EPA has determined that this rule does not contain a Federal mandate that may result in expenditures $100 million or more for State, local, and tribal governments in the aggregate, or the private sector in any one year. EPA does not anticipate that the approval of South Dakota 's hazardous waste program revison referenced in today's notice will result in annual costs of $100 million or more. EPA's approval of state programs generally may reduce, not increase, compliance costs for the private sector since the State, by virtue of the approval, may now administer the program in lieu of EPA and exercise primary enforcement. Hence, owners and operators of treatment, storage, or disposal facilities (TSDFs) generally no longer face dual Federal and State compliance requirements, thereby reducing overall compliance costs. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. The Agency recognizes that small governments may own and/or operate TSDFs or that will become subject to the requirements of an approved State hazardous waste program revision. However, such small governments which own and/or operate TSDFs are already subject to the requirements in 40 CFR parts 264, 265, and 270 and are not subject to any additional significant or unique requirements by virtue of this program approval. Once EPA authorizes a State to administer its own hazardous waste program and any revisions to that program, these same small governments will be able to own and operate their TSDFs under the approved State program, in lieu of the Federal program.

Authority: This notice is issued under the authority of Sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: June 25, 1996.

Jack W. McGraw,

Acting Regional Administrator

[FR Doc. 96–18659 Filed 7–23–96; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 417

[OMC-009-FC]

RIN 0938-AG92

Medicare Program; Qualified Health Maintenance Organizations

CFR Correction

In title 42 of the Code of Federal Regulations, parts 400 to 429, revised as of October 1, 1995, on pages 587 through 599, §§ 417.912 through 417.919, 417.921 through 417.926, 417.932, 417.933, 417.935, and 417.936 were inadvertently published and should be removed.

BILLING CODE 1505-01-D

42 CFR Parts 431, 433, 440, 441, 447, and 456

[MB–099–F]

RIN 0938–AH31

Medicaid Program; Medicaid Eligibility Quality Control, Progressive Reductions in Federal Financial Participation for FYs 1982–1984, Payment for Physician Billing for Clinical Laboratory Services, and Utilization Control of Skilled Nursing Facility Services: Removal of Obsolete Requirements

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: This final rule removes several obsolete sections of the Medicaid regulations that specify rules and procedures for disallowing Federal financial participation for erroneous medical assistance payments due to eligibility and beneficiary liability errors as detected through the Medicaid eligibility quality control program for assessment periods from 1980 through June 1990. The Medicaid regulations that contain the rules and procedures for the progressive reductions in Federal financial participation in medical assistance expenditures made to the States for fiscal years 1982 through 1984 are removed to reflect the repeal of the statutory bases for the reductions. The Medicaid regulations that provide for physician billing for clinical laboratory services that a physician bills or pays for but did not personally perform or supervise are removed to reflect the statutory repeal of this provision. In addition, the rule removes obsolete regulations that prescribe requirements concerning utilization control of Medicaid services furnished in skilled nursing facilities.

This rule is part of the Department's initiative to reinvent health care regulations and eliminate obsolete requirements.

EFFECTIVE DATE: These regulations are effective on August 23, 1996.

FOR FURTHER INFORMATION CONTACT:

Mary Linda Morgan (410) 786–2011, Medicaid Eligibility Quality Control and Reductions in FFP for FYs 1982–1984 Issues

Linda Peltz (410) 786–3399, Utilization Control of Skilled Nursing Facilities Issues

Robert Weaver (410) 786–5914, Laboratory Services Issues.

SUPPLEMENTARY INFORMATION:

I. Reinventing Regulations Effort

Last year, the Department began an initiative to assist in meeting the Administration's commitment to reinventing government regulations. As part of this effort, we began to examine the requirements contained in regulations issued by HCFA governing the Medicare and Medicaid programs to determine which requirements could be reduced or eliminated while assuring that we continually improve the quality of services to Medicaid and Medicare beneficiaries. This rule is a result of part of our efforts in this regard to eliminate obsolete and burdensome requirements.

II. Medicaid Eligibility Quality Control Program

Under the Medicaid program, States are required to operate a Medicaid eligibility quality control (MEQC) program. The program is designed to reduce erroneous expenditures in medical assistance payments by monitoring eligibility determinations. Under the MEQC program, States are required to select a sample of cases every month and review them for eligibility errors. HCFA annually calculates each States' error rate on the basis of State review findings. Federal financial participation (FFP) in State medical assistance expenditures is

disallowed to the extent that a State has a Medicaid eligibility quality control payment error rate that is above a statutorily specified target error rate or national standard. HCFA may waive all or part of the disallowance under specific circumstances.

The current statutory authority for disallowances of payments in erroneous State medical assistance expenditures and for consideration of waiver requests is contained in section 1903(u) of the Social Security Act (the Act). The authority for disallowance determinations and the specified national target error rate have changed over the years since the original legislation was enacted in 1978. The HCFA regulations that contain the conditions under which disallowances are taken for erroneous State medical assistance expenditures if errors exceed the national error rate standards are contained in 42 CFR 431.861 through 431.865. Because the legislation governing the national target error rates and how disallowances are taken has changed frequently over the years, the existing regulations contain conditions and requirements for specified periods, that is, the period prior to September 1980 (§ 431.861); interim periods of October 1, 1980 through September 30, 1982 (§ 431.862), April 1 through December 31, 1983 (§ 431.863), and January 1, 1984 through June 30, 1990 (§ 431.864); and the period effective beginning July 1, 1990 (§ 431.865). We found it was necessary in the past to retain the regulatory provisions for periods prior to July 1, 1990, because of pending reconsiderations of proposed disallowances for State medical assistance expenditures based on expenditure reports for these prior periods and the processing of waiver requests related to these prior periods. The pre-July 1, 1990 provisions are now obsolete and we are therefore deleting them from the Code of Federal Regulations (CFR). We are deleting §§ 431.861 through 431.864.

III. Progressive Reductions in FFP for Fiscal Years 1982 Through 1984

Sections 1903 (s) and (t) of the Act (as enacted by sections 2161(a) and (b) of the Medicare and Medicaid Amendments of 1981 (Pub. L. 97–35)) provided for progressive reductions in total Federal payments to the States for medical assistance expenditures to which they were entitled for fiscal years 1982 through 1984. The reductions applied only to the 49 States with Medicaid programs in operation under State plans approved by HCFA as of July 1, 1981, and to the District of Columbia. The provisions in section 1903(s) of the Act were effective August 13, 1981, and repealed by the same enacting legislation, effective for calendar quarters beginning on or after October 1, 1984. The provisions in section 1903(t) of the Act were effective August 13, 1981, and repealed by the same enacting legislation, effective after payments for the first quarter of fiscal year 1985.

Sections 433.8 and subpart E of part 433 (§§ 433.201 through 433.217) implemented sections 1903 (s) and (t) of the Act. We are deleting these regulations to reflect the repeal of sections 1903 (s) and (t) of the Act by section 2161(c) of the Medicare and Medicaid Amendments of 1981.

IV. Payment for Physician Billing for Clinical Laboratory Services

Section 1902(a)(32) of the Act prohibits Medicaid payments to anyone other than the provider of services, except in specified circumstances. This restriction is commonly referred to as the direct payment provision and is implemented in § 447.10. From 1980 to 1984, section 1902(a)(43) of the Act provided an exception for physician billing of laboratory services which a physician did not personally perform or supervise. Specifically, section 1902(a)(43) of the Act provided that, if the State plan provides for payment to a physician for laboratory services for which the physician (or any other physician with whom he shares his practice) did not personally perform or supervise, the plan must include a provision to ensure that payment for such laboratory services does not exceed the payment authorized for such services under Medicare. Section 2303(g)(1)(B) of the Deficit Reduction Act of 1984 (DRA '84) (Pub. L. 98–369) deleted section 1902(a)(43) of the Act.

Sections 447.10(g)(1) and 447.342 implemented section 1902(a)(43) of the Act. Section 447.10(g)(1) provides that payment may be made to a physician who bills for outside laboratory services that the physician orders and pays for, but that he or she did not personally perform or supervise, or which were not performed or supervised by another physician with whom he or she shares a practice. Section 447.342 specifies that if a State plan provides for payment to a physician who bills for clinical laboratory services performed by an outside laboratory, the State plan must provide that the agency will not pay the physician more than the amount that would be authorized under Medicare.

We are deleting §§ 447.10(g)(1) and 447.342 to reflect the deletion of section 1902(a)(43) of the Act by DRA '84.

V. Utilization Control: Skilled Nursing Facilities

Section 1902(a)(30) of the Act requires each State Medicaid agency to have methods and procedures to safeguard against unnecessary utilization of care and services. In addition to this general provision, State Medicaid agencies are required to meet a number of specific requirements for certain institutional providers. The utilization control requirements are set forth in the regulations at 42 CFR part 456.

Prior to the implementation of the Omnibus Budget and Reconciliation Act of 1987 (OBRA '87) (Pub. L. 100–203), the Medicaid statute made a distinction between skilled nursing facility (SNF) and intermediate care facility (ICF) services. The Medicaid statute contained separate certification requirements for facilities providing each type of long-term care. Section 1905(a)(4) of the Act authorized coverage of inpatient services furnished in facilities that met the SNF requirements. Section 1905(a)(15) of the Act provided for coverage of inpatient services in facilities certified to provide ICF services.

OBRA '87 significantly revised the Medicaid requirements for long-term care facility services. The legislation created a new Medicaid benefit category called ''nursing facility (NF) services'' that, effective October 1, 1990, replaced the Medicaid SNF and ICF benefits. NFs participating in the Medicaid program must now meet certain requirements specified in section 1919 of the Act. Among the reform provisions was an entirely new process, called preadmission screening and annual resident review (PASARR), which requires States to determine the need for admitting or retaining individuals with mental illness or mental retardation who are applicants to or residents of NFs, and to determine whether these persons require specialized services. The NF requirements are codified in the regulations at 42 CFR part 483, subparts B and D, and part 488. The PASARR requirements are codified in the regulations at 42 CFR part 483, subparts C and E.

The utilization control regulations relating to SNF services at 42 CFR part 456 are obsolete because they implement the utilization control process that was in effect before the implementation of the nursing home reform provisions in OBRA '87. Formerly, sections 1902(a) (30), (31), and (44), 1903(g)(1), and 1903(i)(4) of the Act contained requirements for monitoring and controlling utilization of SNF services. Specifically, section

1902(a)(30)(A) of the Act required each State to have methods and procedures relating to utilization of care and services and further required State procedures to include facility-based utilization review plans for SNF services as described in section 1903(i)(4) of the Act. Furthermore, section 1902(a)(30)(B) of the Act required SNFs to screen each admission and precluded certain medical and other professional personnel from establishing criteria for utilization review in SNFs. Section 1902(a)(31) (formerly in section 1902(a)(26)) of the Act required States to establish medical review programs for SNF services. State medical review programs had to (1) ensure that SNF services were furnished in accordance with a written plan of care and be periodically reviewed, and (2) provide for on-site inspections of the care being provided to Medicaid patients in each SNF by State inspection teams who would report their findings to the State Medicaid agency. Section 1902(a)(44) of the Act required the medical necessity of a Medicaid patient's initial placement and continued stay to be certified by a physician, a nurse practitioner, or clinical nurse specialist. Section 1903(g)(1) of the Act provided for a reduction in Federal matching funds for extended inpatient stays unless the State Medicaid agency could satisfactorily demonstrate that it had an effective program of medical review for SNF services. Section 1903(i)(4) of the Act precluded Federal matching payments for inpatient services provided by a SNF unless its utilization review plan met the Medicare standards.

All of the utilization control provisions mentioned above that applied to SNF services were stricken from the Medicaid statute by OBRA '87. Specifically, OBRA '87 made the following deletions to the Act:

- The utilization review requirements in sections 1902(a)(30)(B) and 1903(i)(4) of the Act were deleted by sections 4211(h)(3) and 4211(i) of OBRA '87, respectively.
- The medical review requirements in section 1902(a)(31) of the Act were deleted by section 4212(d)(2) of OBRA '87.
- The certification and recertification of need requirements in section 1902(a)(44) of the Act were deleted by section 4212(e)(1)(A) of OBRA '87.
- The reduction in Federal matching funds provision in section 1903(g) of the Act was deleted by 4212(d)(1) of OBRA '87.

We are removing all of the regulations that contain utilization control requirements for SNFs to reflect the elimination of those provisions from the Medicaid statute made by OBRA '87.

VI. Other Technical Changes

In conjunction with the deletions discussed above in this preamble, we are making the following technical changes:

- We are deleting references to section 1902(a)(43) of the Act and §§ 447.10 and 447.342 associated with payment for physician billing for clinical laboratory services in §§ 440.1, 447.10(a), and 447.300.
- We are deleting references associated with utilization control of SNFs in parts 441 and 456 of the regulations.

VII. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the Federal Register and invite prior public comment on proposed rules. The notice of proposed rulemaking includes a reference to the legal authority under which the rule is proposed, and describes the terms and substances of the proposed rule and the subjects and issues involved. This procedure can be waived, however, if an agency finds good cause that notice-and-public-comment rulemaking is impracticable, unnecessary, or contrary to the public interest and incorporates a statement of the finding and its reasons in the rule issued.

This final rule merely removes regulations that contain obsolete provisions and regulations implementing parts of the Social Security Act that have been repealed. This final rule also makes related technical corrections. Therefore, we find good cause to waive the notice of proposed rulemaking procedures as impracticable and unnecessary and to issue this rule in final form.

VIII. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995.

IX. Regulatory Impact Statement

Consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), we prepare a regulatory flexibility analysis unless we certify that a rule will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, all health care providers and facilities are considered to be small entities. Individuals and States are not included in the definition of a small entity.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

In keeping with the Administration's commitment to reinvent government regulations, this final rule merely removes regulations that contain obsolete provisions and makes related technical corrections. For these reasons, we are not preparing analyses for either the RFA or section 1102(b) of the Act because we have determined, and we certify, that this final rule will not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals.

In accordance with the provisions of Executive Order 12866, this regulation was not reviewed by the Office of Management and Budget.

Under the provisions of Pub. L. 104–121, we have determined that this rule is not a major rule.

List of Subjects

42 CFR Part 431

Grant programs-health, Health facilities, Medicaid, Privacy, Reporting and recordkeeping requirements.

42 CFR Part 433

Administrative practice and procedure, Child support, Claims, Grant programs-health, Medicaid, Reporting and recordkeeping requirements.

42 CFR Part 440

Grant programs-health, Medicaid.

42 CFR Part 441

Family planning, Grant programs-health, Infants and children, Medicaid, Penalties, Reporting and recordkeeping requirements.

42 CFR Part 447

Accounting, Administrative practice and procedure, Drugs, Grant programs-health, Health facilities, Health professions, Medicaid, Reporting and recordkeeping requirements, Rural areas.

42 CFR Part 456

Administrative practice and procedure, Grant programs-health, Health facilities, Medicaid, Reporting and recordkeeping requirements.

42 CFR chapter IV is amended as set forth below:

A. Part 431 is amended as follows:

PART 431—STATE ORGANIZATION AND GENERAL ADMINISTRATION

1. The authority citation for part 431 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

§§ 431.861, 431.862, 431.863, and 431.864 [Removed and reserved]

2. Sections 431.861, 431.862, 431.863, and 431.864 are removed and reserved.

§ 431.865 [Amended]

3. In paragraph (d)(8) of § 431.865, the parenthetical phrase ''(See § 431.863(d)(8) for an example of a disallowance computation)'' is removed.

B. Part 433 is amended as follows:

PART 433—STATE FISCAL ADMINISTRATION

1. The authority citation for part 433 continues to read as follows:

Authority: Secs. 1102, 1137, 1902(a)(4), 1902(a)(18), 1902(a)(25), 1902(a)(45), 1902(t), 1903(a)(3), 1903(d)(2), 1903(d)(5), 1903(i), 1903(o), 1903(p), 1903(r), 1903(w), 1912, 1917, and 1919(e) of the Social Security Act (42 U.S.C. 1302, 1320b–7, 1396a(a)(4), 1396a(a)(18), 1396a(a)(25), 1396a(a)(45), 1396a(t), 1396b(a)(3), 1396b(d)(2), 1396b(d)(5), 1396b(i), 1396b(o), 1396b(p), 1396b(r), 1396b(w), 1396k and 1396(p)).

§ 433.8 [Removed and reserved]

2. Section 433.8 is removed and reserved.

§§ 433.201—433.217 (Subpart E) [Removed and reserved]

3. In part 433, subpart E consisting of §§ 433.201 through 433.217 is removed and reserved.

C. Part 440 is amended as follows:

PART 440—SERVICES: GENERAL PROVISIONS

1. The authority citation for part 440 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

§ 440.1 [Amended]

2. In § 440.1, the reference that reads ''1902(a)(43) Laboratory services. (See also §§ 447.10 and 447.342 for related provisions on laboratory services.)'' is removed.

D. Part 441 is amended as follows:

PART 441—SERVICES: REQUIREMENTS AND LIMITS APPLICABLE TO SPECIFIC SERVICES

1. The authority citation for part 441 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

§ 441.152 [Amended]

2. In § 441.152(b), the reference ''456.260,'' is removed.

§ 441.155 [Amended]

3. Section 441.155 is amended as follows:

a. In paragraph (a), the phrase ''in accordance with §§ 456.180–456.181, and 456.280–456.281 of this subchapter,'' is revised to read ''in accordance with §§ 456.180 and 456.181 of this chapter,''.

b. In paragraph (d), the references ''456.260(b),'' and ''456.280,'' are removed.

E. Part 447 is amended as follows:

PART 447—PAYMENTS FOR SERVICES

1. The authority citation for part 447 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. In § 447.10, paragraph (a) is revised, paragraph (g)(1) is removed, and paragraphs (g)(2) through (g)(4) are redesignated as paragraphs (g)(1) through (g)(3). The revision reads as follows:

§ 447.10 Prohibition against reassignment of provider claims.

(a) *Basis and purpose.* This section implements section 1902(a)(32) of the Act which prohibits State payments for Medicaid services to anyone other than a provider or recipient, except in specified circumstances.

* * * * *

§ 447.300 [Amended]

3. In § 447.300, the second sentence that reads ''Section 447.342 of this subpart implements section 1902(a)(43) of the Act, which permits the State plan to provide for payment to a physician for laboratory services which the physician did not personally perform or supervise.'' is removed.

Subpart F—[Amended]

4. In subpart F, the undesignated center heading that reads ''CLINICAL LABORATORY SERVICES'' is removed.

§ 447.342 [Removed and reserved]

5. Section 447.342 is removed and reserved.

F. Part 456 is amended as follows:

PART 456—UTILIZATION CONTROL

1. The authority citation for part 456 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302), unless otherwise noted.

§ 456.1 [Amended]

2. Section 456.1 is amended as follows:

a. In paragraph (b)(2), the phrase ''skilled nursing facilities (SNF's),'' is removed.

b. In paragraph (b)(2)(iv), the phrase ''skilled nursing and'' is removed.

c. In paragraph (b)(3), the phrases ''skilled nursing facilities and'' and ''SNF or'' are removed.

d. In paragraph (b)(5), the word ''SNF's,'' is removed.

e. In paragraph (b)(6), the phrase ''hospital, mental hospital, or SNF services'' is revised to read ''hospital or mental hospital services''.

f. In Table 1, remove from the first and second columns the following:

Subpart E—Utilization Control: Skilled Nursing Facilities	
Certification of need for care.	1903(g)(1)(A)
Medical evaluation and admission review.	1902(a)(26)(A) 1903(g)(1)(C)
Plan of care	1902(a)(26)(A) 1903(g)(1)(B)
Utilization review plan	1902(a)(30) 1903(g)(1)(C) 1903(i)(4)
Discharge plan	1902(a)(30).

g. In Table 1, in column 1, subparts H and I are revised to read as follows:

Table 1

[This table relates the regulations in this part to the sections of the Act on which they are based.]

* * * * *	
Subpart H—Utilization Review Plans: FFP, Waivers, and Variances for Hospitals and Mental Hospitals.	* * *
Subpart I—Inspections of Care in Intermediate Care Facilities and Institutions for Mental Diseases.	* * *
* * * * *	

§ 456.5 [Amended]

3. Section 456.5 is amended as follows:

a. The phrase ''hospitals, mental hospitals, and SNFs.'' is revised to read ''hospitals and mental hospitals.''

b. The phrase ''§ 456.232 of subpart D; and § 456.332 of subpart E.'' is revised to read ''and § 456.232 of subpart D.''

§§ 456.250 through 456.348 (Subpart E) [Removed and reserved]

4. In part 456, subpart E consisting of §§ 456.250 through 456.348 is removed and reserved.

§ 456.480 [Amended]

5. In § 456.480, the phrase ''skilled nursing facilities,'' is removed.

§§ 456.481, 456.482, and 456.652 [Amended]

6. In part 456, remove the references ''456.260,'' ''456.270,'' and ''456.280,'' wherever they appear, in the following places:

a. Sections 456.481 (a) and (b);

b. Section 456.482; and

c. Sections 456.652 (a)(1), (a)(2), and (a)(4).

Subpart H—[Amended]

7. In the heading of subpart H, the phrase ''Hospitals, Mental Hospitals, and Skilled Nursing Facilities'' is revised to read ''Hospitals and Mental Hospitals.''

§ 456.500 [Amended]

8. In § 456.500, in the introductory text, the phrase ''hospitals, mental hospitals and SNFs,'' is revised to read ''hospitals and mental hospitals,''

§ 456.501 [Amended]

9. Section 456.501 is amended as follows:

a. In paragraph (a), the phrase ''hospital, mental hospital, or SNF'' is revised to read ''hospital or mental hospital''

b. In paragraph (c), the phrase ''in subpart C, D, or E of this part,'' is revised to read ''in subpart C or D of this part,''

§ 456.505 [Amended]

10. Section 456.505 is amended as follows:

a. In the introductory text, the phrase ''subpart C, D, or E of this part,'' is revised to read ''subpart C or D of this part,''

b. In the introductory text, the phrase, ''§ 456.206 of subpart D, and § 456.306 of subpart E,'' is revised to read ''and § 456.206 of subpart D,''

c. In paragraph (b), the phrase ''under subpart C, D, or E.'' is revised to read ''under subpart C or D of this part.''

§ 456.506 [Amended]

11. Section 456.506 is amended as follows:

a. In paragraph (b), the phrase ''hospital, mental hospital, or SNF'' is revised to read ''hospital or mental hospital''

b. In paragraph (b), the phrase ''under subpart C, D, or E of this part.'' is revised to read ''under subpart C or D of this part.''

§ 456.508 [Amended]

12. Section 456.508 is amended as follows:

a. In paragraph (a), the phrase ''under subpart C, D, or E.'' and, in paragraph (b), the phrase ''under subpart C, D, or E of this part.'' are revised to read ''under subpart C or D of this part.''

b. In paragraph (b), the phrase ''hospital, mental hospital, or SNF'' is revised to read ''hospital or mental hospital.''

§ 456.520 [Amended]

13. Section 456.520 is amended as follows:

a. In paragraph (b), the phrase ''§ 456.207 of subpart D; or § 456.307 of subpart E;'' is revised to read ''or § 456.207 of subpart D;''

b. In paragraph (c), in the definition of *Remote facility*, the phrase ''under subpart C, D, or E of this part,'' is revised to read ''under subparts C or D of this part,''

c. In paragraph (c), in the definition of *Variance*, the phrase ''§ 456.238 of subpart D; and §§ 456.333, 456.334, and 456.336 of subpart E.'' is revised to read ''and § 456.238 of subpart D.''

§ 456.522 [Amended]

14. Section 456.522 is amended as follows:

a. In paragraph (d), the word ''SNF,'' is removed.

b. In paragraph (i), the phrase ''subpart C, D, or E of this part;'' and, in paragraph (j), the phrase ''subpart C, D, or E of this part;'' are revised to read ''subpart C or D of this part;''

15. In the heading of subpart I, the phrase ''Skilled Nursing and'' is removed.

§ 456.600 [Amended]

16. In § 456.600, the phrase ''in skilled nursing facilities (SNF's),'' is removed.

§ 456.601 [Amended]

17. Section 456.601 is amended as follows:

a. In the definition of *Facility*, the phrase ''a skilled nursing facility,'' is removed.

b. In the definition of *Institution for mental diseases*, the phrase ''skilled nursing or'' is removed.

§ 456.603 [Amended]

18. In § 456.603, paragraph (a)(1) is removed and reserved.

§ 456.608 [Amended]

19. In § 456.608(a) introductory text, remove the words ''SNFs and.''

§ 456.610 [Amended]

20. In § 456.610(b)(1), remove the word ''SNFs,''.

§ 456.651 [Amended]

21. In § 456.651, in the definition of *Level of care*, the phrase ''skilled nursing facility,'' is removed.

§ 456.654 [Amended]

22. Section 456.654 is amended as follows:

a. In paragraph (a)(2), the phrase ''skilled nursing facilities,'' is removed.

b. In paragraph (a)(7), the phrase ''skilled nursing or'' is removed.

c. In paragraph (a)(8), the phrase ''or skilled nursing facility'' is removed.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

Dated: May 28, 1996.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Dated: July 11, 1996.

Donna E. Shalala,

Secretary.

[FR Doc. 96–18537 Filed 7–23–96; 8:45 am]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 20 and 22

[CC Docket No. 94–54; FCC 96–263]

Interconnection and Resale Obligations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, on an interim basis, extends to cellular, broadband personal communications services (PCS) and certain specialized mobile radio (SMR) providers its rule under which cellular licensees are currently prohibited from restricting resale of their service. The Commission also eliminates an exception to the current rule under which cellular licensees are permitted to restrict resale by competing fully operational cellular licensees in the same geographic market. The action is needed to promote the development of competition in these services.

EFFECTIVE DATE: September 23, 1996.

FOR FURTHER INFORMATION CONTACT: Jeffrey Steinberg, 202–418–1310.

SUPPLEMENTARY INFORMATION: This is a synopsis of the *First Report and Order* in CC Docket No. 94–54, FCC 96–263, adopted June 12, 1996, and released July 12, 1996. The complete text of this *First Report and Order* 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, at (202) 857–3800, 2100 M Street, N.W., Suite 140, Washington, D.C. 20037.

Synopsis of the First Report and Order

The Commission adopts a transitional rule concerning the obligations of certain commercial mobile radio services (CMRS) providers to permit the unrestricted resale of their services. The Commission initiated this proceeding in a *Notice of Proposed Rulemaking and Notice of Inquiry* (59 FR 35664, July 13, 1994) that addressed a broad array of CMRS regulatory issues, including resale. The Commission refined its proposal concerning resale in a *Second Notice of Proposed Rulemaking* in this proceeding (60 FR 20949, April 28, 1995).

2. Based on the record established in this proceeding, the Commission first concludes that, under current market conditions, restrictions on resale by cellular, broadband PCS, and certain specialized mobile radio (covered SMR) providers will inhibit the development of competition in these services. Covered SMR providers are 800 MHz and 900 MHz SMR licensees that either hold geographic area licenses or have obtained extended implementation authorizations, and that offer real-time, two-way switched voice service that is interconnected with the public switched network. Thus, the Commission prohibits such providers from forbidding or unreasonably restricting the resale of their services during a transitional period. The Commission is not persuaded, however, that the resale rule should be extended to include CMRS carriers other than cellular, broadband PCS and covered SMR providers, although the Commission will consider on a case-by-case basis complaints alleging that other CMRS carriers' practices concerning interstate resale are unreasonable.

3. Furthermore, the Commission concludes that once broadband PCS licensees have built out their networks and are competing with cellular carriers, market forces will eliminate the need for explicit resale regulation. Therefore, the Commission will sunset the resale rule adopted in this decision, effective five years after the last group of initial licenses for currently allotted broadband PCS spectrum is awarded.

4. The Commission also eliminates an exception to its existing rule that permits a cellular licensee to restrict resale by the other cellular licensee in the same geographic area after expiration of the other licensee's five year build-out period. The Commission concludes that this exception is unnecessary to encourage build-out because most cellular build-out periods ended several years ago, and that its elimination will further promote the procompetitive goals of the First *Report and Order.*

Procedural Matters; Ordering Clauses

Final Regulatory Flexibility Analysis

As required by Section 603 of the Regulatory Flexibility Act, 5 U.S.C. § 603 (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Second Notice of Proposed Rulemaking in this proceeding (*Second NPRM*). The Commission sought written public comments on the proposals in the *Second NPRM,* including on the IRFA. The Commission's Final Regulatory Flexibility Analysis (FRFA) in this Report and Order conforms to the RFA, as amended by the Contract With America Advancement Act of 1996, Public Law No. 104–21, 110 Stat. 847 (1996).

I. Need for and Purpose of this Action

In this decision, the Commission, on an interim basis, extends its rule under which cellular licensees are currently prohibited from restricting resale of their service to broadband personal communications services (PCS) and certain geographic area specialized mobile radio (SMR) providers. The Commission also eliminates an exception to the current rule under which cellular licensees are permitted to restrict resale by competing fully operational cellular licensees in the same geographic market. The purposes of this action are to help bring the benefits of competition to the market for these services while the market is in transition to a fully competitive state, as well as to help jump start competition by allowing new entrants to enter the marketplace quickly by reselling their competitors' services while they build out their facilities.

II. Summary of Issues Raised by the Public Comments in Response to the Initial Regulatory Flexibility Analysis

No comments were filed in direct response to the IRFA. In general comments on the *Second NPRM,* however, some commenters raised issues that might affect small entities. In particular, some commenters argued that the obligation to permit unrestricted resale would make it difficult for some providers, especially paging, narrowband PCS, public coast service, and other small providers, to manage their capacity and to earn a reasonable return on their investment. The Commission determined that these objections were not well founded because the resale rule does not prevent carriers from pricing their services so as to earn a return on their investment or from including provisions in their contracts to protect themselves against stranded capacity.

III. Changes Made to the Proposed Rules

In the *Second NPRM,* the Commission proposed to extend the resale rule to all commercial mobile radio services (CMRS) providers. However, the Commission here determines instead to apply the rule only to cellular, broadband PCS and certain SMR providers because it has concluded that application of the resale rule to other CMRS providers will not promote the public interest at this time. The Commission also determines to sunset application of the resale rule to affected cellular, broadband PCS and SMR providers in approximately five years because by that time the development of competition is expected to render the rule unnecessary. In light of this sunset decision, the Commission does not adopt its proposal to allow providers subject to the rule to restrict resale by their fully operational facilities-based competitors, and it further eliminates the existing exception between competing cellular licensees in order to maintain regulatory parity and because it has determined that the exception no longer serves a useful purpose.

IV. Description and Estimate of the Small Entities Subject to the Rules

The rule adopted in this Report and Order will apply to providers of cellular, broadband PCS, and geographic area 800 MHz and 900 MHz specialized mobile radio services, including licensees who have obtained extended implementation authorizations in the 800 MHz or 900 MHz SMR services, either by waiver or under Section 90.629 of the Commission's Rules. However, the rule will apply to SMR

licensees only if they offer real-time, two-way voice service that is interconnected with the public switched network.

A. Estimates for Cellular Licensees

The Commission has not developed a definition of small entities applicable to cellular licensees. Therefore, the applicable definition of small entity is the definition under the Small Business Administration (SBA) rules applicable to radiotelephone companies. This definition provides that a small entity is a radiotelephone company employing fewer than 1,500 persons.[1] Since the Regulatory Flexibility Act amendments were not in effect until the record in this proceeding was closed, the Commission was unable to request information regarding the number of small cellular businesses and is unable at this time to determine the precise number of cellular firms which are small businesses.

The size data provided by the SBA does not enable us to make a meaningful esimate of the number of cellular providers which are small entities because it combines all radiotelephone companies with 500 or more employees.[2] We therefore used the 1992 Census of Transportation, Communications, and Utilities, conducted by the Bureau of the Census, which is the most recent information available. This document shows that only 12 radiotelephone firms out of a total of 1,178 such firms which operated during 1992 had 1,000 or more employees.[3] Therefore, even if all 12 of these firms were cellular telephone companies, nearly all cellular carriers were small businesses under the SBA's definition. We assume, for purposes of our evaluations and conclusions in this FRFA, that all of the current cellular licensees are small entities, as that term is defined by the SBA. Although there are 1,758 cellular licenses, we do not know the number of cellular licensees, since a cellular licensee may own several licenses.

B. Estimates for Broadband PCS Licensees

The broadband PCS spectrum is divided into six frequency blocks designated A through F. Pursuant to 47 CFR 24.720(b), the Commission has defined ''small entity'' in the auctions for Blocks C and F as a firm that had average gross revenues of less than $40 million in the three previous calendar years. This regulation defining ''small entity'' in the context of broadband PCS auctions has been approved by the SBA.[4]

The Commission has auctioned broadband PCS licenses in Blocks A, B, and C. We do not have sufficient data to determine how many small businesses bid successfully for licenses in Blocks A and B. There were 89 winning bidders that qualified as small entities in the Block C auction. Based on this information, we conclude that the number of broadband PCS licensees affected by the rule adopted in this Report and Order includes the 89 winning bidders that qualified as small entities in the Block C broadband PCS auction.

At present, no licenses have been awarded for Blocks D, E, and F of broadband PCS spectrum. Therefore, there are no small businesses currently providing these services. However, a total of 1,479 licenses will be awarded in the D, E, and F Block broadband PCS auctions, which are scheduled to begin on August 26, 1996. Eligibility for the 493 F Block licenses is limited to entrepreneurs with average gross revenues of less than $125 million. However, we cannot estimate how many of these licenses will be won by small entities, nor how many small entities will win D or E Block licenses. Given the facts that nearly all radiotelephone companies have fewer than 1,000 employees and that no reliable estimate of the number of prospective D, E, and F Block licensees can be made, we assume, for purposes of our evaluations and conclusions in this FRFA, that all of the licenses will be awarded to small entities, as that term is defined by the SBA.

C. Estimates for SMR Licensees

Pursuant to 47 CFR 90.814(b)(1), the Commission has defined ''small entity'' in auctions for geographic area 800 MHz and 900 MHz SMR licenses as a firm that had average gross revenues of less than $15 million in the three previous calendar years. This regulation defining ''small entity'' in the context of 800 MHz and 900 MHz SMR has been approved by the SBA.[5]

The rule adopted in this Report and Order applies to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of less than $15 million. Since the Regulatory Flexibility Act amendments were not in effect until the record in this proceeding was closed, the Commission was unable to request information regarding the number of small businesses in this category. We do know that one of these firms has over $15 million in revenues. We assume, for purposes of our evaluations and conclusions in this FRFA, that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA.

The Commission recently held auctions for geographic area licenses in the 900 MHz SMR band. There were 60 winning bidders who qualified as small entities in the 900 MHz auction. Based on this information, we conclude that the number of geographic area SMR licensees affected by the rule adopted in this Report and Order includes these 60 small entities.

No auctions have been held for 800 MHz geographic area SMR licenses. Therefore, no small entities currently hold these licenses. A total of 525 licenses will be awarded for the upper 200 channels in the 800 MHz geographic area SMR auction. However, the Commission has not yet determined how many licenses will be awarded for the lower 230 channels in the 800 MHz geographic area SMR auction. There is no basis to estimate, moreover, how many small entities within the SBA's definition will win these licenses. Given the facts that nearly all radiotelephone companies have fewer than 1,000 employees and that no reliable estimate

[1] 13 CFR § 121.201, Standard Industrial Classification (SIC) Code 4812.

[2] U.S. Small Business Administration 1992 Economic Census Employment Report, Bureau of the Census, U.S. Department of Commerce, SIC Code 4812 (radiotelephone communications industry data adopted by the SBA Office of Advocacy).

[3] U.S. Bureau of the Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications, and Utilities, UC92–S–1, Subject Series, Establishment and Firm Size, Table 5, Employment Size of Firms: 1992, SIC Code 4812 (issued May 1995).

[4] See Implementation of Section 309(j) of the Communications Act—Competitive Bidding, PP Docket No. 93–253, Fifth Report and Order, 9 FCC Rcd 5532, 5581–84 (1994).

[5] See Amendment of Parts 2 and 90 of the Commission's Rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896–901 MHz and the 935–940 MHz Bands Allotted to the Specialized Mobile Radio Pool, PR Docket No. 89–583, Second Order on Reconsideration and Seventh Report and Order, 11 FCC Rcd 2639, 2693–702 (1995); Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, PR Docket No. 93–144, First Report and Order, Eighth Report and Order, and Second Further Notice of Proposed Rulemaking, 11 FCC Rcd 1463 (1995).

of the number of prospective 800 MHz licensees can be made, we assume, for purposes of our evaluations and conclusions in this FRFA, that all of the licenses will be awarded to small entities, as that term is defined by the SBA.

D. Estimates for Resellers

We were unable to obtain reliable data regarding the number of entities that resell services covered by the rule adopted in this Report and Order, or how many of these are small entities. Since the Regulatory Flexibility Act amendments were not in effect until the record in this proceeding was closed, the Commission was unable to request information regarding the number of small businesses in this category. We note, however, that resellers are included among the 1,178 radiotelephone firms described in the 1992 Census data discussed above, 12 of which had 1,000 or more employees. Given the facts that nearly all radiotelephone companies have fewer than 1,000 employees and that no reliable estimate of the number of resellers can be made, we assume, for purposes of our evaluations and conclusions in this FRFA, that all resellers are small entities, as that term is defined by the SBA.

V. Summary of Projected Reporting, Recordkeeping and Other Compliance Requirements

The rule adopted in this Report and Order imposes no reporting or recordkeeping requirements. The rule also requires no affirmative compliance action by any entity to which it applies. Rather, the rule operates as a negative prohibition forbidding restrictions on the resale of service. Therefore, the only compliance costs likely to be incurred are administrative costs to ensure that an entity's practices are in compliance with the rule.

VI. Steps Taken to Minimize the Economic Impact on Small Entities

The Commission determines not to apply its resale rule to CMRS providers other than those classified as cellular, broadband PCS and certain SMR. Many of the providers that are thereby excluded from the rule are small entities, including paging, narrowband PCS, air-ground, public coast service, and non-covered SMR providers. In addition, the Commission's decision to sunset the resale rule five years after it awards the last group of initial licenses for currently allotted broadband PCS spectrum will reduce the impact of the rule on small entities by limiting the period of time for which such entities are subject to that rule. By prohibiting restrictions on resale during a transitional period, the Commission's decision benefits small entities that are resellers or that will use resale while they are building out their facilities.

VII. Significant Alternatives Considered and Rejected

The Commission considered and rejected several significant alternatives. The Commission rejected the alternative of extending the resale rule to all CMRS providers because it determined that such a rule is unnecessary at this time to promote competition or the availability of socially useful offerings in services other than cellular, broadband PCS, and geographic area SMR. At the same time, the Commission rejected the alternative of extending an interim resale rule to a universe less than all cellular, broadband PCS, and covered SMR providers because it concluded that a more limited rule would not adequately promote its competitive and social ends and would be inconsistent with the principle of regulatory parity. The Commission rejected the alternative of continuing the resale rule indefinitely because it determined that the rule would be unnecessary once broadband PCS licensees are fully operational as facilities-based competitors to cellular providers. Finally, the Commission rejected the alternative of allowing providers to restrict resale by their facilities-based competitors because in the short term such an exception would defeat the purpose of allowing new entrants to use resale to help them enter the market more quickly, and in the long term the sunset of the resale rule as a whole would render the exception irrelevant.

VIII. Report to Congress

The Commission shall send a copy of this Final Regulatory Flexibility Analysis, along with this Report and Order, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801(a)(1)(A).

List of Subjects

47 CFR Part 20

Communications common carriers, Federal Communications Commission.

47 CFR Part 22

Communications common carriers, Federal Communications Commission.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

Parts 20 and 22 of Chapter I of Title 47 of the Code of Federal Regulations are amended as follows:

PART 20—COMMERCIAL MOBILE RADIO SERVICES

1. The authority citation for Part 20 continues to read as follows:

Authority: Sections 4, 303 and 332, 48 Stat. 1066, 1092, as amended; 47 USC 154, 303, and 332, unless otherwise noted.

2. Section 20.3 is amended by adding the following definition in alphabetical order to read as follows:

§ 20.3 Definitions.

* * * * *

Incumbent Wide Area SMR Licensees. Licensees who have obtained extended implementation authorizations in the 800 MHz or 900 MHz service, either by waiver or under Section 90.629 of these rules, and who offer real-time, two-way voice service that is interconnected with the public switched network.

* * * * *

3. New § 20.12 is added to read as follows:

§ 20.12 Resale.

(a) *Scope of section.* This section is applicable only to providers of Broadband Personal Communications Services (Part 24, Subpart E of this chapter), providers of Cellular Radio Telephone Service (Part 22, Subpart H of this chapter), providers of Specialized Mobile Radio Services in the 800 MHz and 900 MHz bands that hold geographic area licenses (included in Part 90, Subpart S of this chapter) and offer real-time, two-way voice service that is interconnected with the public switched network, and Incumbent Wide Area SMR Licensees.

(b) *Resale.* Each carrier subject to this section must permit unrestricted resale of its service. This paragraph shall cease to be effective five years after the last group of initial licenses for broadband PCS spectrum in the 1850–1910 and 1930–1990 MHz bands is awarded.

PART 22—PUBLIC MOBILE SERVICES

1. The authority citation for Part 22 continues to read as follows:

Authority: Sections 4, 303, and 332, 48 Stat. 1066, 1082, as amended; 47 USC 154, 303, and 332, unless otherwise noted.

§ 22.901 [Amended]

2. Section 22.901 is amended by removing paragraph (e).

[FR Doc. 96–18603 Filed 7–23–96; 8:45 am]

BILLING CODE 6712–01–P

47 CFR Part 90

[PR Docket No. 93–61, DA 96–836]

Automatic Vehicle Monitoring: Correction

AGENCY: Federal Communications Commission.

ACTION: Correction to final rule.

SUMMARY: This Erratum contains corrections to one of the final rules adopted in *Amendment of Part 90 of the Commission's Rules to Adopt Regulations for Automatic Vehicle Monitoring Systems, Order on Reconsideration*, which was published Tuesday, April 30, 1996 (61 FR 18981). The rule deals with frequency stability.

EFFECTIVE DATE: August 23, 1996.

FOR FURTHER INFORMATION CONTACT: Jane Hinckley Halprin, Wireless Telecommunications Bureau, Commercial Wireless Division, (202) 418–0620.

SUPPLEMENTARY INFORMATION:

Background

This erratum corrects Section 90.213 of the Commission's rules, 47 CFR § 90.213, as modified in *Amendment of Part 90 of the Commission's Rules to Adopt Regulations for Automatic Vehicle Monitoring Systems, Order on Reconsideration*, PR Docket No. 93–61, FCC 96–115 (released March 21, 1996), 61 FR 18981 (April 30, 1996). This rule, which deals with frequency stability, was published with a clerical error.

Need for Correction

As published, this final rule contains an error that may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication on April 30, 1996 of final rules in PR Docket No. 93–61, which were the subject of FR Doc. 96–10498, is corrected as follows:

§ 90.213 [Corrected]

On page 18986, in the first column of the table, in section 90.213, in the text of note 13, the phrase ''operating within 40 kHz from the band edge'' is corrected to read ''with an authorized bandwidth that is more than 40 kHz from the band edge''.

Federal Communications Commission.

David L. Furth,

Chief, Commercial Wireless Division, Wireless Telecommunications Bureau.

[FR Doc. 96–18723 Filed 7–23–96; 8:45 am]

BILLING CODE 6712–01–M–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 190, 192 and 198

[Docket No. PS 145; Amdt. Nos. 190–6; 191–10; 192–75; 193–10; 195–55; 198–2; 199–13]

RIN 2137–AC79

Pipeline Safety Program Procedures; Update and Corrections; Correction

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to the final regulations (PS–145) updating and correcting pipeline safety program procedures which were published Friday, April 26, 1996, (61 FR 18512) in the Federal Register.

EFFECTIVE DATE: July 24, 1996.

FOR FURTHER INFORMATION CONTACT: L.E. Herrick at 202–366–5523 or online at herrickl@rspa.dot.gov.

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections updated and corrected pipeline safety program procedures by amending nomenclature, addresses, typographical errors, and penalty amounts. These editorial amendments imposed no new procedural requirements.

Need for Correction

The final regulations contained four errors. The amendment number for Part 192, Amdt. 192–74, was previously assigned to the final rule in Docket No. PS–135. The next number in the series of amendments to Part 192 should be Amdt. 192–75. In § 190.205, the word ''owner'' was omitted. The amount in § 190.223(a) should be ''$25,000''. And, in § 198.35, the citation should be ''49 U.S.C. 60101 *et seq.*''

Correction of Publication

Accordingly, the publication on April 26, 1996, of the final regulations (PS–145), which was the subject of FR Doc. 96–10282, is corrected as follows:

1. On page 18512, in the first column, in the heading, the amendment number ''192–74'' is corrected to read ''192–75''.

2. On page 18513, third column, § 190.205 is corrected to read as follows:

§ 190.205 Warning letters.

Upon determining that a probable violation of 49 U.S.C. 60101 *et seq.* or any regulation or order issued thereunder has occurred, the Associate Administrator, OPS, may issue a Warning Letter notifying the owner or operator of the probable violation and advising the owner or operator to correct it or be subject to enforcement action under §§ 190.207 through 190.235.

§ 190.223 [Corrected]

3. On page 18515, first column, in § 190.223(a) the figure ''$10,000'' is corrected to read ''$25,000''.

4. On Page 18518, second column, § 198.35 is corrected to read as follows:

§ 198.35 Grants conditioned on adoption of one-call damage prevention program.

In allocating grants to State agencies under the pipeline safety laws, (49 U.S.C. 60101 *et seq.*), the Secretary considers whether a State has adopted or is seeking to adopt a one-call damage prevention program in accordance with § 198.37. If a State has not adopted or is not seeking to adopt such program, the State agency may not receive the full reimbursement to which it would otherwise be entitled.

Issued in Washington, DC. on June 24, 1996.

Kelley S. Coyner,

Deputy Administrator, Research and Special Programs Administration.

[FR Doc. 96–18694 Filed 7–23–96; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 951116270-5308-02; I.D. 071796A]

Fisheries of the Northeastern United States; Summer Flounder Fishery; Commercial Quota Harvested for Delaware

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

ACTION: Commercial quota harvest.

SUMMARY: NMFS issues this notification announcing that the summer flounder commercial quota available to the State of Delaware has been harvested. Vessels

issued a commercial Federal fisheries permit for the summer flounder fishery may not land summer flounder in Delaware for the remainder of calendar year 1996, unless additional quota becomes available through a transfer. Regulations governing the summer flounder fishery require publication of this notification to advise the State of Delaware that the quota has been harvested and to advise vessel and dealer permit holders that no commercial quota is available for landing summer flounder in that state.

EFFECTIVE DATE: July 19, 1996, through December 31, 1996.

FOR FURTHER INFORMATION CONTACT: Regina Spallone, Fishery Policy Analyst, 508-281-9221.

SUPPLEMENTARY INFORMATION: Regulations governing the summer flounder fishery are found at 50 CFR part 648, Subparts A and G. The regulations require annual specification of a commercial quota that is apportioned among the states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state are described in § 648.100. Amendment 7 to the FMP (November 24, 1995, 60 FR 57955) revised the fishing mortality rate reduction schedule for summer flounder, and the revised schedule was the basis for establishing the 1996 quota. The total commercial quota for summer flounder for the 1996 calendar year was adopted to ensure achievement of the appropriate fishing mortality rate of 0.41 for 1996, and is set equal to 11,111,298 pounds (5,040,000 kg) (January 4, 1996, 61 FR 291). The percent allocated to vessels landing summer flounder in Delaware is 0.01779 percent or 1,977 pounds (897 kg).

Section 648.100(d)(2) provides that any overages of the commercial quota landed in any state will be deducted from that state's annual quota for the following year. In calendar year 1995, a total of 3,072 pounds (1,393 kg) were landed in Delaware. The amount allocated for Delaware landings in 1995 was 2,614 pounds (1,186 kg), creating an overage of 458 pounds (208 kg) that was deducted from the amount allocated for landings in that state during 1996 (April 05, 1996, 61 FR 15199). The resulting quota for Delaware is 1,519 pounds (689 kg).

Section 648.101(b) requires the Regional Director, Northeast Region (Regional Director) to monitor state commercial quotas and to determine when a state commercial quota is harvested. The Regional Director is further required to publish a notice in the Federal Register advising a state and notifying Federal vessel and dealer permit holders that, effective upon a specific date, the state's commercial quota has been harvested and no commercial quota is available for landing summer flounder in that state. Because the available information indicates that Delaware has exceeded its quota for 1996, the Regional Director has determined that the 1996 summer flounder quota allocations for vessels landing in Delaware has been harvested.

The regulations at § 648.4(b) provide that Federal permit holders agree as a condition of the permit not to land summer flounder in any state that the Regional Director has determined no longer has commercial quota available. Therefore, effective 0001 hours July 19, 1996, further landings of summer flounder in Delaware by vessels holding commercial Federal fisheries permits are prohibited for the remainder of the 1996 calendar year, unless additional quota becomes available through a transfer and is announced in the Federal Register. Federally permitted dealers are also advised that they may not purchase summer flounder from federally permitted vessels that land in Delaware for the remainder of the calendar year, or until additional quota becomes available, effective the date above.

Classification

This action is required by 50 CFR part 648 and is exempt from review under E.O. 12866.

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

Dated: July 18, 1996.

Richard W. Surdi,

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

[FR Doc. 96–18790 Filed 7–19–96; 12:26 pm]

BILLING CODE 3510–22–F

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50 CFR Part 648

[Docket No. 950615156–6193–02; I.D. 070196C]

RIN 0648–AI02

Fisheries of the Northeastern United States; Framework Adjustment 8 Gear Restrictions

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement measures contained in Framework Adjustment 8 to the Fishery Management Plan for the Atlantic Sea Scallop Fishery (FMP). This rule expands the qualification criteria for limited access vessels fishing under the scallop days-at-sea (DAS) program to use trawl nets to include vessels with an engine of no greater than 450 horsepower that have used a scallop dredge on no more than 10 trips from January 1, 1988, through December 31, 1994. Presently, only vessels that have not used a scallop dredge after December 31, 1987, are qualified to use trawl nets to fish for scallops. The intent of this action is to allow certain limited access vessels that cannot practically use a dredge to fish for scallops to use trawl nets.

EFFECTIVE DATE: July 19, 1996.

ADDRESSES: Copies of Amendment 4, its regulatory impact review, the initial regulatory flexibility analysis, the final supplemental environmental impact statement, and the supporting documents for Framework Adjustments 5 and 8 are available from Douglas Marshall, Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway (U.S. Route 1), Saugus, MA 01906–1097, telephone 617–231–0422.

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, Fishery Policy Analyst, 508–281–9273.

SUPPLEMENTARY INFORMATION:

Background

Amendment 4 to the FMP was implemented on March 1, 1994 (59 FR 2757, January 19, 1994). The amendment established controls on total fishing effort through limited entry and a schedule of reductions in allowable time at sea. Amendment 4 also included framework measures to implement adjustments to the effort control and other additional management measures considered necessary to meet the goals and objectives of the FMP. Although the amendment was approved, NMFS raised concerns about the level of protection of small sea scallops in its approval letter to the New England Fishery Management Council (Council).

Framework Adjustment 5 (60 FR 33757, June 29, 1995) prohibited limited access scallop vessels from using trawl nets while fishing under the scallop DAS program except for vessels that have not used a scallop dredge after December 31, 1987. The intended effect of the prohibition was to minimize the number of vessels that could fish for scallops with trawl nets and to prevent scallop dredge vessels from switching to trawl nets, a switch that would likely result in a significant increase in the

harvest of small scallops in contravention of the FMP's objectives.

During the March 21, 1996, Scallop Oversight Committee meeting several owners of vessels not meeting the qualification criteria asked the Council to relax the criteria. The Committee reviewed NMFS' records on scallop dredge/trawl trips and vessel horsepower and recommended that the Council consider a framework adjustment to expand the criteria.

Framework Adjustment 8 expands the number of vessels qualified to fish for scallops with trawl nets by including limited access vessels with an engine no greater than 450 horsepower that have fished for scallops with a scallop dredge on no more than 10 trips from January 1, 1988, through December 31, 1994. The new criteria of no more than 10 trips and an engine horsepower of no greater than 450 are intended to qualify only those vessels that may have towed or attempted to tow a scallop dredge in the past, but could not practicably do so due to their lack of sufficient engine horsepower and/or proper construction. The number of such vessels is projected to be small, and, therefore, allowing such vessels to fish for scallops with trawl nets is not anticipated to have any significant impact on the stock.

All limited access scallop vessels not issued a letter of authorization or a permit endorsed to fish for scallops with trawl nets under the old criterion will be notified by NMFS of its determination, based on information currently available to NMFS, as to whether the vessel qualifies under the new criteria. If a vessel owner agrees with NMFS' determination that the vessel is qualified and signs a declaration, furnished by NMFS, to that effect, NMFS will issue the vessel a letter of authorization to use trawl nets for the 1996–97 fishing year. If a vessel does not obtain a letter of authorization for the 1996–97 fishing year, it loses its eligibility for subsequent years. A permit endorsement will be the authorizing instrument in future years.

Replacement vessels for vessels qualified under either the old criterion or the additional criteria must themselves meet the limitations on fishing for scallops with scallop dredges that the vessel it is replacing met.

Supplemental rationale and analyses of expected biological effects, economic impacts, impacts on employment, and safety concerns are contained within the supporting documents for Framework Adjustments 5 and 8 (see **ADDRESSES**).

The Council requests publication of the management measures as a final rule after considering the required factors stipulated in the regulations governing the sea scallop fishery and providing supporting analysis for each factor considered. The Director, Northeast Region, NMFS, concurs with the Council's recommendation and has determined that Framework Adjustment 8 should be published as a final rule.

NMFS is adjusting the scallop regulations following the procedure for framework adjustments established by Amendment 4 and codified in 50 CFR part 648. The Council followed this procedure when making adjustments to the FMP, by developing and analyzing the actions over the span of a minimum of at least two Council meetings, on April 17, 1996, and June 6, 1996.

Comments and Responses

The April 17, 1996, Council meeting was the first of two meetings that provided an opportunity for public comment on Framework Adjustment 8. A draft document containing the proposed management measures and their rationale was available to the public on June 6, 1996, and mailed to 260 people, including those serving as scallop industry advisors to the Council. The final public hearing was held on June 6, 1996. Testimony provided by industry members at the public hearing favored the framework adjustment. Only one written comment was received by the Council, which favored the framework adjustment.

Classification

This final rule has been determined to be not significant for purposes of E.O. 12866.

This rule is implemented in compliance with all procedural requirements established by the Administrative Procedure Act. The Regional Director concurs with the Council's request for publication of the management measures as a final rule after considering the required factors stipulated under the procedure for framework adjustments in the final rule for Amendment 4 and providing supporting analysis for each factor considered. Public meetings held by the Council to discuss the management measures implemented by this rule provided adequate opportunity for public comment to be considered. Thus, the Assistant Administrator for Fisheries, NOAA, finds there is good cause to waive prior notice under 5 U.S.C. 553(b)(B). Under 5 U.S.C. 553(d)(1), because this rule relieves a restriction by allowing some fishermen to resume their traditional fishing method not available to them since August 1, 1995, it is not subject to a 30-day delay in effective date.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: July 18, 1996.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

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

2. In § 648.51, paragraph (f) is revised to read as follows:

§ 648.51 Gear and crew restrictions.

* * * * *

(f) *Restrictions on use of trawl nets*—(1) *Prohibition on use of trawl nets.* A vessel issued a limited access scallop permit fishing for scallops under the scallop DAS allocation program may not fish with, possess on board, or land scallops while in possession of, trawl nets unless such vessel has on board a valid letter of authorization or permit endorsed to fish for scallops with trawl nets.

(2) *Eligibility to use trawl nets.* (i) A vessel is eligible for a letter of authorization or a permit endorsement to fish for scallops with trawl nets if the vessel:

(A) Has not fished for scallops with a scallop dredge after December 31, 1987, and, as of July 19, 1996, has a letter of authorization or permit endorsed to fish for scallops with trawl nets;

(B) Has fished for scallops with a scallop dredge on no more than 10 trips from January 1, 1988, through December 31, 1994, has an engine horsepower no greater than 450, and is eligible for or has been issued a 1996 limited access scallop permit (if the vessel does not obtain a letter of authorization or a permit endorsed to fish for scallops with trawl nets for the 1996–97 scallop fishing year, the vessel shall not be eligible under this provision for subsequent fishing years); or

(C) Is a replacement vessel for a vessel described in paragraph (f)(2)(i)(A) or (B) of this section.

(ii) NMFS will contact the owners of all vessels with limited access scallop permits that have not previously been issued a letter of authorization or permit endorsed to fish for scallops with trawl nets as to whether, based on information available to NMFS on July 19, 1996, their vessels are eligible under paragraph (f)(2)(i)(B) of this section for

a letter of authorization or permit endorsed to fish for scallops with trawl nets. If a vessel owner agrees with NMFS' determination that the vessel is eligible under paragraph (f)(2)(i)(B) of this section to fish for scallops with trawl nets, the owner must, within 30 days of receipt of the determination, sign and submit to NMFS a declaration, provided by NMFS, stating that the vessel has fished for scallops with a scallop dredge on no more than 10 trips from January 1, 1988, through December 31, 1994, and has an engine with no greater than 450 horsepower. The signed declaration shall serve as a rebuttable presumption that the vessel qualifies for a letter of authorization or permit endorsement to fish for scallops with trawl nets. Any replacement vessel must meet the limitations on fishing for scallops with scallop dredges that the vessel it is replacing met. The letter of authorization or permit endorsement must be requested by the vessel owner at the time the vessel owner initially applies for a permit for the replacement vessel.

[FR Doc. 96–18789 Filed 7–19–96; 12:51 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 61, No. 143
Wednesday, July 24, 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

Agricultural Marketing Service

7 CFR Part 1240

[AMS–FV–96–707.C]

Honey Research, Promotion, and Consumer Information Order—Continuance Referendum; Correction

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Correction to referendum order.

SUMMARY: This document contains a correction to the referendum order which was published Tuesday, July 2, 1996 (61 FR 34385). The referendum order directed that a referendum be conducted among honey producers, producer-packers, and importers to determine if they favor continuance of the Honey Research, Promotion, and Consumer Information Order.

FOR FURTHER INFORMATION CONTACT: Richard B. Schultz, Research and Promotion Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2535–S, Washington, DC 29909–6456; telephone (202) 720–9915.

SUPPLEMENTARY INFORMATION:

Background

The Honey Research, Promotion, and Consumer Information Act (Act) provides that the Secretary of Agriculture (Secretary) conduct a referendum every 5 years among honey producers, producer-packers, and importers to determine whether they favor continuance of the the Honey Research, Promotion, and Consumer Information Order (Order). The last continuance referendum was conducted in August 1991, and, in compliance with the Act, a continuance referendum will be held August 1996.

In the July 2, 1996, Federal Register at 61 FR 34385, the Department of Agriculture (USDA) ordered that a referendum be held, set forth the authority for conducting a continuance referendum, announced the dates of the the voting period and the representative period for establishing voter eligibility, the referendum agents, and the procedures to be used to conduct the referendum. However, the section of the Act which provides that a continuance referendum must be conducted was incorrectly listed as section 13(d)(1) rather than section 13(b)(1).

Need for Correction

In the final rule, the section of the Act which provides that a continuance referendum be conducted was incorrectly listed as section 13(d)(1) rather than section 13(b)(1).

Correction of Publication

Accordingly, in the July 2, 1996, publication FR Doc.96–16839, page 34386, in the first column, under the heading ''Referendum Order'', in the first line of the second paragraph the words ''Section 13(d)(1)'' are removed and the words ''Section 13(b)(1)'' are added in their place.

Dated: July 15, 1996.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 96–18464 Filed 7–23–96; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–28–AD]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Fokker Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes. This proposal would require a one-time visual inspection to detect missing rivet heads or loose rivets of the applicable stringer-to-rib connections in the upper and lower wing skin, and repair, if necessary. In lieu of the one-time visual inspection or in addition to that inspection, the proposed AD also would require replacement of certain rivets with certain new rivets in all applicable rib-to-stringer connections of the upper and lower wings. This proposal is prompted by reports of missing rivet heads at the rib-to-stringer connections of the upper and lower wing skin at stringers 5 and 6. The actions specified by the proposed AD are intended to prevent reduced structural integrity of the wings that is caused by problems associated with missing and/or loose rivets.

DATES: Comments must be received by September 3, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–28–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Ruth E. Harder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–1721; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of

the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 96–NM–28–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–28–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Rijksluchtvaartdienst (RLD), which is the airworthiness authority for the Netherlands, recently notified the FAA that an unsafe condition may exist on certain Fokker Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes. The RLD advises that it has received two reports indicating that the rivet heads were missing at the rib-to-stringer connections of the upper and lower wing skin at stringers 5 and 6, at wing stations 11260, 11860, 12660, and 13460. These incidents occurred on two airplanes that had accumulated 11,601 and 15,684 total flight cycles, respectively. Investigation revealed that the rivets on these airplanes have a lower than allowable tensile strength, which contributes to these rivets becoming loosened over time. Loose or missing rivets at the subject attachment areas could result in reduced structural integrity of the wing.

Relevant Service Information

Fokker has issued Service Bulletin F27/57–74, dated November 15, 1994, which describes procedures for a one-time visual inspection to detect missing rivet heads or loose rivets of the applicable stringer-to-rib connections in the upper and lower skin, and repair, if necessary. In lieu of one-time visual inspection, or in addition to that inspection, the service bulletin also contains procedures for replacement of rivets having part number (P/N) MS20600AD4W2 with new rivets having P/N CR3553P4 in all applicable rib-to-stringer connections of the upper and lower wings. The RLD classified this service bulletin as mandatory and issued Dutch airworthiness directive BLA 93–094 (A), dated July 16, 1993, in order to assure the continued airworthiness of these airplanes in the Netherlands.

FAA's Conclusions

This airplane model is manufactured in the Netherlands 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 RLD has kept the FAA informed of the situation described above. The FAA has examined the findings of the RLD, 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, the proposed AD would require a one-time visual inspection to detect missing rivet heads or loose rivets of the applicable stringer-to-rib connections in the upper and lower skin, and repair, if necessary. In lieu of the one-time visual inspection, or in addition to that inspection, the proposed AD would require replacement of certain rivets with certain new rivets in all applicable rib-to-stringer connections of the upper and lower wings. The actions would be required to be accomplished in accordance with the service bulletin described previously.

Cost Impact

The FAA estimates that 6 Fokker Model 100, 200, 300, 400, 500, 600, and 700 series airplanes of U.S. registry would be affected by this proposed AD.

The proposed inspection would take approximately 4 work hours per airplane to accomplish the proposed actions, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed inspection action on U.S. operators is estimated to be $240 per airplane.

The proposed replacement would take approximately 19 work hours per airplane to accomplish the proposed actions, at an average labor rate of $60 per work hour. The cost of required parts would be nominal. Based on these figures, the cost impact of the replacement proposed AD on U.S. operators is estimated to be $1,140 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Fokker: Docket 96–NM–28–AD.

Applicability: Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes, serial numbers 10653 through 10692

inclusive; on which Part 1 of the Accomplishment Instructions of Fokker Service Bulletins F27/57–68 and F27/57–70 has not been accomplished; 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 as indicated, unless accomplished previously.

To prevent loose or missing rivets at the rib-to-stringer connections of the upper and lower wing skin at stringers 5 and 6, which could result in reduced structural integrity of the wings, accomplish the following:

(a) Except as provided by paragraph (c) of this AD: Prior to the accumulation of 10,000 total flight cycles, or within 2 months after the effective date of this AD, whichever occurs later, perform a one-time visual inspection to detect missing rivet heads or loose rivets of the applicable stringer-to-rib connections in the upper and lower skin, in accordance with Part 2 of the Accomplishment Instructions of Fokker Service Bulletin F27/57–74, dated November 15, 1994.

(1) If no missing rivet head and no loose rivet is detected, no further action is required by paragraph (a) of this AD.

(2) If any missing rivet head or loose rivet is detected, prior to further flight, repair the affected rib-to-stringer connection, in accordance with Part 1 of the Accomplishment Instructions of the service bulletin.

(b) Prior to the accumulation of 10,000 total flight cycles, or within 1 year after the effective date of this AD, whichever occurs later, replace rivets having part number (P/N) MS20600AD4W2 with new rivets having P/N CR3553P4 in all applicable rib-to-stringer connections of the upper and lower wings, in accordance with Part 1 of the Accomplishment Instructions of Fokker Service Bulletin F27/57–74, dated November 15, 1994.

(c) Airplanes on which the replacement required by paragraph (b) of this AD is performed within the compliance time specified in paragraph (a) of this AD are not required to accomplish the inspection required by paragraph (a) of this AD.

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

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

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

Issued in Renton, Washington, on July 18, 1996.

Stewart R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–18773 Filed 7–23–96; 8:45 am]

BILLING CODE 4910–13–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4001, 4043, 4065

RIN 1212–AA80

Reportable Events; Annual Report

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Proposed rule.

SUMMARY: The Pension Benefit Guaranty Corporation is proposing amendments to its reportable events regulation. The Retirement Protection Act of 1994 made significant changes to the reportable events requirements, including adding four new events. This proposed rule addresses the RPA changes and provides extensions of time and waivers for certain filings. The rule reflects the consensus of a negotiated rulemaking committee consisting of representatives of employers, participants, pension practitioners, and the PBGC.

DATES: Comments must be received on or before September 23, 1996.

ADDRESSES: Comments may be mailed to the Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, or delivered to Suite 340 at the above address. Comments also may be sent by Internet e-mail to reg.comments@pbgc.gov. Comments will be available for public inspection at the PBGC's Communications and Public Affairs Department, Suite 240.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, or James L. Beller, Attorney, Office of the General Counsel, PBGC, 1200 K Street, NW., Washington, DC 20005–4026, 202–326–4024 (202–326–4179 for TTY and TDD).

SUPPLEMENTARY INFORMATION:

Background

Section 4043 of ERISA requires reporting to the PBGC of certain events that may indicate a need for the PBGC to take action to protect participants and the termination insurance program. RPA expanded section 4043 by adding four new reportable events involving: (1) a company ceasing to be a member of a plan's controlled group; (2) a group member liquidating; (3) a group member declaring an extraordinary dividend or redeeming stock above certain thresholds; or (4) a plan maintained by the group transferring 3 percent of its benefit liabilities outside the group.

RPA also extended the reporting obligation to contributing sponsors as well as plan administrators; imposed an advance reporting requirement in certain limited circumstances for the new and certain other reportable events; and provided that reportable event filings are confidential.

In developing this proposed regulation, the PBGC for the first time used a negotiated rulemaking committee. The committee, which first met in October 1995, is made up of PBGC representatives and 14 private parties representing the interests of large and small employers, participants, and pension practitioners. The committee's consensus recommendations are the basis for this proposed rule.

Filing Obligation

When a reportable event occurs for a plan, the plan administrator and contributing sponsor must give the PBGC notice within 30 days after that person knows or has reason to know of the event (post-event notice). In the case of privately-held companies in controlled groups maintaining plans with over $50 million in total underfunding and an overall funded percentage below 90 percent, the contributing sponsor must give 30 days advance notice of the four events added by RPA and any events added by the regulation.

If an event occurs for more than one plan in a controlled group, the reporting requirement applies to the contributing sponsor and, for post-event notice, the plan administrator of each plan. When more than one person is required to notify the PBGC of a reportable event, a filing by one of those persons is treated as a filing by all of them.

Information Requirements

The regulation requires submission of general information (e.g., identifying information and a brief description of the event) for all reportable events and

specific information tailored to each event. The PBGC has developed optional reportable event forms that provide for reduced initial information filings. The PBGC may request additional information.

Post-Event Notice

Active participant reduction: Reporting is required when the number of active participants drops below 80 percent of the number at the beginning of the current plan year or 75 percent of the number at the beginning of the prior year. The proposed regulation tests the reduction solely on a plan-by-plan basis, rather than (as under the existing regulation) on both a plan-by-plan and controlled group basis.

Minimum funding payments and funding waivers: The proposed regulation waives reporting for a missed minimum funding payment if full payment is made by the time the reportable event notice would ordinarily be due—30 days after the payment's due date. A separate reportable event notice continues to be unnecessary if a Form 200 is filed with respect to the same failure. Reporting is required without regard to the funding status of the plan. The existing requirement to report when a minimum funding waiver is granted is replaced by a requirement to report when a waiver application is filed.

Inability to pay benefits when due: Plans not subject to the liquidity requirement of section 412(m)(5) of the Internal Revenue Code (100 or fewer participants) must report if there is a current or projected inability to pay benefits. There is a projected inability if the plan's liquid assets are less than twice its disbursements for a quarter.

Distribution to a substantial owner: Reporting is required for certain distributions to a substantial owner. The threshold for reporting is raised from $10,000 to the annual limit on benefits under Code section 415(b) ($120,000 for 1996) or, if greater, one percent of plan assets.

Change in contributing sponsor or controlled group: Controlled group changes are reportable under the existing regulation only if they involve the contributing sponsor. RPA added a new reportable event for transactions that result in any person ceasing to be a member of the plan's controlled group. This event includes a transaction in which a plan is transferred from one controlled group to another.

Liquidation: Liquidations are reportable under the existing regulation only if the contributing sponsor is liquidating. RPA added liquidation of a controlled group member as a new statutory event.

Extraordinary dividend or stock redemption: RPA added a new reportable event related to extraordinary dividends (as defined in section 1059(c) of the Code) and stock redemptions. The negotiated rulemaking committee concluded that the reportable event rules and the extraordinary dividend rules in the Code were so different in purpose and structure that the cross-reference to the Code was unworkable. The regulation waives this statutory event and replaces it with a new event calling for notice when any member of the controlled group declares a dividend that exceeds the company's income (in the case of cash distributions) or 10 percent of the company's assets (in the case of non-cash distributions). The same thresholds are used for stock redemptions.

Transfer of benefit liabilities: Notice is required for a transfer of 3 percent or more of a plan's benefit liabilities outside the controlled group. No reporting is required if the transfer complies with section 414(l) of the Code using PBGC assumptions (the safe harbor under the section 414(l) regulations), if both the transferor and transferee plans are fully funded after the transfer using PBGC assumptions, if the transfer is a complete plan transfer, or if the transfer is a de minimis transfer under the section 414(l) regulations involving less than 3 percent of assets. The PBGC will consider, on a case-by-case or class basis, whether other assumptions may be the basis of a waiver.

Loan default: The regulation adds a new event requiring reporting of certain loan defaults on loans with outstanding balances of $10 million or more. A default is reportable only if it results from a debtor's failure to make a required loan payment when due (unless the payment is made within 30 days after the due date), the lender accelerates the loan, or the debtor receives a written notice of default from the lender on account of specified circumstances—a drop in the debtor's cash reserves below an agreed-upon level, an unusual or catastrophic event experienced by the debtor, or a persisting failure by the debtor to attain agreed-upon performance levels. (The PBGC specifically invites comments on when such a failure is ''persisting.'') Reporting is waived if, among other things, the default is cured within a specified time period. The regulation also provides for several extensions, including ones keyed to time periods for correcting the default.

Bankruptcy or similar settlement: The current requirement to report bankruptcies is expanded to cover the bankruptcy of any controlled group member. If the bankrupt member is not a contributing sponsor, the deadline for reporting is extended until 30 days after the person required to notify the PBGC has actual knowledge of the bankruptcy.

Advance Notice

Seven reportable events—controlled group change, liquidation, extraordinary dividend and stock redemption, transfer of benefit liabilities, application for minimum funding waiver, loan default, and bankruptcy or similar settlement—are subject to advance reporting requirements.

Waivers and Extensions

The existing regulation waives all reporting for the following events: tax-disqualification, Title I noncompliance, amendment decreasing benefits payable, termination or partial termination, and plan merger. The proposed regulation preserves these waivers, as well as the waiver for multiemployer plans.

For the other events, the regulation provides certain waivers and extensions. For many events, post-event reporting is waived if the plan for which the reportable event occurred meets one of the following funding tests: (1) The plan is not required to pay a variable rate premium; (2) the plan has less than $1 million in unfunded vested benefits; (3) the plan has no unfunded vested benefits using the fair market value of assets, the 30-year Treasury rate, and specified mortality tables; or (4) the plan is at least 80 percent funded.

Plan funding is determined as of the same date used in determining the plan's variable rate premium for the year in which the reportable event occurs, generally the last day of the prior plan year. Because the information necessary to determine whether a funding test is met for the current year may not be available by the time the notice would be due, the regulation provides an extension for plans that met a funding test for the prior year until 30 days after the plan's variable rate premium filing is due for the current year.

Reporting is also waived if the companies involved are only a *de minimis* portion (either 5 or 10 percent, depending on the event) of the plan's controlled group. The regulation provides a number of waivers and extensions, including ones relating to foreign entities and several extensions that are keyed to other filing or reporting requirements (e.g., Form 5500).

For advance notice, the waivers and extensions relating to plan funding and foreign entities do not apply. De

minimis waivers apply for some events, but only at the 5 percent level. Small plan (500 or fewer participants) waivers apply for controlled group change and transfer of benefit liabilities. For certain events (application for minimum funding waiver, loan default, and bankruptcy), the deadline for reporting is extended to 10 days after the reportable event occurs.

The regulation provides that the PBGC may waive any reportable event requirement on a case-by-case or class basis.

Effective Date

Any new reportable events requirements in the final rule will be effective prospectively. The PBGC will treat any new waivers or extensions as if they had been in effect as of the effective date of the RPA amendments to section 4043 of ERISA. Accordingly, the PBGC does not intend to assess penalties or to pursue any other equitable or legal remedies with respect to any failure to meet a reportable event requirement to the extent reporting is waived or extended under the final rule.

Paperwork Reduction Act

The collection of information requirements in this proposed rule and the related forms and instructions have been submitted to the Office of Management and Budget for review under section 3507(d) of the Paperwork Reduction Act of 1995. The collection of information requirements contained in the PBGC's existing regulation on reportable events were approved by the Office of Management and Budget under control number 1212–0013. The collection of information requirements contained in PBGC's existing regulation on notice of failure to make required contributions were approved under control number 1212–0041.

The PBGC needs the information so that it can take action to protect participants and the termination insurance program in appropriate cases. The PBGC estimates that it will take an average of 8.7 hours to comply with the collection of information requirements under subparts B and C of the proposed regulation and, based on its experience, that about 355 persons will be required to comply each year. Accordingly, the estimated burden of the collection of information under subparts B and C is 3075 hours. The respective numbers for subpart D (Form 200) are 3.35 hours to comply and 50 responses for a total estimated burden of 167.5 hours

Comments on the paperwork provisions of the proposed rule and on the forms and instructions should be mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Pension Benefit Guaranty Corporation, Washington, DC 20503. Comments may address (among other things)—

- Whether the proposed collection of information is needed for the proper performance of the PBGC's functions and will have practical utility;
- The accuracy of the PBGC's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhancement of the quality, utility, and clarity of the information to be collected; and
- Minimizing the burden of the collection of information on respondents through the use of automated collection techniques (or other forms of information technology) or in other ways.

In particular, the PBGC invites suggestions regarding procedures for submitting some or all of the required information electronically.

Compliance With Rulemaking Guidelines

The PBGC is submitting this action as a ''significant regulatory action'' under Executive Order 12866 because the rule is the product of the PBGC's first use of the negotiated rulemaking process. The rule reflects the consensus of a negotiated rulemaking committee consisting of representatives of employers, participants, pension practitioners, and the PBGC. The action is not economically significant.

The PBGC certifies under section 605(b) of the Regulatory Flexibility Act that this rule will not have a significant economic impact on a substantial number of small entities. For most reportable events, waivers based on plan size or funding level will exempt reporting for small plans. Even where reporting is required, there is no significant economic impact because the filing burden averages only 8.7 hours. Accordingly, sections 603 and 604 of the Regulatory Flexibility Act do not apply.

List of Subjects

29 CFR Part 4001

Pension insurance, Pensions, Reporting and Recordkeeping requirements.

29 CFR Part 4043

Pension insurance, Pensions, Reporting and Recordkeeping requirements.

29 CFR Part 4065

Pension insurance, Pensions, Reporting and Recordkeeping requirements.

For the reasons set forth above, the PBGC proposes to amend parts 4001, 4043, and 4065 of 29 CFR chapter LX as follows.

PART 4001—[AMENDED]

1. The authority citation for Part 4001 continues to read as follows:

Authority: 29 U.S.C. 1301, 1302 (b)(3).

1a. Section 4001.2 is amended by adding the following definitions after the definition of distribution date:

* * * * *

EIN means the nine digit employer identification number assigned by the Internal Revenue Service to the contributing sponsor of the plan.

EIN/PN means, as last filed with the PBGC, the nine-digit employer identification number assigned by the Internal Revenue Service to the contributing sponsor of the plan and the three-digit plan number assigned by the contributing sponsor to the plan.

* * * * *

2. Section 4001.2 is further amended by adding the following to the end of the definition of controlled group:

* * * * *

Controlled group * * * any reference to a plan's controlled group means all contributing sponsors of the plan and all members of each contributing sponsor's controlled group.

* * * * *

3. Part 4043 is revised to read as follows:

PART 4043—REPORTABLE EVENTS AND CERTAIN OTHER NOTIFICATION REQUIREMENTS

Subpart A—General Provisions

Sec.
4043.1 Purpose and scope.
4043.2 Definitions.
4043.3 Requirement of notice.
4043.4 Waivers and extensions.
4043.5 Where to file.
4043.6 Date of filing.
4043.7 Computation of time.
4043.8 Confidentiality.

Subpart B—Post-Event Notice of Reportable Events

4043.20 Post-event filing obligation.
4043.21 Tax disqualification and Title I noncompliance.
4043.22 Amendment decreasing benefits payable.
4043.23 Active participant reduction.
4043.24 Termination or partial termination.
4043.25 Failure to make required minimum funding payments.
4043.26 Inability to pay benefits when due.

4043.27 Distribution to a substantial owner.
4043.28 Plan merger, consolidation, or transfer.
4043.29 Change in contributing sponsor or controlled group.
4043.30 Liquidation.
4043.31 Extraordinary dividend or stock redemption.
4043.32 Transfer of benefit liabilities.
4043.33 Application for minimum funding waiver.
4043.34 Loan default.
4043.35 Bankruptcy or similar settlement.

Subpart C—Advance Notice of Reportable Events

4043.61 Advance reporting filing obligation.
4043.62 Change in contributing sponsor or controlled group.
4043.63 Liquidation.
4043.64 Extraordinary dividend or stock redemption.
4043.65 Transfer of benefit liabilities.
4043.66 Application for minimum funding waiver.
4043.67 Loan default.
4043.68 Bankruptcy or similar settlement.

Subpart D—Notice of Failure to Make Required Contributions

4043.81 PBGC Form 200, notice of failure to make required contributions; supplementary information.

Authority: 29 U.S.C. 1082(f), 1302(b)(3), 1343.

Subpart A—General Provisions

§ 4043.1 Purpose and scope.

This part prescribes the requirements for notifying the PBGC of a reportable event under section 4043 of ERISA or of a failure to make certain required contributions under section 302(f)(4) of ERISA or section 412(n)(4) of the Code. Subpart A contains definitions and general rules. Subpart B contains rules for post-event notice of a reportable event. Subpart C contains rules for advance notice of a reportable event. Subpart D contains rules for notifying the PBGC of failure to make certain required contributions.

§ 4043.2 Definitions.

The following terms are defined in § 4001.2 of this chapter: Code, contributing sponsor, controlled group, ERISA, fair market value, irrevocable commitment, multiemployer plan, notice of intent to terminate, PBGC, person, plan, plan administrator, proposed termination date, single-employer plan, and substantial owner. For purposes of this part:

De minimis 10-percent segment means, in connection with a plan's controlled group, one or more entities that in the aggregate have for a fiscal year—

(1) Revenue not exceeding 10 percent of the controlled group's revenue;

(2) Annual operating income not exceeding the greatest of—

(i) 10 percent of the controlled group's annual operating income;

(ii) 5 percent of the controlled group's first $200 million in net tangible assets at the end of the fiscal year(s); or

(iii) $5 million; and

(3) Net tangible assets at the end of the fiscal year(s) not exceeding the greater of—

(i) 10 percent of the controlled group's net tangible assets at the end of the fiscal year(s); or

(ii) $5 million.

De minimis 5-percent segment has the same meaning as a de minimis 10-percent segment, except that ''5 percent'' is substituted for ''10 percent'' each time it appears.

Event year means the plan year in which the reportable event occurs.

Fair market value of the plan's assets means the fair market value of the plan's assets as of the testing date for the applicable plan year including contributions attributable to the previous plan year for funding purposes under section 302(c)(10) of ERISA or section 412(c)(10) of the Code if made by the earlier of the due date or filing date of the variable rate premium for the applicable plan year, but not to the extent contributions are used to satisfy the quarterly contribution requirements under section 302(e) of ERISA or section 412(m) of the Code for the applicable plan year.

Foreign entity means a member of a controlled group that—

(1) Is not a contributing sponsor of a plan;

(2) Is not organized under the laws of (or, if an individual, is not a domiciliary of) any state (as defined in section 3(10) of ERISA); and

(3) For the fiscal year that includes the date the reportable event occurs, meets one of the following tests—

(i) Is not required to file any United States federal income tax form;

(ii) Has no income reportable on any United States federal income tax form other than passive income not exceeding $1,000; or

(iii) Does not own substantial assets in the United States (disregarding stock of a member of the plan's controlled group) and is not required to file any quarterly United States tax returns for employee withholding.

Foreign-linked entity means a person that—

(1) Is neither a foreign entity nor a contributing sponsor of a plan; and

(2) Is a member of the plan's controlled group only because of ownership interests in or by foreign entities.

Foreign parent means a foreign entity that is a direct or indirect parent of a person that is a contributing sponsor.

Form 5500 due date means the deadline (including extensions) for filing the annual report under section 103 of ERISA.

Notice date means the deadline (including extensions) for filing notice of the reportable event with the PBGC.

Participant means a participant as defined in § 4006.2 .

Public company means a person subject to the reporting requirements of section 13 or 15(d) of the Securities Exchange Act of 1934 or a subsidiary (as defined for purposes of the Securities Exchange Act of 1934) of a person subject to such reporting requirements.

Testing date means, with respect to a plan year—

(1) The last day of the prior plan year, except as provided in paragraphs (2) or (3) of this definition;

(2) In the case of a new or newly-covered plan (as defined in § 4006.2 of this chapter), the first day of the plan year or, if later, the date on which the plan becomes effective for benefit accruals for future service; or

(3) In the case of a plan described in § 4006.5(e)(2) of this chapter (relating to certain mergers or spinoffs), the first day of the plan year.

Ultimate parent means the parent at the highest level in the chain of corporations and/or other organizations constituting the parent-subsidiary controlled group.

Unfunded vested benefits means unfunded vested benefits determined in accordance with § 4006.4 of this chapter, without regard to the exemptions and special rules in § 4006.5 (a)–(c) of this chapter. For purposes of subpart B only, unfunded vested benefits may be determined by subtracting the fair market value of the plan's assets from the plan's vested benefits amount.

Variable rate premium means the portion of the premium determined under section 4006(a)(3)(E) of ERISA and § 4006.3(b) of this chapter.

Vested benefits amount means the vested benefits amount determined under § 4006.4(b)(1) of this chapter.

§ 4043.3 Requirement of notice.

(a) *Obligation to file.* Each person that is required to file a notice under this part, or a duly authorized representative, shall submit the information required by this part by the time specified in § 4043.20 (for post-event notice), § 4043.61 (for advance notice), or § 4043.81 (for Form 200 filings). Any information previously filed with the PBGC may be

incorporated by reference. If a reportable event occurs for more than one plan, the filing obligation with respect to each plan is independent of the filing obligation with respect to any other plan.

(b) *Contents of reportable event notice.* A person required to file a reportable event notice shall provide, by the notice date, the following general information, along with any other information required for each reportable event under subpart B or C of this part:

(1) The name of the plan;

(2) The name, address, and telephone number of the contributing sponsor(s) and the name of an individual that should be contacted;

(3) The name, address, and telephone number of the plan administrator and the name of an individual that should be contacted;

(4) The EIN of the contributing sponsor and the EIN/PN of the plan;

(5) A brief statement of the pertinent facts relating to the reportable event;

(6) A copy of the plan document in effect, i.e., the last restatement of the plan and all amendments thereto;

(7) A copy of the most recent actuarial statement and opinion (if any) relating to the plan; and

(8) A statement of any material change in the assets or liabilities of the plan occurring after the date of the most recent actuarial statement and opinion.

(c) *Optional reportable event forms.* The PBGC shall issue optional reportable events forms, which may provide for reduced initial information submissions.

(d) *Requests for additional information.* The PBGC may, in any case, require the submission of additional information. Any such information shall be submitted for subpart B of this part within 30 days, and for subpart C or D of this part within 7 days, after the date of a written request by the PBGC, or within a different time period specified therein. The PBGC may in its discretion shorten the time period where it determines that the interests of the PBGC or participants may be prejudiced by a delay in receipt of the information.

(e) *Optional consolidated filing.* If more than one person is required to notify the PBGC under this part, a filing by one of those persons will be deemed to be a filing by the other person(s). If notices are required for two or more events, the notices may be combined in one filing.

(f) *Effect of failure to file.* If a notice (or any other information required under this part) is not provided within the specified time limit, the PBGC may assess against each person required to provide the notice a separate penalty under section 4071 of ERISA of up to $1,000 a day for each day that the failure continues. The PBGC may pursue any other equitable or legal remedies available to it under the law.

§ 4043.4 Waivers and extensions.

(a) *Specific events.* For specific reportable events, waivers from reporting and information requirements and extensions of time are provided in subparts B and C of this part. If an occurrence constitutes two or more reportable events, reporting requirements for each event are determined independently. For example, any event reportable under more than one section will be exempt from reporting only if it satisfies the requirements for a waiver under each section.

(b) *Multiemployer plans.* The requirements of section 4043 of ERISA are waived with respect to multiemployer plans.

(c) *Terminating plans.* No notice is required from the plan administrator or contributing sponsor of a plan if the notice date is on or after the date on which—

(1) All of the plan's assets (other than any excess assets) are distributed pursuant to a termination; or

(2) A trustee is appointed for the plan under section 4042(c) of ERISA.

(d) *Other waivers and extensions.* The PBGC may extend any deadline or waive any other requirement under this part where it finds convincing evidence that the waiver or extension is appropriate under the circumstances. Any waiver or extension may be subject to conditions. A request for a waiver or extension must be filed in writing with the PBGC and must state the facts and circumstances on which the request is based.

§ 4043.5 Where to file.

Requests and information shall be filed as follows—

(a) Post-event notice under subpart B of this part: Reports Processing, Insurance Operations Department, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026; and

(b) Advance notice under subpart C of this part and Form 200 filings under subpart D of this part: Corporate Finance and Negotiations Department, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026.

§ 4043.6 Date of filing.

(a) *Post-event notice.* Information filed under subpart B of this part is considered filed—

(1) On the date of the United States postmark stamped on the cover in which the information is mailed, if—

(i) The postmark was made by the United States Postal Service; and

(ii) The document was mailed postage prepaid, properly addressed to the PBGC; or

(2) On the date it is received by the PBGC, if the conditions stated in paragraph (a)(1) of this section are not met.

(b) *Advance notice and Form 200 filings.* Information filed under subpart C or D of this part is considered filed on the date it is received by PBGC. A reportable event notice under subpart C of this part will be deemed filed on the date a facsimile transmission is sent to the PBGC, provided—

(1) The facsimile transmission contains the information required by § 4043.3(b) (1)–(6); and

(2) The remaining initial information is received by the PBGC on the next regular business day.

(c) *Receipt date.* Information received on a weekend or Federal holiday or after 5:00 p.m. on a weekday is considered filed on the next regular business day.

§ 4043.7 Computation of time.

In computing any period of time, the day of the event from which the period of time begins to run shall not be included. The last day so computed shall be included, unless it is a weekend or Federal holiday, in which case the period runs until the end of the next regular business day.

§ 4043.8 Confidentiality.

In accordance with section 4043(f) of ERISA and § 4901.21(a)(3) of this chapter, any information or documentary material that is not publicly available and is submitted to the PBGC pursuant to this part shall not be made public, except as may be relevant to any administrative or judicial action or proceeding or for disclosures to either body of Congress or to any duly authorized committee or subcommittee of the Congress.

Subpart B—Post-Event Notice of Reportable Events

§ 4043.20 Post-event filing obligation.

The plan administrator and each contributing sponsor of a plan for which a reportable event under this subpart has occurred is required to notify the PBGC within 30 days after that person knows or has reason to know that the reportable event has occurred, unless a waiver or extension applies.

§ 4043.21 Tax disqualification and Title I noncompliance.

(a) *Reportable event.* A reportable event occurs when the Secretary of the Treasury issues notice that a plan has ceased to be a plan described in section 4021(a)(2) of ERISA, or when the Secretary of Labor determines that a plan is not in compliance with title I of ERISA.

(b) *Waivers.* Notice is waived for this event.

§ 4043.22 Amendment decreasing benefits payable.

(a) *Reportable event.* A reportable event occurs when an amendment to a plan is adopted under which the retirement benefit payable from employer contributions with respect to any participant may be decreased.

(b) *Waivers.* Notice is waived for this event.

§ 4043.23 Active participant reduction.

(a) *Reportable event.* A reportable event occurs when the number of active participants under a plan is reduced to less than 80 percent of the number of active participants at the beginning of the plan year, or to less than 75 percent of the number of active participants at the beginning of the previous plan year.

(b) *Initial information required.* In addition to the information in § 4043.3(b), the notice shall include—

(1) A statement explaining the cause of the reduction (*e.g.*, facility shutdown or sale); and

(2) The number of active participants at the date the reportable event occurs, at the beginning of the plan year, and at the beginning of the prior plan year.

(c) *Waivers.*

(1) *Small plan.* Notice is waived if the plan has fewer than 100 participants at the beginning of either the current or the previous plan year.

(2) *Plan funding.* Notice is waived if—

(i) *No variable rate premium.* No variable rate premium is required to be paid for the plan for the event year;

(ii) *$1 million unfunded vested benefits.* As of the testing date for the event year, the plan has less than $1 million in unfunded vested benefits; or

(iii) *No unfunded vested benefits.* As of the testing date for the event year, the plan would have no unfunded vested benefits if unfunded vested benefits were determined in accordance with the assumptions and methodology in § 4010.4(b)(2) of this chapter.

(3) *No facility closing event/80-percent funded.* Notice is waived if—

(i) The active participant reduction would not be reportable if only those active participant reductions resulting from cessation of operations at one or more facilities were taken into account; and

(ii) As of the testing date for the event year, the fair market value of the plan's assets is at least 80 percent of the plan's vested benefits amount.

(d) *Extensions.* The notice date is extended to the latest of—

(1) *Form 1 extension.* 30 days after the plan's variable rate premium filing due date for the event year if a waiver under any of paragraphs (c)(2)(i) through (c)(2)(iii) or (c)(3) of this section would apply if ''the plan year preceding the event year'' were substituted for ''the event year'';

(2) *Form 5500 extension.* 30 days after the plan's Form 5500 due date that next follows the date the reportable event occurs, provided the event would not be reportable counting only those participant reductions resulting from cessation of operations at a single facility; and

(3) *Form 1–ES extension.* The due date for the Form 1–ES for the plan year following the event year if—

(i) The plan is required to file a Form 1–ES for the plan year following the event year;

(ii) The event would not be reportable counting only those participant reductions resulting from cessation of operations at a single facility; and

(iii) The participant reduction represents no more than 20 percent of the total active participants (at the beginning of the plan year(s) in which the reduction occurs) in all plans maintained by any member of the plan's controlled group.

(e) *Determination of the number of active participants.*—(1) *Determination date.* The number of active participants at the beginning of a plan year may be determined at the end of the previous plan year.

(2) *Active participant.* ''Active participant'' means a participant who—

(i) Is receiving compensation for work performed;

(ii) Is on paid or unpaid leave granted for a reason other than a layoff;

(iii) Is laid off from work for a period of time that has lasted less than 30 days; or

(iv) Is absent from work due to a recurring reduction in employment that occurs at least annually.

§ 4043.24 Termination or partial termination.

(a) *Reportable event.* A reportable event occurs when the Secretary of the Treasury determines that there has been a termination or partial termination of a plan within the meaning of section 411(d)(3) of the Code.

(b) *Waivers.* Notice is waived for this event.

§ 4043.25 Failure to make required minimum funding payment.

(a) *Reportable event.* A reportable event occurs when a required installment or a payment required under section 302 of ERISA or section 412 of the Code (including a payment required as a condition of a funding waiver) is not made by the due date for the payment. In the case of a payment needed to avoid a deficiency in the plan's funding standard account, the due date is the latest date such payment may be made under section 302(c)(10)(A) of ERISA or section 412(c)(10)(A) of the Code.

(b) *Initial information required.* In addition to the information in § 4043.3(b), the notice shall include—

(1) The due date and amount of the required minimum funding payment that was not made and of the next payment due;

(2) The name of each member of the plan's controlled group and its ownership relationship to other members of that controlled group; and

(3) For each other plan maintained by any member of the plan's controlled group, identification of the plan and its contributing sponsor(s) by name and EIN/PN or EIN, as appropriate.

(c) *Waiver.* Notice is waived if the required minimum funding payment is made by the 30th day after its due date.

(d) *Form 200 filed.* If, with respect to the same failure, a Form 200 has been completed and submitted in accordance with § 4043.81, the Form 200 filing shall be deemed to satisfy the requirements of this section.

§ 4043.26 Inability to pay benefits when due.

(a) *Reportable event.* A reportable event occurs when a plan is currently unable or projected to be unable to pay benefits.

(1) *Current inability.* A plan is currently unable to pay benefits if it fails to provide any participant or beneficiary the full benefits to which the person is entitled under the terms of the plan, at the time the benefit is due and in the form in which it is due. A plan shall not be treated as being currently unable to pay benefits if its failure to pay is caused solely by the need to verify the person's eligibility for benefits; the inability to locate the person; or any other administrative delay if the delay is for less than the shorter of two months or two full benefit payment periods.

(2) *Projected inability.* A plan is projected to be unable to pay benefits when, as of the last day of any quarter of a plan year, the plan's ''liquid assets'' are less than two times the amount of

the ''disbursements from the plan'' for such quarter. Liquid assets and disbursements from the plan have the same meaning as under section 302(e)(5)(E) of ERISA and section 412(m)(5)(E) of the Code.

(b) *Initial information required.* In addition to the information in § 4043.3(b), the notice shall include—

(1) The date of any current inability and the amount of benefit payments not made;

(2) The next date on which the plan is expected to be unable to pay benefits, the amount of the projected shortfall, and the number of plan participants and beneficiaries expected to be affected by the inability to pay benefits;

(3) For a projected inability described in paragraph (a)(2), the amount of the plan's liquid assets at the end of the quarter, and the amount of its disbursements for the quarter; and

(4) The name, address, and phone number of the trustee of the plan (and of any custodian).

(c) *Waivers.* Notice is waived unless the reportable event occurs during a plan year for which the plan is described in section 302(d)(6)(A) of ERISA or section 412(l)(6)(A) of the Code.

§ 4043.27 Distribution to a substantial owner.

(a) *Reportable event.* A reportable event occurs for a plan when—

(1) There is a distribution to a substantial owner of a contributing sponsor of the plan;

(2) The total of all distributions made to the substantial owner within the one-year period ending with the date of such distribution exceeds $10,000;

(3) The distribution is not made by reason of the substantial owner's death; and

(4) Immediately after the distribution, the plan has nonforfeitable benefits (as provided in § 4022.5) that are not funded.

(b) *Initial information required.* In addition to the information in § 4043.3(b), the notice shall include—

(1) The name, address and telephone number of the substantial owner receiving the distribution(s); and

(2) The amount, form, and date of each distribution.

(c) *Waivers.*—(1) *Distribution up to section 415 limit.* Notice is waived if the total of all distributions made to the substantial owner within the one-year period ending with the date of the distribution does not exceed the limitation (as of the date the reportable event occurs) under section 415(b)(1)(A) of the Code (as adjusted in accordance with section 415(d)) when expressed as an annual benefit in the form of a straight life annuity to a participant beginning at Social Security retirement age ($120,000 for calendar year 1996).

(2) *Plan funding.* Notice is waived if—

(i) *No variable rate premium.* No variable rate premium is required to be paid for the plan for the event year;

(ii) *No unfunded vested benefits.* As of the testing date for the event year, the plan would have no unfunded vested benefits if unfunded vested benefits were determined in accordance with the assumptions and methodology in § 4010.4(b)(2) of this chapter; or

(iii) *80-percent funded.* As of the testing date for the event year, the fair market value of the plan's assets is at least 80 percent of the plan's vested benefits amount.

(3) *Distribution up to one percent of assets.* Notice is waived if the sum of the values of all distributions that are made to the substantial owner within the one-year period ending with the date of the distribution is one percent or less of the end-of-year current value of the plan's assets (as required to be reported on the plan's Form 5500) for either of the two plan years immediately preceding the event year.

(d) *Form 1 extension.* The notice date is extended until 30 days after the plan's variable rate premium filing due date for the event year, provided that a waiver under any of paragraphs (c)(2)(i) through (c)(2)(iii) of this section would apply if ''the plan year preceding the event year'' were substituted for ''the event year.''

(e) *Determination rules.*—(1) *Valuation of distribution.* The value of a distribution under this section is the sum of—

(i) The cash amounts actually received by the substantial owner;

(ii) The purchase price of any irrevocable commitment; and

(iii) The fair market value of any other assets distributed, determined as of the date of distribution to the substantial owner.

(2) *Date of substantial owner distribution.* The date of distribution to a substantial owner of a cash distribution is the date it is received by the substantial owner. The date of distribution to a substantial owner of an irrevocable commitment is the date on which the obligation to provide benefits passes from the plan to the insurer. The date of any other distribution to a substantial owner is the date when the plan relinquishes control over the assets transferred directly or indirectly to the substantial owner.

(3) *Determination date.* The determination of whether a participant is (or has been in the preceding 60 months) a substantial owner is made on the date when there has been a distribution that would be reportable under this section if made to a substantial owner.

§ 4043.28 Plan merger, consolidation or transfer.

(a) *Reportable event.* A reportable event occurs when a plan merges, consolidates, or transfers its assets or liabilities under section 208 of ERISA or section 414(1) of the Code.

(b) *Waivers.* Notice is waived for this event. However, notice may be required under § 4043.29 (for a controlled group change) or § 4043.32 (for a transfer of benefit liabilities).

§ 4043.29 Change in contributing sponsor or controlled group.

(a) *Reportable event.* A reportable event occurs for a plan when, as a result of a transaction, one or more persons will cease to be members of the plan's controlled group. This does not include a transaction that will result solely in a reorganization involving a mere change in identity, form, or place of organization, however effected.

(b) *Initial information required.* In addition to the information in § 4043.3(b), the notice shall include—

(1) The name of each member of the plan's old and new controlled groups and the member's ownership relationship to other members of those groups;

(2) For each other plan maintained by any member of the plan's old or new controlled group, identification of the plan and its contributing sponsor(s) by name and EIN/PN or EIN, as appropriate; and

(3) A copy of the most recent audited (or if not available, unaudited) financial statements, and the most recent interim financial statements, of the plan's contributing sponsor (both old and new, in the case of a change in the contributing sponsor) and any persons that will cease to be in the plan's controlled group.

(c) *Waivers.*—(1) *De minimis 10-percent segment.* Notice is waived if the person or persons that will cease to be members of the plan's controlled group represent a de minimis 10-percent segment of the plan's old controlled group for the most recent fiscal year(s) ending on or before the date the reportable event occurs.

(2) *Foreign entity.* Notice is waived if each person that will cease to be a member of the plan's controlled group is a foreign entity other than a foreign parent.

(3) *Plan funding.* Notice is waived if—

(i) *No variable rate premium.* No variable rate premium is required to be paid for the plan for the event year;

(ii) *$1 million unfunded vested benefits.* As of the testing date for the event year, the plan has less than $1 million in unfunded vested benefits; or

(iii) *No unfunded vested benefits.* As of the testing date for the event year, the plan would have no unfunded vested benefits if unfunded vested benefits were determined in accordance with the assumptions and methodology in § 4010.4(b)(2) of this chapter.

(4) *Public company/80-percent funded.* Notice is waived if—

(i) The plan's contributing sponsor before the effective date of the transaction is a public company; and

(ii) As of the testing date for the event year, the fair market value of the plan's assets is at least 80 percent of the plan's vested benefits amount.

(d) *Extensions.* The notice date is extended to the latest of—

(1) *Form 1 extension.* 30 days after the plan's variable rate premium filing due date for the event year if a waiver under any of paragraphs (c)(3)(i) through (c)(3)(iii) or (c)(4) of this section would apply if ''the plan year preceding the event year'' were substituted for ''the event year'';

(2) *Foreign parent and foreign-linked entities.* With respect to a transaction in which only foreign parents or foreign-linked entities will cease to be members of the plan's controlled group, 30 days after the plan's first Form 5500 due date after the person required to notify the PBGC has actual knowledge of the transaction and of the controlled group relationship; and

(3) *Press releases; Forms 10Q.* If the plan's contributing sponsor before the effective date of the transaction is a public company, 30 days after the earlier of—

(i) The first Form 10Q filing deadline that occurs after the transaction; or

(ii) The date (if any) when a press release with respect to the transaction is issued.

(e) *Transaction.* For purposes of this section, the term ''transaction'' includes, but is not limited to, a legally binding agreement, whether or not written, to transfer, a transfer, and a change in ownership that occurs as a matter of law or through the exercise or lapse of pre-existing rights.

(f) *Examples.* The following examples assume that no waivers apply.

(1) *Controlled group breakup.* Plan A's controlled group consists of Company A (its contributing sponsor), Company B (which maintains Plan B), and Company C. As a result of a transaction, the controlled group will break into two separate controlled groups—one segment consisting of Company A and the other segment consisting of Companies B and C. Both Company A (Plan A's contributing sponsor) and the plan administrator of plan A are required to report that Companies B and C will leave plan A's controlled group. Company B (Plan B's contributing sponsor) and the plan administrator of Plan B are required to report that Company A will leave Plan B's controlled group. Company C is not required to report because it is not a contributing sponsor or a plan administrator.

(2) *Change in contributing sponsor.* Plan Q is maintained by Company Q. In connection with a sale of Company Q's assets and the transfer of employees, Plan Q will be transferred to Company R, which is not a member of Company Q's controlled group. There is no change in the structure of Company Q's controlled group. The plan administrator and contributing sponsor of Plan Q are required to report that Company Q (and any other member of Company Q's controlled group) will cease to be a member of Plan Q's controlled group.

(3) *Merger/consolidation within a controlled group.* Company X and Company Y are subsidiaries of Company Z, which maintains Plan Z. Company Y merges into Company X (only Company X survives). Company Z and the plan administrator of Plan Z must report that Company Y has ceased to be a member of Plan Z's controlled group.

§ 4043.30 Liquidation.

(a) *Reportable event.* A reportable event occurs for a plan when a member of the plan's controlled group—

(1) Is involved in any transaction to implement its complete liquidation (including liquidation into another controlled group member);

(2) Institutes or has instituted against it a proceeding to be dissolved or is dissolved, whichever occurs first; or

(3) Liquidates in a case under the Bankruptcy Code, or under any similar law.

(b) *Initial information required.* In addition to the information in § 4043.3(b), the notice shall include—

(1) The name of each member of the plan's controlled group before and after the liquidation and its ownership relationship to other members of that controlled group; and

(2) For each other plan maintained by any member of the plan's controlled group, identification of the plan and its contributing sponsor(s) by name and EIN/PN or EIN, as appropriate.

(c) *Waivers.*— (1) *De minimis 10-percent segment.* Notice is waived if—

(i) The person or persons that liquidate represent a *de minimis* 10-percent segment of the plan's controlled group for the most recent fiscal year(s) ending on or before the date the reportable event occurs; and

(ii) Each plan that was maintained by the liquidating member is maintained by another member of the plan's controlled group after the liquidation.

(2) *Foreign entity.* Notice is waived if each person that liquidates is a foreign entity other than a foreign parent.

(3) *Plan funding.* Notice is waived if any plan that was maintained by the liquidating member is maintained by another member of the plan's controlled group after the liquidation and—

(i) *No variable rate premium.* No variable rate premium is required to be paid for the plan for the event year;

(ii) *$1 million unfunded vested benefits.* As of the testing date for the event year, the plan has less than $1 million in unfunded vested benefits; or

(iii) *No unfunded vested benefits.* As of the testing date for the event year, the plan would have no unfunded vested benefits if unfunded vested benefits were determined in accordance with the assumptions and methodology in § 4010.4(b)(2) of this chapter.

(4) *Public company/80-percent funded.* Notice is waived if—

(i) The plan's contributing sponsor is a public company; and

(ii) As of the testing date for the event year, the fair market value of the plan's assets is at least 80 percent of the plan's vested benefits amount.

(d) *Extensions.* The notice date is extended to the latest of—

(1) *Form 1 extension.* 30 days after the plan's variable rate premium filing due date for the event year if a waiver under any of paragraphs (c)(3)(i) through (c)(3)(iii) or (c)(4) of this section would apply if ''the plan year preceding the event year'' were substituted for ''the event year'';

(2) *Foreign parent and foreign-linked entity.* 30 days after the plan's first Form 5500 due date after the person required to notify the PBGC has actual knowledge of the transaction and of the controlled group relationship, if the person liquidating is a foreign parent or foreign-linked entity; and

(3) *Press releases; Forms 10Q.* If the plan's contributing sponsor is a public company, 30 days after the earlier of—

(i) The first Form 10 filing deadline that occurs after the transaction; or

(ii) The date (if any) when a press release with respect to the transaction is issued.

§ 4043.31 Extraordinary dividend or stock redemption.

(a) *Reportable event.* A reportable event occurs for a plan when any member of the plan's controlled group declares a dividend or redeems its own stock, if the resulting distribution is reportable under this paragraph.

(1) *Cash distributions.* A cash distribution is reportable if—

(i) The distribution, when combined with any other cash distributions to shareholders previously made during the fiscal year, exceeds the adjusted net income (as defined in paragraph (e)(1) of this section) of the person making the distribution for the preceding fiscal year; and

(ii) The distribution, when combined with any other cash distributions to shareholders previously made during the fiscal year or during the three prior fiscal years, exceeds the adjusted net income (as defined in paragraph (e)(1) of this section) of the person making the distribution for the four preceding fiscal years.

(2) *Non-cash distributions.* A non-cash distribution is reportable if its net value (as defined in paragraph (e)(4) of this section), when combined with the net value of any other non-cash distributions to shareholders previously made during the fiscal year, exceeds 10 percent of the total net assets (as defined in paragraph (e)(6) of this section) of the person making the distribution.

(3) *Combined distributions.* If both cash and non-cash distributions to shareholders are made during a fiscal year, a distribution is reportable when the sum of the cash distribution percentage and the non-cash distribution percentages for the fiscal year exceeds 100 percent.

(b) *Information required.* In addition to the information in § 4043.5(b), the notice shall include—

(1) Identification of the person making the distribution (by name and EIN); and

(2) The date and amount of any cash distribution during the fiscal year;

(3) A description of any non-cash distribution during the fiscal year, the fair market value of each asset distributed, and the date or dates of distribution; and

(4) A statement as to whether the recipient was a member of the plan's controlled group.

(c) *Waivers*—(1) *Extraordinary dividends and stock redemptions.* The reportable event described in section 4043(c)(11) of ERISA related to extraordinary dividends and stock redemptions is waived except to the extent reporting is required under this section.

(2) *De minimis 5-percent segment.* Notice is waived if the person making the distribution is a *de minimis* 5-percent segment of the plan's controlled group for the most recent fiscal year(s) ending on or before the date the reportable event occurs.

(3) *Foreign entity.* Notice is waived if the person making the distribution is a foreign entity other than a foreign parent.

(4) *Foreign parent.* Notice is waived if the person making the distribution is a foreign parent, and the distribution is made solely to other members of the plan's controlled group.

(5) *Plan funding.* Notice is waived if—

(i) *No variable rate premium.* No variable rate premium is required to be paid for the plan for the event year;

(ii) *$1 million unfunded vested benefits.* As of the testing date for the event year, the plan has less than $1 million in unfunded vested benefits;

(iii) *No unfunded vested benefits.* As of the testing date for the event year, the plan would have no unfunded vested benefits if unfunded vested benefits were determined in accordance with the assumptions and methodology in § 4010.4(b)(2) of this chapter; or

(iv) *80-percent funded.* As of the testing date for the event year, the fair market value of the plan's assets is at least 80 percent of the plan's vested benefits amount.

(d) *Extensions.* The notice date is extended to the latest of—

(1) *Form 1 extension.* 30 days after the plan's variable rate premium filing due date for the event year if a waiver under any of paragraphs (c)(5)(i) through (c)(5)(iv) of this section would apply if ''the plan year preceding the event year'' were substituted for ''the event year'';

(2) *Foreign parent and foreign-linked entity.* 30 days after the plan's first Form 5500 due date after the person required to notify the PBGC has actual knowledge of the distribution and the controlled group relationship, if the person making the distribution is a foreign parent or foreign-linked entity; and

(3) *Press releases; Forms 10Q.* If the plan's contributing sponsor is a public company, 30 days after the earlier of—

(i) The first Form 10Q filing deadline that occurs after the distribution; or

(ii) The date (if any) when a press release with respect to the distribution is issued.

(e) *Definitions.*

(1) *Adjusted net income* means the net income before after-tax gain or loss on any sale of assets, as determined in accordance with generally accepted accounting principles and practices.

(2) *Cash distribution percentage* means, for a fiscal year, the lesser of—

(i) The percentage that all cash distributions to one or more shareholders made during that fiscal year bears to the adjusted net income (as defined in paragraph (e)(1) of this section) of the person making the distributions for the preceding fiscal year, or

(ii) The percentage that all cash distributions to one or more shareholders made during that fiscal year and the three preceding fiscal years bears to the adjusted net income (as defined in paragraph (e)(1) of this section) of the person making the distributions for the four preceding fiscal years.

(3) *Dividend* means a distribution to one or more shareholders. A payment by a person to a member of its controlled group is treated as a distribution to its shareholder(s).

(4) *Net value of non-cash distribution* means the fair market value of assets transferred by the person making the distribution, reduced by the fair market value of any liabilities assumed or consideration given by the recipient in connection with the distribution. A distribution of stock that one controlled group member holds in another controlled group member is disregarded. Net value determinations should be based on readily available fair market value(s) or independent appraisal(s) performed within one year before the distribution is made. To the extent that fair market values are not readily available and no such appraisals exist, the fair market value of an asset transferred in connection with a distribution or a liability assumed by a recipient of a distribution shall be deemed to be equal to 200 percent of the book value of the asset or liability on the books of the person making the distribution. Stock redeemed is deemed to have no value.

(5) *Non-cash distribution percentage* means the percentage that the net value of the non-cash distribution bears to one-tenth of the value of the total net assets (as defined in paragraph (e)(6) of this section) of the person making the distribution.

(6) *Total net assets* means, with respect to the person declaring a non-cash distribution—

(i) If all classes of the person's securities are publicly traded, the total market value (immediately before the distribution is made) of the publicly-traded securities of the person making the distribution;

(ii) If no classes of the person's securities are publicly traded, the excess (immediately before the distribution is made) of the book value of the person's assets over the book value of the

person's liabilities, adjusted to reflect the net value of the non-cash distribution; or

(iii) If some but not all classes of the person's securities are publicly traded, the greater of the amounts in paragraphs (e)(6)(i) or (ii) of this section.

§ 4043.32 Transfer of benefit liabilities.

(a) *Reportable event*—(1) *In general.* A reportable event occurs for a plan when—

(i) The plan or any other plan maintained by a person in the plan's controlled group makes a transfer of benefit liabilities to a person, or to a plan or plans maintained by a person or persons, that are not members of the transferor plan's controlled group; and

(ii) The amount of benefit liabilities transferred, in conjunction with other benefit liabilities transferred during the 12-month period ending on the date of the transfer, is 3 percent or more of the plan's total benefit liabilities. Both the benefit liabilities transferred and the plan's total benefit liabilities shall be valued as of any one date in the plan year in which the transfer occurs, using actuarial assumptions that comply with section 414(l) of the Code.

(2) *Date of transfer.* The date of transfer shall be determined on the basis of the facts and circumstances of the particular situation. For transfers subject to the requirements of section 414(l) of the Code, a date determined in accordance with 26 CFR 1.414(l)–1(b)(11) will be considered the date of transfer.

(b) *Initial information required.* In addition to the information required in § 4043.3(b), the notice shall include—

(1) Identification of the transferee(s) and each contributing sponsor of each transferee plan by name and EIN/PN or EIN, as appropriate;

(2) An explanation of the actuarial assumptions used in determining the value of benefit liabilities (and, if appropriate, the value of plan assets) for each transfer; and

(3) An estimate of the amounts of assets and liabilities being transferred, and the number of participants whose benefits are transferred.

(c) *Waivers.* (1) *Complete plan transfer.* Notice is waived if the transfer is a transfer of all of the transferor plan's benefit liabilities and assets to one other plan.

(2) *Transfer of less than 3 percent of assets.* Notice is waived if the value of the assets being transferred—

(i) Equals the present value of the accrued benefits (whether or not vested) being transferred, using actuarial assumptions that comply with section 414(l) of the Code; and

(ii) In conjunction with other assets transferred during the same plan year, is less than 3 percent of the assets of the transferor plan as of at least one day in that year.

(3) *Section 414(l) safe harbor.* Notice is waived if the transfer complies with section 414(l) of the Code using the actuarial assumptions prescribed for valuing benefits in trusteed plans under § 4044.51–57 of this chapter.

(4) *Fully funded plans.* Notice is waived if the transfer complies with section 414(l) of the Code using reasonable actuarial assumptions and, after the transfer, the transferor and transferee plans are fully funded (using the actuarial assumptions prescribed for valuing benefits in trusteed plans under § 4044.51–57) of this chapter.

(d) *Who must file.* Only the plan administrator and contributing sponsor of the plan that made the transfer described in paragraph (a)(1) of this section are required to file a notice of a reportable event under this section. Notice by any other contributing sponsor or plan administrator is waived.

§ 4043.33 Application for minimum funding waiver.

(a) *Reportable event.* A reportable event for a plan occurs when an application for a minimum funding waiver for the plan is submitted under section 303 of ERISA or section 412(d) of the Code.

(b) *Initial information required.* In addition to the information in § 4043.3(b), the notice shall include a copy of the waiver application, including all attachments.

§ 4043.34 Loan default.

(a) *Reportable event.* A reportable event occurs for a plan whenever there is a default by a member of the plan's controlled group with respect to a loan with an outstanding balance of $10 million or more, if—

(1) The default results from the debtor's failure to make a required loan payment when due (unless the payment is made within 30 days after the due date);

(2) The lender accelerates the loan; or

(3) The debtor receives a written notice of default from the lender (and does not establish the notice was issued in error) on account of:

(i) A drop in the debtor's cash reserves below an agreed-upon level;

(ii) An unusual or catastrophic event experienced by the debtor; or

(iii) A persisting failure by the debtor to attain agreed-upon performance levels.

(b) *Initial information required.* In addition to the information in § 4043.3(b), the notice shall include—

(1) A copy of the relevant loan documents (e.g., promissory note, security agreement);

(2) The due date and amount of any missed payment;

(3) A copy of any notice of default from the lender; and

(4) A copy of any notice of acceleration from the lender.

(c) *Waivers.—(1) Default cured.* Notice is waived if the default is cured, or waived by the lender, within 30 days or, if later, by the end of any cure period provided by the loan agreement.

(2) *Foreign entity.* Notice is waived if the debtor is a foreign entity other than a foreign parent.

(3) *Plan funding.* Notice is waived if—

(i) *No variable rate premium.* No variable rate premium is required to be paid for the plan for the event year;

(ii) *$1 million unfunded vested benefits.* As of the testing date for the event year, the plan has less than $1 million in unfunded vested benefits;

(iii) *No unfunded vested benefits.* As of the testing date for the event year, the plan would have no unfunded vested benefits if unfunded vested benefits were determined in accordance with the assumptions and methodology in § 4010.4(b)(2) of this chapter; or

(iv) *80-percent funded.* As of the testing date for the event year, the fair market value of the plan's assets is at least 80 percent of the plan's vested benefits amount.

(d) *Notice date and extensions.*

(1) *In general.* Except as provided in paragraph (d)(2) or (d)(3) of this section, the notice date is 30 days after the person required to report knows or has reason to know of the occurrence of the default, without regard to the time of any other conditions required for the default to be reportable.

(2) *Cure period extensions.* The notice date is extended to one day after—

(i) The applicable cure period provided in the loan agreement (in the case of a reportable event described in paragraph (a)(1) of this section);

(ii) The date the loan is accelerated (in the case of a reportable event described in paragraph (a)(2) of this section); or

(iii) The date the debtor receives written notice of the default (in the case of a reportable event described in paragraph (a)(3) of this section).

(3) *Form 1 extension.* The notice date is extended to 30 days after the plan's variable rate premium filing due date for the event year, if a waiver under any of paragraphs (c)(3)(i) through (c)(3)(iv) of this section would apply if ''the plan year preceding the event year'' were substituted for ''the event year.''

(4) *Foreign parent and foreign-linked entities.* With respect to a loan default

involving only a foreign parent or a foreign-linked entity, the notice date is extended to 30 days after the plan's first Form 5500 due date after the person required to notify the PBGC has actual knowledge of the default and of the controlled group relationship.

(5) *Example.* Company A has a debt with an outstanding balance of $20 million, for which a payment is due on October 1. Under the terms of the loan, the default may be cured within 10 days. Company A does not make the payment until October 31. Because Company A has made the payment within 30 days of the due date, no reportable event has occurred. If Company A does not make the payment by October 31, a reportable event will have occurred on October 1, and notice will be due by October 31.

§ 4043.35 Bankruptcy or similar settlement.

(a) *Reportable event.* A reportable event occurs for a plan when any member of the plan's controlled group—

(1) Commences a bankruptcy case (under the Bankruptcy Code), or has a bankruptcy case commenced against it;

(2) Commences or has commenced against it any other type of insolvency proceeding (including, but not limited to, the appointment of a receiver);

(3) Commences, or has commenced against it, a proceeding to effect a composition, extension, or settlement with creditors;

(4) Executes a general assignment for the benefit of creditors; or

(5) Undertakes to effect any other nonjudicial composition, extension, or settlement with substantially all its creditors.

(b) *Initial information required.* In addition to the information in § 4043.3(b), the notice shall include—

(1) A copy of all papers filed in the relevant proceeding, including, but not limited to, petitions and supporting schedules;

(2) The last date for filing claims;

(3) The name, address, and phone number of any trustee or receiver (or similar person);

(4) The name of each member of the plan's controlled group and its ownership relationship to other members of that controlled group; and

(5) For each other plan maintained by any member of the plan's controlled group, identification of the plan and its contributing sponsor(s) by name and EIN/PN or EIN, as appropriate.

(c) *Waivers.* Notice is waived if the person described in paragraph (a) of this section is a foreign entity other than a foreign parent.

(d) *Extensions.* Unless the controlled group member described in paragraph (a) of this section is the contributing sponsor of the plan, the notice date is extended until 30 days after the person required to notify the PBGC has actual knowledge of the reportable event.

Subpart C—Advance Notice of Reportable Events

§ 4043.61 Advance reporting filing obligation.

(a) *In general.* Unless a waiver or extension applies with respect to the plan, each contributing sponsor of a plan for which a reportable event under this subpart is going to occur is required to notify the PBGC no later than 30 days before the effective date of the reportable event if the contributing sponsor is subject to advance reporting.

(b) *Persons subject to advance reporting.* A contributing sponsor is subject to the advance reporting requirement under paragraph (a) of this section if—

(1) Neither the contributing sponsor nor the member of the plan's controlled group to which the event relates is a public company; and

(2) The contributing sponsor is a member of a controlled group maintaining one or more plans that, in the aggregate (disregarding plans with no unfunded vested benefits) have—

(i) Vested benefits amounts that exceed the actuarial values of plan assets by more than $50 million; and

(ii) A funded vested benefit percentage of less than 90 percent.

(c) *Funding determinations.* For purposes of paragraph (b)(2) of this section.

(1) *Actuarial value of assets.* The actuarial value of plan assets is determined in accordance with § 4006.4(b)(2) of this chapter;

(2) *Funded vested benefit percentage.* The aggregate funded vested percentage of one or more plans is the percentage that the total actuarial values of plan assets bears to the plans' total vested benefits amounts; and

(3) *Testing date.* Each plan's assets and vested benefits amount are determined as of that plan's testing date for the plan year that includes the effective date of the reportable event.

(d) *Shortening of 30-day period.* Pursuant to § 4043.3(d), the PBGC may, upon review of an advance notice, shorten the notice period to allow for an earlier effective date.

§ 4043.62 Change in contributing sponsor or controlled group.

(a) *Reportable event and information required.* Advance notice is required for a change in a plan's contributing sponsor or controlled group, as described in § 4043.29(a), and the notice shall include the information described in § 4043.29(b) and, if known, the expected effective date of the reportable event.

(b) *Waivers*—(1) *Small plan.* Notice is waived with respect to a change of contributing sponsor if the transferred plan has 500 or fewer participants.

(2) *De minimis 5-percent segment.* Notice is waived if the person or persons that will cease to be members of the plan's controlled group represent a *de minimis* 5-percent segment of the plan's old controlled group for the most recent fiscal year(s) ending on or before the effective date of the reportable event.

§ 4043.63 Liquidation.

(a) *Reportable event and information required.* Advance notice is required for a liquidation of a member of a plan's controlled group, as described in § 4043.30(a), and the notice shall include the information described in § 4043.30(b) and, if known, the expected effective date of the reportable event.

(b) *Waiver.* Notice is waived if the person that liquidates is a *de minimis* 5-percent segment of the plan's controlled group for the most recent fiscal year(s) ending on or before the effective date of the reportable event, and any plan that was maintained by the liquidating member is maintained by another member of the plan's controlled group.

§ 4043.64 Extraordinary dividend or stock redemption.

(a) *Reportable event and information required.* Advance notice is required for a distribution by a member of a plan's controlled group that would be described in § 4043.31(a) if both assets and liabilities were valued at fair market value. The notice shall include the information described in § 4043.31(b).

(b) *Waiver.* Notice is waived if the person making the distribution is a *de minimis* 5-percent segment of the plan's controlled group for the most recent fiscal year(s) ending on or before the effective date of the reportable event.

§ 4043.65 Transfer of benefit liabilities.

(a) *Reportable event and information required.* Advance notice is required for a transfer of benefit liabilities, as described in § 4043.32(a) (determined without regard to § 4043.32(d)), and the notice shall include the information described in § 4043.32(b).

(b) *Waivers.* Notice is waived—

(1) In the circumstances described in § 4043.32 (c)(1), (c)(2), and (c)(4); and

(2) If the benefit liabilities of 500 or fewer participants are transferred, in the circumstances described in § 4043.32(c)(3).

§ 4043.66 Application for minimum funding waiver.

(a) *Reportable event and information required.* Advance notice is required for an application for a minimum funding waiver, as described in § 4043.33(a), and the notice shall include the information described in § 4043.33(b).

(b) *Extension.* The notice date is extended until 10 days after the reportable event has occurred.

§ 4043.67 Loan default.

(a) *Reportable event and information required.* Advance notice is required for a loan default, as described in § 4043.34(a) (or that would be so described if ''10 days'' were substituted for ''30 days'' in § 4043.34(a)(1)). The notice shall include the information described in § 4043.34(b).

(b) *Waivers.* Notice is waived if the reportable default is cured, or the lender waives the default, within 10 days or, if later, by the end of any cure period.

(c) *Extensions.* The notice date is extended to the later of—

(1) *10 days after default.* 10 days after the default occurs (without regard to the time of any other conditions required for the default to be reportable); and

(2) *One day after subsequent event.* One day after—

(i) The applicable cure period provided in the loan agreement (in the case of a default described in § 4043.34(a)(1));

(ii) The date the loan is accelerated (in the case of a default described in § 4043.34(a)(2)); and

(iii) The date the debtor receives written notice of the default (in the case of a default described in § 4043.34(a)(3)).

§ 4043.68 Bankruptcy or similar settlement.

(a) *Reportable event and information required.* Advance notice is required for a bankruptcy or similar settlement, as described in § 4043.35(a), and the notice shall include the information described in § 4043.35(b).

(b) *Extension.* The notice date is extended until 10 days after the reportable event has occurred.

Subpart D—Notice of Failure to Make Required Contributions

§ 4043.81 PBGC Form 200, notice of failure to make required contributions; supplementary information.

(a) *General rules.* To comply with the notification requirement in section 302(f)(4) of ERISA and section 412(n)(4) of the Code, a contributing sponsor of a single-employer plan that is covered under section 4021 of ERISA and, if that contributing sponsor is a member of a parent-subsidiary controlled group, the ultimate parent must complete and submit in accordance with this section a properly certified Form 200 that includes all required documentation and other information, as described in the related filing instructions. Notice is required whenever the unpaid balance of a required installment or any other payment required under section 302 of ERISA and section 412 of the Code (including interest), when added to the aggregate unpaid balance of all preceding such installments or other payments for which payment was not made when due (including interest), exceeds $1 million.

(1) Form 200 must be filed with the PBGC no later than 10 days after the due date for any required payment for which payment was not made when due.

(2) If a contributing sponsor or the ultimate parent completes and submits Form 200 in accordance with this section, the PBGC will consider the notification requirement in section 302(f)(4) of ERISA and section 412(n)(4) of the Code to be satisfied by all members of a controlled group of which the person who has filed Form 200 is a member.

(b) *Supplementary information.* If, upon review of a Form 200, the PBGC concludes that it needs additional information in order to make decisions regarding enforcement of a lien imposed by section 302(f) of ERISA and section 412(n) of the Code, the PBGC may require any member of the contributing sponsor's controlled group to supplement the Form 200 in accordance with § 4043.3(d).

PART 4065—ANNUAL REPORT

4. The authority citation for part 4065 is revised to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1365.

5. Section 4065.3 is amended by redesignating the existing text as paragraph (b); and adding a new paragraph (a) to read as follows:

§ 4065.3 Filing requirement.

(a) The requirement to report the occurrence of a reportable event under section 4043 of ERISA in the Annual Report is waived.

* * * * *

Issued in Washington, DC, this 17th day of July, 1996.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 96–18608 Filed 7–23–96; 8:45 am]

BILLING CODE 7708–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 943

[SPATS No. TX–31–FOR]

Texas Regulatory Program

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

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Texas regulatory program (hereinafter the ''Texas program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Texas proposed revisions to its regulations pertaining to rough backfilling and grading performance standards for cyclic and continuous excavation area strip mining operations. The amendments is intended to revise the Texas program to take into consideration the two types of area strip mining excavation operations conducted in the State of Texas and to clarify the time and distance standards for cyclic excavation area strip mining.

DATES: Written comments must be received by 4:00 p.m. c.d.t., August 23, 1996. If requested, a public hearing on the proposed amendment will be held on August 19, 1996. Requests to speak at the hearing must be received by 4:00 p.m., c.d.t. August 8, 1996.

ADDRESSES: Written comments and requests to speak at the hearing should be mailed or hand delivered to Jack R. Carson, Acting Director, Tulsa Field Office, at the address listed below.

Copies of the Texas program, the proposed amendment, a listing of any scheduled public hearings, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Tulsa Field Office.

Jack R. Carson, Acting Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 East Skelly Drive, Suite 470, Tulsa, Oklahoma, 74135–6547, Telephone: (918) 581–6430.

Surface Mining and Reclamation Division, Railroad Commission of Texas, 1701 North Congress Avenue, P.O. Box 12967, Austin, Texas,

78711–2967, Telephone: (512) 463–6900.

FOR FURTHER INFORMATION CONTACT: Jack R. Carson, Acting Director, Tulsa Field Office, Telephone: (918) 581–6430.

SUPPLEMENTARY INFORMATION

I. Background on the Texas Program

On February 16, 1980, the Secretary of the Interior conditionally approved the Texas program. General background information on the Texas program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the February 27, 1980, Federal Register (45 FR 12998). Subsequent actions concerning the Texas program can be found at 30 CFR 943.10, 943.15, and 943.16.

II. Description of the Proposed Amendment

By letter dated July 11, 1996 (Administrative Record No. TX–617), Texas submitted a proposed amendment to its program pursuant to SMCRA. Texas submitted the proposed amendment at its own initiative. Texas proposes to amend Texas Coal Mining Regulations (TCMR) 816.384 (Backfilling and Grading—General Requirements) by providing rough backfilling and grading timing provisions for two types of area strip mining operations, cyclic excavation and continuous excavation. Texas also proposes to clarify that time and distance variances may be approved for cyclic excavation area strip mining operations.

1. TCMR 816.384(a)(3) Timing of Backfilling and Grading for Cyclic Excavation Area Strip Mining

Texas proposes to limit its rough backfilling and grading provisions at TCMR 816.384(a)(3) to the cyclic excavation method of area strip mining. Texas also proposes to clarify that time and distance variances may be approved for cyclic excavation area strip mining operations by providing for an exception to its four spoil ridge limitation. The permittee must demonstrate that additional time and/or distance is necessary.

2. TCMR 816.384(a)(4) Timing of Backfilling and Grading for Continuous Excavation Area Strip Mining

Texas proposes to add the following provision at TCMR 816.384(a)(4) concerning rough backfilling and grading timing requirements for continuous excavation area strip mining.

Area strip mining (continuous excavation). Rough backfilling and grading shall occur in accordance with the time schedule approved by the Commission, on the basis of a detailed written analysis by the permittee under Section .145(b)(3) and any additional information which the Commission may require.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Texas program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Tulsa Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to speak at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., c.d.t. on August 8, 1996. The location and time of the hearing will be arranged with those persons requesting the hearing. Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT**. If no one requests an opportunity to speak at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to speak have been heard. Persons in the audience who have not been scheduled to speak, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Public Meeting

If only one person requests an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSEES**. A written summary of each meeting will be made a part of the Administrative Record.

IV. 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 programs 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 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 States. In making the determination as to whether this rule would have a significant economic impact, the Department relied on 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 943

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 17, 1996.

Charles E. Sandberg,

Acting Regional Director, Mid-Continent Regional Coordinating Center.

[FR Doc. 96–18783 Filed 7–23–96; 8:45 am]

BILLING CODE 4310–05–M

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30 CFR Part 946

[VA–106–FOR]

Virginia Regulatory Program

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

ACTION: Proposed rule; reopening of comment period.

SUMMARY: OSM is reopening the comment period on a portion of a proposed amendment to the Virginia regulatory program (hereinafter referred to as the Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment for which the comment period is being reopened concerns the proposed use of a 28-degree angle of draw with the rebuttable presumption of causation by subsidence provision. The amendment is intended to revise the State program to be consistent with the federal regulations as amended on March 31, 1995.

DATES: Written comments must be received by 4:00 p.m., August 8, 1996.

ADDRESSES: When comments should be mailed or hand delivered to Mr. Robert A. Penn, Director, Big Stone Gap Field Office at the first address listed below.

Copies of the Virginia program, the proposed amendment, a listing of any scheduled public hearings, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requestor may receive one free copy of the proposed amendment by contacting OSM's Big Stone Gap Field Office.

Office of Surface Mining Reclamation and Enforcement, Big Stone Gap Field Office, 1941 Neeley Road, Suite 201, Compartment 116, Big Stone Gap, Virginia 24219, Telephone: (703) 523–4303

Virginia Division of Mined Land Reclamation, P. O. Drawer 900, Big Stone Gap, Virginia 24219, Telephone: (703) 523–8100.

FOR FURTHER INFORMATION CONTACT: Mr. Robert A. Penn, Director, Big Stone Gap Field Office, Telephone: (703) 523–4303.

SUPPLEMENTARY INFORMATION:

I. Background on the Virginia Program

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 can be found at 30 CFR 946.12, 946.13, 946.15, and 946.16.

II. Discussion of the Proposed Amendment

By letter dated May 21, 1996 (Administrative Record No. VA–882), Virginia submitted amendments to the Virginia program concerning subsidence damage. The amendments are intended to make the Virginia program consistent with the Federal regulations as amended on March 31, 1995 (60 FR 16722). Virginia stated that the proposed amendments implement the standards of the Federal Energy Policy Act of 1992, and sections 45.1–243 and 45.1–258 of the Code of Virginia.

The proposed amendments were announced in the June 11, 1996, Federal Register (61 FR 29506). In that notice, however, OSM did not specifically point out that, at § 480–03–19.817.121(c)(4), Virginia proposed to normally use a 28-degree angle of draw presumption for the rebuttable presumption of causation by subsidence provision. The counterpart Federal provision at 30 CFR 817.121(c)(4) provides that a 30-degree angle of draw will normally apply.

30 CFR 817.121(c)(4) also authorizes the use of a different angle of draw (other than 30 degrees) if the regulatory authority shows in writing that the proposed angle has a more reasonable basis than the 30-degree angle of draw, based on geotechnical analysis of the factors affecting potential surface impacts of underground coal mining operations in the State.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comment on whether the amendment identified above satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Virginia program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Big Stone Gap Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

IV. 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: July 17, 1996.

Tim L. Dieringer,

Acting Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 96–18782 Filed 7–23–96; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TN–173–9637b; FRL–5538–1]

Approval and Promulgation of Implementation Plans—Tennessee: Approval of Source Specific Nitrogen Oxide Permits Into the Tennessee State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve two source specific permits into the Tennessee State Implementation Plan (SIP) submitted to EPA by Tennessee, through the Tennessee Department of Air Pollution Control (TDAPC) which limit nitrogen oxide (NO_X) emissions for certain engines at the Tenneco Energy Portland facility located in Sumner County, Tennessee. These permits are necessary because NO_X reductions from the Tenneco Energy Portland facility were used in calculating the NO_X emissions projections in the maintenance plan for the Middle Tennessee ozone nonattainment area. EPA is proposing approval of the ozone redesignation request in a separate action. In the final rules section of this Federal Register, the EPA is approving these permits as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: To be considered, comments must be received by August 23, 1996.

ADDRESSES: Written comments on this action should be addressed to William Denman at the Environmental Protection Agency, Region 4 Air Programs Branch, 345 Courtland Street, NE, Atlanta, Georgia 30365. Copies of documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day. Reference file TN173–01–9637. The Region 4 office may have additional background documents not available at the other locations

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460

Environmental Protection Agency, Region 4 Air Programs Branch, 345 Courtland Street NE., Atlanta, Georgia 30365; William Denman, 404/347–3555 extension 4208

Tennessee Department of Environment and Conservation, Division of Air Pollution Control, L&C Annex, 9th Floor, 401 Church Street, Nashville, Tennessee 37243–1531; 615/532–0554.

FOR FURTHER INFORMATION CONTACT: William Denman, 404/347–3555 extension 4208.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the rules section of this Federal Register.

Dated: July 2, 1996.

A. Stanley Meiburg,

Acting Regional Administrator.

[FR Doc. 96–18647 Filed 7–23–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 180

[PP 4E4417/P671; FRL–5382–8]

RIN 2070–AC18

N-Acyl Sarcosines and Sodium N-Acyl Sarcosinates; Proposed Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that residues of *N*-acyl sarcosines [*N*-oleoyl sarcosine, *N*-stearoyl sarcosine, *N*-lauroyl sarcosine, *N*-myristoyl sarcosine, *N*-cocoyl sarcosine mixture] and sodium *N*-acyl sarcosinates [*N*-methyl-*N*-(1-oxo-9-octodecenyl) glycine, *N*-methyl-*N*-(1-oxooctadecyl) glycine, *N*-methyl-*N*-(1-oxododecyl) glycine, *N*-methyl-*N*-(1-oxotetradecyl) glycine, and *N*-cocoyl sarcosine sodium salt mixture be exempted from the requirement of a tolerance when used at levels not to exceed 10% as inert ingredients (surfactants) in pesticide formulations applied to growing crops, crops after harvest, and on animals. This proposed regulation was requested by Hampshire

Chemical Company, pursuant to the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: Comments, identified by the docket control number [PP 4E4417/P671], must be received on or before August 23, 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, CM #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 4E4417/P671]. 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: Amelia M. Acierto, 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) 308–8375, e-mail: acierto.amelia@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Hampshire Chemical Company, 55 Hayden Avenue, Lexington, MA 02173, has submitted pesticide petition (PP) 4E4417 to EPA requesting that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a(e), propose to amend 40 CFR 180.1001(c) and (e) by establishing an exemption from the requirement of a tolerance for *N*-acyl sarcosines [*N*-oleoyl sarcosine (CAS Reg. No. 110–25–8); *N*-stearoyl sarcosine (CAS Reg. No. 142–48–3); *N*-lauroyl sarcosine (CAS Reg. No. 97–78–9); *N*-myristoyl sarcosine (CAS Reg. No. 52558–73–3); *N*-cocoyl sarcosine mixture (CAS Reg. No. 68411–97–2); and sodium *N*-acyl sarcosinates [*N*-methyl-*N*-(1-oxo-9-octodecenyl) glycine (CAS Reg. No. 3624–77–9); *N*-methyl-*N*-(1-oxooctadecyl) glycine (CAS Reg. No. 5136–55–0); *N*-methyl-*N*-(1-oxododecyl) glycine (CAS Reg. No. 137–16–6); *N*-methyl-*N*-(1-oxotetradecyl glycine (CAS Reg. No. 30364–51–3); and *N*-cocoyl sarcosine sodium salt mixture (CAS Reg. No. 61791–59–1)] when used at levels not to exceed 10% as inert ingredients (surfactants) in pesticide formulations applied to growing crops, crops after harvest and animals under 40 CFR 180.1001(c) and (e).

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 *N*-acyl sarcosines and their corresponding sodium salts will need to be submitted. The rationale for this decision is described below:

1. *N*-Acyl sarcosines form a large class of chemical compounds that have been used for years in soaps, toiletries, toothpastes, medicated skin cleaners and shampoos and other consumer products.

2. *N*-Acyl sarcosines have approved uses under the Federal Food, Drug, and Cosmetic Act (FFDCA):

(a) Lauroyl and stearoyl sarcosines are approved for use as release agents in coatings at levels up to 0.3% by weight of the finished food packaging cellophane (21 CFR 177.1200).

(b) Lauroyl sarcosine, sodium salt is approved for use in food packaging made of vinylidine chloride copolymer up to 0.35% by weight (21 CFR 177.1200) and for use in holding food (21 CFR 175.105).

(c) Oleoyl sarcosine [listed as *N*-methyl-*N*-(1-oxo-9-octadecenyl) glycine] is approved for use as a corrosion inhibitor at levels of up to 0.5% of the lubricants used on machinery used for processing, manufacturing, packing, processing, preparing, treating, packaging, transporting or holding food (21 CFR 178.3570).

3. *N*-Acyl sarcosines where the acyl group is lauroyl, oleoyl, or derived from the combined fatty acids of coconut oil (i.e., cocoyl) are approved for use as anti-static and/or antifogging agents at levels up to a total of 0.15% by weight of polyolefin film used for packaging meat, fresh fruits, and fresh vegetables (21 CFR 178.3130).

4. The structurally similar compounds, *N*-methyl-*N*-oleoyltaurine, sodium salt and *N*-methyl-*N*-palmitoyltaurine, sodium salt are approved for use as surfactants in pesticide formulations applied to growing crops or to raw agricultural commodities under 40 CFR 180.1001(c) and are included in the EPA's list of inert ingredients accepted for non-food use.

5. *N*-Methyl-*N*-oleoyl glycine and *N*-methyl-*N*-oleoyltaurine, sodium salt, two other structurally similar compounds, are included in the EPA list of inert ingredients approved for non-food use pesticides.

6. *N*-Acyl sarcosines were negative in dermal irritation, dermal sensitization and mutagenicity studies.

7. Hazard to aquatic organisms is not expected at the proposed use rates based on ecotoxicology studies of *N*-acyl sarcosines with fish and aquatic invertebrates.

8. Based on the worst case assumption regarding the dietary risks resulting

from exposure to *N*-acyl sarcosines and its salts when used at levels not to exceed 10% of pesticide formulations, residues of *N*-acyl sarcosines and their sodium salts would not be considered to be toxicologically significant.

Based on the extensive use of *N*-acyl sarcosines and their sodium salts in various consumer products such as toothpastes, soaps, medicated skin cleaners and medicated shampoos; its physico-chemical properties; the fact that some of these chemicals have been approved for food use applications, and the review of its use, the Agency does not believe that a potential for hazard exists when *N*-acyl sarcosines and their sodium salts are used in accordance with good agricultural practice. The Agency believes that these ingredients are 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 control number, [PP 4E4417/P671].

A record has been established for this rulemaking under docket number [PP 4E4417/P671] (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 Virginia 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 1955 (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 (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 explaining the factual basis for this determination 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: July 10, 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 in paragraph (c) and (e) is amended by adding alphabetically the following inert ingredients:

§ 180.1001 Exemptions from the requirements of a tolerance.

* * * * *

(c) * * *

Inert ingredients	Limits	Uses
* * * * * * *		
N-Cocoyl sarcosine mixture (CAS Reg. No. 68411–97–2) [composed of *N*-methyl-*N*-(1-oxooctyl) glycine, *N*-methyl-*N*-(1-oxodecyl) glycine, *N*-methyl-*N*-(1-oxododecyl) glycine, *N*-methyl-*N*-(1-oxotetradecyl) glycine, (*N*-methyl-*N*-(1-oxohexadecyl) glycine and *N*-methyl-*N*-(1-oxooctadecyl)glycine.	Not to exceed 10% by weight of pesticide formulation.	Surfactant.
N-Cocoyl sarcosine, sodium salt mixture (CAS Reg. No. 61791–59–1)	Not to exceed 10% by weight of pesticide formulation.	Surfactant.
* * * * * * *		
N-Lauroyl sarcosine (CAS Reg. No. 97–78–9)	Not to exceed 10% by weight of pesticide formulation.	Surfactant.
* * * * * * *		
N-Methyl-*N*-(1-oxododecyl) glycine, sodium salt (CAS Reg. No. 137–16–6)	Not to exceed 10% by weight of pesticide formulation.	Surfactant.
N-Methyl-*N*-(1-oxo-9-octadecenyl) glycine, sodium salt CAS Reg. No. 3624–77–9)	Not to exceed 10% by weight of pesticide formulation.	Surfactant.
N-Methyl-*N*-(1-oxooctadecyl) glycine, sodium salt (CAS Reg. No. 5136–55–0)	Not to exceed 10% by weight of pesticide formulation.	Surfactant.

Inert ingredients	Limits	Uses
N-Methyl-*N*-(1-oxotetradecyl) glycine, sodium salt (CAS Reg. No. 30364–51–3)	Not to exceed 10% by weight of pesticide formulation.	Surfactant.
* * * * * *	*	
N-Myristoyl sarcosine (CAS Reg. No. 52558–73–3)	Not to exceed 10% by weight of pesticide formulation.	Surfactant.
* * * * * *	*	
N-Oleoyl sarcosine (CAS Reg. No. 110–25–8)	Not to exceed 10% by weight of pesticide formulation.	Surfactant.
* * * * * *	*	
N-Stearoyl sarcosine (CAS Reg. No. 142–48–3)	Not to exceed 10% by weight of pesticide formulation.	Surfactant.
* * * * * *	*	

* * * * * (e) * * *

Inert ingredients	Limits	Uses
* * * * * *	*	
N-Cocoyl sarcosine mixture (CAS Reg. No. 68411–97–2) [composed of *N*-methyl-*N*-(1-oxooctyl) glycine, *N*-methyl-*N*-(1-oxodecyl) glycine, *N*-methyl-*N*-(1-oxododecyl) glycine, *N*-methyl-*N*-(1-oxotetradecyl) glycine, (*N*-methyl-*N*-(1-oxohexadecyl) glycine and *N*-methyl-*N*-(1-oxooctadecyl)glycine.	Not to exceed 10% by weight of pesticide formulation.	Surfactant.
N-Cocoyl sarcosine, sodium salt mixture (CAS Reg. No. 61791–59–1)	Not to exceed 10% by weight of pesticide formulation.	Surfactant.
* * * * * *	*	
N-Lauroyl sarcosine (CAS Reg. No. 97–78–9)	Not to exceed 10% by weight of pesticide formulation.	Surfactant.
* * * * * *	*	
N-Methyl-*N*-(1-oxododecyl) glycine, sodium salt (CAS Reg. No. 137–16–6)	Not to exceed 10% by weight of pesticide formulation.	Surfactant.
N-Methyl-*N*-(1-oxo-9-octadecenyl) glycine, sodium salt CAS Reg. No. 3624–77–9)	Not to exceed 10% by weight of pesticide formulation.	Surfactant.
N-Methyl-*N*-(1-oxooctadecyl) glycine, sodium salt (CAS Reg. No. 5136–55–0)	Not to exceed 10% by weight of pesticide formulation.	
N-Methyl-*N*-(1-oxotetradecyl) glycine, sodium salt (CAS Reg. No. 30364–51–3)	Not to exceed 10% by weight of pesticide formulation.	Surfactant.
* * * * * *	*	
N-Myristoyl sarcosine (CAS Reg. No. 52558–73–3)	Not to exceed 10% by weight of pesticide formulation.	Surfactant.
* * * * * *	*	
N-Oleoyl sarcosine (CAS Reg. No. 110–25–8)	Not to exceed 10% by weight of pesticide formulation.	Surfactant.
* * * * * *	*	
N-Stearoyl sarcosine (CAS Reg. No. 142–48–3)	Not to exceed 10% by weight of pesticide formulation.	Surfactant.
* * * * * *	*	

[FR Doc. 96–18388 Filed 7–23–96; 8:45 am]
BILLING CODE 6560–50–F

40 CFR Part 180

[PP 3E4254/P658; FRL–5371–2]

Polybutene; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that an exemption from the requirement of a tolerance be established for residues of polybutene, when used as an inert ingredient (sticker and spreading agent) in pesticide formulations applied to growing crops only. This proposed regulation was requested by Miller Chemical and Fertilizer Corporation pursuant to the Federal Food, Drug, and Cosmetic Act (FFDCA). This proposed time-limited exemption from the requirement of a tolerance will expire 2 years and 9 months after promulgation of the final rule in the Federal Register.

DATES: Comments, identified by the docket control number [PP 3E4254/P658], must be received on or before August 23, 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 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number, [PP 3E4254/P658]. 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: Mary Waller, 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) 308–8320, e-mail: waller.mary@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Miller Chemical and Fertilizer Corporation, P.O. Box 333, 120 Radio Road, Hanover, PA 17331, has submitted pesticide petition (PP) 3E4254 to EPA requesting that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a(e), propose to amend 40 CFR 180.1001(d) by establishing an exemption from the requirement of a tolerance for residues of polybutene, when used as an inert ingredient (sticker and spreading agent) in pesticide formulations applied to growing crops only.

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 results of the data and evaluations are described below:

1. Acute toxicity data indicated the following: acute oral toxicity studies established LD_{50} values ranging from 5,000 mg/kg to 12,000 mg/kg; an acute dermal toxicity study demonstrated no systemic toxicity; primary eye irritation studies demonstrated minimal eye irritation; a primary skin irritation study demonstrated no dermal irritation; and a dermal sensitization study was negative.

2. A 90–day rat oral toxicity study established the systemic toxicity no-observed-effect level (NOEL) of > 2,500 mg/kg/day.

3. A gene mutation test in cultured/chinese hamster ovary cell strain AS52 CHO/XPRT showed no evidence of cytotoxicity or mutagenicity up to a concentration of 1.0 μg/plate.

4. An *in vivo* mammalian marrow cytogenetic test using mice indicated no increased incidence of micronucleated polychromatic erythrocytes.

5. The Structural Activity Team (SAT) of the Office of Pollution Prevention, and Toxics (OPPT) evaluated this inert ingredient based on the physico-chemical characteristics submitted by the petitioner and the validated data. The SAT stated that no absorption was expected through any exposure route, and the health effects of this inert ingredient are of low concern. The SAT concluded that exposure to the inert ingredient was not expected to result in any significant health effects.

6. An avian acute oral toxicity study established an LD_{50} > 2,150 mg/kg and an avian subacute dietary toxicity study established an LC_{50} > 5,000 ppm.

7. Exposure to aquatic environments is considered unlikely based on the poor solubility and sticky physical characteristic of the inert ingredient.

8. The inert ingredient is expected to degrade via photochemical reactions followed by microbial co-metabolism of the photochemical products. Leaching is not expected because of the inert ingredient's relative insolubility in water and tendency to adhere to surfaces as a film.

The Agency does not expect exposure to polybutene to pose a risk to the public health based on the toxicological profile which indicates a lack of mutagenicity, the extremely low acute and subchronic toxicity, and the SAT evaluation which indicated that no absorption was expected via any exposure route and therefore, exposure to this inert ingredient would not result in any significant health effects. The Agency has concluded that ecological effects are minimal based on the extremely low avian toxicity, and the unique physico-chemical characteristics which also attributed to the low environmental concern.

Based upon the above information and review of its use, the Agency has found that, when used in accordance with good agicultural practices, this inert 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.

The Agency has decided to add a separate section to part 180 instead of amending § 180.1001(d) as proposed by the petitioner. This change is being made because this is a time-limited exemption from the requirement of a tolerance and it would not fit well in the table format of paragraph (d). In addition, this exemption from the requirement of a tolerance is being proposed as a time-limited exemption because the Agency does not have data for two required studies: A 90–day feeding study in dogs and a developmental toxicity study in rodents. These studies are being required because they are part of the base set data

requirements. The Agency will require that the above studies be submitted within 2 years of the date of promulgation of the final rule in the Federal Register. When the Agency receives these studies, it will reassess this exemption from the requirement of a tolerance. However, based upon the data considered in support of the petition and the restriction on exposure offered by a time limitation, the Agency does not believe that this proposed exemption from the requirement of a tolerance poses a risk to human health or the environment.

Upon adoption, this exemption from the requirement of a tolerance will expire 2 years and 9 months after promulgation of the final rule in the Federal Register. Residues will not be considered actionable if a pesticide containing this inert ingredient is legally applied during the term of a conditional registration under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, and in accordance with the acceptable labeling under a conditional registration. This exemption from the requirement of a tolerance will be revoked if any data indicate such revocation is necessary to protect the public health.

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 control number, [PP 3E4254/P658]. All written comments filed in response to this petition will be available in the Public Response and Program Resources Branch.

A record has been established for this rulemaking under docket number [PP 3E4254/P658] (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 (5 U.S.C. 601–612), the Administrator has determined that regulations establishing new inert ingredient 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 explaining the factual basis for this determination 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: July 5, 1996.

Peter Caulkins,

Acting 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. Section 180.1168 is added to subpart D to read as follows:

§ 180.1168 Polybutene; exemption from the requirement of a tolerance.

A time-limited exemption from the requirement of a tolerance is established for residues of polybutene (CAS Reg. No. 9003–29–6), molecular weight (in amu) 320 or greater, not to exceed 35 percent of the pesticide formulation when used as an inert ingredient (sticker and spreading agent) in pesticide formulations applied to growing crops only. This time-limited exemption from the requirement of a tolerance will expire on April 26, 1999.

[FR Doc. 96–18391 Filed 7–23–96; 8:45 am]

BILLING CODE 6560–50–F

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40 CFR Part 180

[PP 5F4508/P673; FRL–5385–2]

RIN 2070–AC18

Avermectin B1 and Its Delta-8,9-Isomer; Proposed Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rule.

SUMMARY: EPA proposes to establish a tolerance for combined residues of the insecticide Avermectin B_1 and its delta-8,9-isomer in or on the raw agricultural commodity potatoes. The proposed regulation to establish a maximum permissible level for residues of the insecticide was requested in a petition submitted by the Merck Research Laboratories, Division of Merck Co., Inc.

DATES: Comments, identified by the docket number [PP 5F4508/P673], must be received on or before August 23, 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 Highway, Arlington, VA 22202. Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). Information so marked will not be disclosed except in accordance with

procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4:30 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 [PP 5F4508/P673]. 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: George 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, 1921 Jefferson Davis Highway, Arlington, VA 22202. (703) 305-6100, e-mail: larocca.george@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: On April 19, 1995, Merck Research Laboratories, Inc. submitted a pesticide petition (PP 5F4508) requesting that the Administrator, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), establish a tolerance for combined residues of the insecticide avermectin B_1 and its delta-8,9-isomers in or on the raw agricultural commodity (RAC) potatoes at 0.002 parts per million (ppm). On February 20, 1996, at the request of EPA, Merck amended the pesticide petition proposing an increase in the tolerance from 0.002 ppm to 0.005 ppm based on the limits of the analytical methodology testing.

The data submitted in support of this tolerance and other relevant material have been reviewed. The toxicological and metabolism data and analytical methods for enforcement purposes considered in support of this tolerance are discussed in detail in related documents published in the Federal Register of May 31, 1989 (54 FR 23209) (for cottonseed) and August 2, 1989 (54 FR 31836) (for citrus).

The Agency used a two-generation rat reproduction study with an uncertainty factor of 300 to establish a Reference Dose (RfD). The 300-fold uncertainty factor was utilized for (1) inter- and intra-species differences, (2) the extremely serious nature (pup death) observed in the reproduction study, (3) maternal toxicity (lethality) no-observable-effect level (NOEL) (0.05 mg/kg/day), and (4) cleft palate in the mouse developmental toxicity study with isomer (NOEL = 0.06 mg/kg/day). Thus, based on a NOEL of 0.12 mg/kg/day from the two-generation rat reproduction study and an uncertainty factor of 300, the RfD is 0.0004 mg/kg/body weight(bwt)/day.

A chronic dietary exposure/risk assessment has been performed for avermectin B_1 using the above RfD. Available information on anticipated residues and 100% crop treated was incorporated into the analysis to estimate the Anticipated Residue Contribution (ARC). The ARC is generally considered a more realistic estimate than an estimate based on the tolerance-level residues. The ARC for established tolerances and the current action is estimated at 0.000017 mg/kg/bwt/day and utilizes 4.2 percent of the RfD for the U.S. population. For non-nursing infants less than 1 year old (the sub-group population with the highest exposure level) the ARC for established tolerances and the current action is estimated at 0.000040 mg/kg bwt/day and utilizes 10.0% of the RfD. Generally speaking, the Agency has no cause for concern if anticipated residues contribution for all published and proposed tolerances is less than the RfD.

Because of the developmental effects seen in animal studies, the Agency used the mouse teratology study (with a NOEL of 0.06 mg/kg/day for developmental toxicity for the delta-8,9 isomer) to assess acute dietary exposure and determine a margin of exposure (MOE) for the overall U.S. population and certain subgroups. Since the toxicological end point pertains to developmental toxicity, the population group of interest for this analysis is women aged 13 and above, the subgroup which most closely approximates women of child bearing ages. The MOE is calculated as the ratio of the NOEL to the exposure. For this analysis, the Agency calculated the MOE for the high-end exposures for women ages 13 and above. The MOE is 120. Generally speaking, MOEs greater than 100 for developmental toxicity do not raise concerns.

The metabolism of the chemical in plants and animals for the use is adequately understood. The established tolerances for cattle meat, meat byproducts, milk and fat are adequate to cover the increased dietary burden from the addition of the feed items potato culls and processed potato waste. There is no reasonable expectation of finite residues in poultry and swine, therefore no tolerances are necessary at this time. Adequate analytical methodology (HPLC-Fluorescence Methods) is available for enforcement purposes. Prior to publication in the Pesticide Analytical Manual, Vol II, the enforcement methodology is being made available in the interim to anyone who is interested in pesticide enforcement when requested from Calvin Furlow, Public Response and Program Resource Branch, Field Operations Division (7506C), Office of Pesticide Programs, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1132, CM #2, 1921 Jefferson-Davis Hwy., Arlington, VA 22202, (703) 305–5232.

The tolerances established by amending 40 CFR part 180 will be adequate to cover residues in or on potatoes. There are presently no actions pending against the continued registration of this chemical. Based on the information and data considered, the Agency has determined that the tolerance established by amending 40 CFR part 180 would protect the public health. Therefore, it is proposed that the tolerance be established as set forth below.

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

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the docket number, [PP 5F4508/P673].

A record has been established for this rulemaking under docket number [PP 5F4508/P673](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, CM #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 of 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 **ADDRESSEES** at the beginning of this document.

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

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

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 (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 explaining the factual basis for this determinations 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 record keeping requirements.

Dated: July 10, 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 of part 180 continues to read as follows:

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

2. In § 180.449 the table in paragraph (b) is amended by adding alphabetically an entry for the commodity ''potatoes,'' to read as follows:

§ 180.449 Avermectin B_1 and its delta-8,9-isomer; tolerances for residues.

* * * * *

(b) * * *

Commodity	Parts per million
* * * * *	
Potatoes	0.005
* * * * *	

[FR Doc. 96–18392 Filed 7–23–96; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 071596E]

Fisheries of the Northeastern United States; Amendment 9 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan

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

ACTION: Notice of availability and request for comments.

SUMMARY: NMFS issues this notice to advise that the Mid-Atlantic Fishery Management Council (Council) has submitted Amendment 9 to the Fishery Management Plan for the Summer Flounder, Scup, and Black Sea Bass Fisheries (FMP) for Secretarial review and is requesting comments from the public. Amendment 9 would initiate management measures for the black sea bass fishery.

DATES: Comments must be received on or before September 12, 1996.

ADDRESSES: Send comments to Dr. Andrew A. Rosenberg, Regional Director, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930-3799. Mark the outside of the envelope ''Comments on the Black Sea Bass Fishery.''

Copies of proposed Amendment 9, its Regulatory Impact Review (RIR) and the Initial Regulatory Flexibility Analysis contained within the RIR, and the Final Environmental Impact Statement are available from David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115 Federal Building, 300 S. New Street, Dover, DE 19904-6790.

FOR FURTHER INFORMATION CONTACT: Regina L. Spallone, Fishery Policy Analyst, 508–281–9221.

SUPPLEMENTARY INFORMATION: The Magnuson Fishery Conservation and Management Act (Magnuson Act) (16 U.S.C. 1801 *et seq.*) requires that each regional fishery management council submit any fishery management plan or amendment it prepares to the Secretary of Commerce (Secretary) for review and approval or disapproval. The Magnuson Act also requires that the Secretary, upon receiving the plan or amendment for review, immediately make a preliminary evaluation of whether the amendment is sufficient to warrant continued review, and publish a notice

that the plan or amendment is available for public review and comment. The Secretary will consider the public comments in determining whether to approve the plan or amendment.

Amendment 9, if approved, would revise the FMP to institute management measures for the black sea bass fishery. Such measures would allow the black sea bass (*Centropristis striata*) resource to rebuild over a 7-year period. The black sea bass resource is overfished.

Proposed management measures include: Dealer, charter/party vessel, and operator permits; moratorium vessel permits for the directed commercial fishery; a requirement that permitted vessels may sell only to permitted dealers; mandatory reporting for permitted vessels and dealers; escape vents on black sea bass pots or traps; degradable hinges and fasteners in pots or traps; maximum size for rollers used in roller rig trawl gear; minimum fish sizes for the commercial and recreational fisheries; minimum codend mesh requirements when possessing more than a threshold level of black sea bass on board; and a mechanism to enable the Council to establish special management zones around artificial reef areas. A framework process would also allow annual adjustment of the minimum fish size, escape vent size, and mesh requirements.

In 1998 and beyond, the Council also proposed to implement a coastwide recreational harvest limit, a state by state commercial quota to reduce fishing mortality, and a provision to allow for the respecification of the manner in which the commercial quota is allocated (e.g. coastwide, rather than state by state).

NMFS, on behalf of the Secretary, disapproved the state by state commercial quota in Amendment 9 before publishing this notice of availability as authorized under section 304(a)(1)(A) of the Magnuson Act.

Day 1 of Amendment 9 is July 15, 1996. Proposed regulations to implement this amendment are scheduled to be published within 15 days of this date.

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

Dated: July 18, 1996.

Richard W. Surdi,

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

[FR Doc. 96–18699 Filed 7–18–96; 5:03 pm]

BILLING CODE 3510–22–F

Notices

Federal Register

Vol. 61, No. 143

Wednesday, July 24, 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

Cooperative State Research, Education, and Extension Service

Notice of Intent To Revise a Currently Approved Information Collection

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

ACTION: Notice and request for comments.

SUMMARY: In accordance with the paperwork Reduction Act of 1995, this notice announces the Cooperative State Research, Education, and Extension Service's (CSREES) intention to revise a currently approved information collection in support of Form CSREES–665 ''Assurance of Compliance with the Department of Agriculture Regulations Under Title VI of the Civil Rights Act of 1964 (as amended)'', and Form CSREES–666 ''Organizational Information''.

DATES: Comments on this notice must be received by no later than September 27, 1996, to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact Dr. Sally J. Rockey, Acting Deputy Administrator, Competitive Research Grants and Awards Management, Cooperative State Research, Education, and Extension Service, U.S. Department of Agriculture, AG Box 2240, 901 D Street, S.W., Washington, D.C. 20250–2240, (202) 401–1761.

SUPPLEMENTARY INFORMATION:

Title: Assurance of Compliance with the Department of Agriculture Regulations Under Title VI of the Civil Rights Act of 1964 (as amended), and Organizational Information.

OMB Number: 0524–0026.

Expiration Date of Approval: August 31, 1996.

Type of Request: Intent to revise and extend currently approved information collection.

Abstract: This action is necessary to: (1) change the forms from a CSRS (Cooperative State Research Service) to a CSREES (Cooperative State Research, Education, and Extension Service) designation in accordance with the 1994 reorganization of the U.S. Department of Agriculture, and (2) obtain approval for use of the forms beyond the current expiration date. The collection of this information enables CSREES to determine that applicants recommended for awards are responsible recipients of Federal funds. The information pertains to organizational management and financial matters of the potential grantee, as well as a certification that it complies with the Civil Rights Act of 1964, as amended. This information is submitted to CSREES on a one-time basis. If sufficient changes occur within the organization, the grantee submits revised information. Form CSREESc665 documents that the grantee will comply with Title VI of the Civil Rights Act of 1964, as amended. Form CSREES–666 and the documents which the applicant attaches to this form provide CSREES with information such as the legal name of the grantee, certification that the organization has the legal authority to accept Federal funding, identification and signatures of the key officials of the organization, the organization's practices in regard to compensation rates and benefits of employees, insurance for equipment, subcontracting with other organizations, etc., as well as the financial condition of the organization. All of this information is considered by CSREES prior to award to determine that grantees are both managerially and fiscally responsible.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 8½ hours per response.

Respondents: Individuals or households, business or other for profit, non-profit institutions and small businesses or organizations.

Estimated Number of Respondents: 80.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondent: 680 hours.

Copies of this information collection can be obtained from Dr. Sally Rockey, Acting Deputy Administrator, (202) 401–1761.

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 will have practical utility; (b) 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: (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 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. Comments may be sent to Dr. Sally Rockey, Acting Deputy Administrator, Competitive Research Grants and Awards Management, Cooperative State Research, Education, and Extension Service, U.S. Department of Agriculture, AG Box 2240, 901 D Street, S.W., Washington, D.C. 20250–2240, (202) 401–1761.

All responses to this notice will be summarized and included in the request for OMB approval.

All comments will also become a matter of public record.

Done at Washington, D.C., this 17th day of July 1996.

Louise Ebaugh,

Acting Deputy Administrator, Competitive Research Grants and Awards Management, Cooperative State Research, Education, and Extension Service.

[FR Doc. 96–18726 Filed 7–23–96; 8:45 am]

BILLING CODE 3510–22–M

Forest Service

Taneum/Peaches Road Access Project, Wenatchee National Forest, Kittitas County Washington

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare a supplement to a draft environmental impact statement.

SUMMARY: The Forest Service, USDA, will prepare a supplement to the draft environmental impact statement (EIS) for the Taneum/Peaches Road Access Project on the Wenatchee National Forest, which was released for public

review in January 1996 (66 FR 2508). This supplement will document the environmental analyses of additional information that was not included in the original road access draft EIS. This new information includes: change in the road access right-of-way; two additional alternative road locations will be considered; and a third road access will be added. The Forest Service gives notice of this analysis so that interested and affected people are aware of how they may participate and contribute to the final decision.

FOR FURTHER INFORMATION CONTACT: Questions and comments about this supplement should be directed to Douglas Campbell, Lands Specialist, Cle Elum Ranger District, 803 West Second Cle Elum, Washington 98922, phone 509–674–4411.

SUPPLEMENTARY INFORMATION: The Wenatchee National Forest is initiating this action in response to an application filed by Plum Creek Timber Company. The applicant requests additional right-of-way across National Forest System (NFS) lands for the purpose of establishing legal access to their lands. The information to be included in the supplement includes a change in the road access right-of-way application from temporary road permit to permanent road right-of-way; the addition of two new alternatives for road locations in the Taneum and in the Peaches Ridge project areas; and the addition of a third road access project area, Big Bend, in the Little Creek drainage of the Yakima River watershed. The proposed access involves approximately 38 feet of road on .1 acres of NFS land for the Peaches section; 432 feet of road on .7 acres of NFS land for the Tarneum section; and .6 miles of road on 4.3 acres of NFS land for the Big Bend section.

The applicant seeks legal access pursuant to the Alaska National Interest Lands Conservation Act (ANILCA). The ANILCA directs the Forest Service to grant access to in-holdings of non-Federal land within the National Forest boundary for the reasonable use and enjoyment of those lands by the landowner. The applicant has stated that it intends to manage the lands to be accessed for long term timber production utilizing conventional ground based logging systems. The applicant intends to build roads on the permitted rights-of-way sufficient to support the intended use of the land.

The supplement will be prepared and circulated in the same manner as the draft EIS (40 CFR 1502.9). The supplement to this draft EIS is expected to be released to the public for review in August 1996. The comment period on the draft supplement will be 45 days from the date the Environmental Protection Agency's notice of availability appears in the Federal Register.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of a draft supplement to the EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankees Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft supplement stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angood* v. *Hodel,* 803 F. 2d. 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft supplement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft supplement. Comments may also address the adequacy of the supplemental EIS or the merits of the alternatives formulated and discussed in the statement. (Reviewer may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environment Policy Act at 40 CFR 1503.3 in addressing these points.).

After the 45 day comment period ends on the draft supplement, the comments will be analyzed and considered by the Forest Service in preparing the final supplement. The final EIS is scheduled to be completed by October 1996.

In the final EIS, the Forest Service is required to respond to the comments received (40 CFR 1503.4). The responsible official, Forest Supervisor Sonny J. O'Neal, will consider the comments, responses, environmental consequences discussed in the EIS and applicable laws, regulations, and policies in making a decision regarding this proposal. The responsible official will document the decision and reasons for the decision in the Record of Decision. The Forest Service decision will be subject to Forest Service Appeal Regulations (36 CFR Part 215).

Dated: July 15, 1996.

Sonny J. O'Neal,

Forest Supervisor.

[FR Doc. 96–18769 Filed 7–23–96; 8:45 am]

BILLING CODE 3410–11–M

Intergovernmental Committee Subcommittee meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of Meeting.

SUMMARY: The Intergovernmental Advisory Committee will meet on July 31, 1996, at the Robert Duncan Plaza Building, 333 SW First Ave., Portland, Oregon 97208 in the Regional Forester's conference room on the 6th floor. The purpose of the meeting is to continue discussions to identify issues and solutions to improve the implementation of the Northwest Forest Plan (NFP) and in particular to focus on ways to help field specialists evaluate riparian reserves during watershed analysis. The meeting will begin at 9:00 a.m. and continue until 12:00 noon. The IAC meeting will be open to the public and is fully accessible for people with disabilities. Interpreters are available upon request in advance. Written comments may be submitted for the record at the meeting. Time will also be scheduled for oral public comments. Interested persons are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Questions regarding this meeting may be directed to Don Knowles, Executive Director, Regional Ecosystem Office, 333 SW 1st Avenue, P.O. Box 3623, Portland, OR 97208 (Phone: 503–326–6265).

Dated: July 12, 1996.

Donald R. Knowles,

Designated Federal Official.

[FR Doc. 96–18762 Filed 7–23–96; 8:45 am]

BILLING CODE 3410–11–M

Rural Utilities Service

Tri-State Generation and Transmission Association, Inc.; Finding of No Significant Impact

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Notice is hereby given that the Rural Utilities Service (RUS), formerly the Rural Electrification

Administration, has made a finding of no significant impact (FONSI) with respect to the potential environmental impact related to the construction and operation of the Comanche to Walsenberg 230 kV Transmission Line Project by Tri-State Generation and Transmission Association, Inc. (Tri-State) of Denver, Colorado. The proposed project is located in Pueblo and Huerfano Counties, Colorado. The FONSI is based on an Environmental Assessment (EA) prepared by RUS and an Environmental Analysis (EVAL) prepared by Tri-State and its environmental consultant, ENSR.

FOR FURTHER INFORMATION CONTACT: Lawrence R. Wolfe, Senior Environmental Protection Specialist, Engineering and Environmental Staff, Stop 1571, 1400 independence Avenue SW., RUS, Washington, DC 20250, telephone (202) 720–1784.

SUPPLEMENTARY INFORMATION: As part of its environmental review process, RUS held an interagency and two public information workshops in April 1994. Tri-State was required by RUS to develop the EVAL and other documentation to support its proposal. RUS conducted an independent evaluation of the EVAL and concurs with its scope and content. The documentation provided by Tri-State and ENSR, input from the meetings, and input from Federal, state and local agencies have been used by RUS to develop its EA.

The proposed 230 kV transmission line would extend approximately 50 miles in a southerly direction on Alternative Corridor E from Public Service Company of Colorado's existing substation at the Comanche Generating Station located in Pueblo, Colorado, to Tri-State's Walsenberg Substation located west Walsenberg, Colorado. The primary structure type will be wood pole H-frame structures located on a 150 foot wide right-of-way.

Alternatives considered to the project included no action, demand side management, local generation, underground construction, transmission system alternatives, and corridor alternatives. RUS has considered these alternatives and concluded that the project as proposed meets the needs of Tri-State and San Isabel Electric Association, Inc. (a Tri-State member distribution system).

The proposed project should have no impact on cultural resources, floodplains, wetlands, important farmlands and federally listed threatened or endangered species or their critical habitat. The proposed route will cross approximately 0.4 miles of floodplains and 0.2 miles of wetland areas associated with river or stream crossings. These areas will be spanned and no structures will be placed in floodplain or wetland habitat. RUS has determined that there is no practicable alternative to crossing these areas and there should be no impacts to floodplain or wetland areas.

Copies of the EVAL, EA and FONSI have been sent to persons on the mailing list and are available for review at, or can be obtained from, RUS at the address provided herein; Mr. Karl Myers, Tri-State, P.O. Box 33695, Denver, Colorado 80233, telephone (303) 452–6111; or Mr. William Wood, San Isabel Electric Association, 893 East Enterprise Drive, Pueblo, Colorado 81002, telephone (719) 547–2160, during normal business hours.

RUS will take no final action with respect to approval for the proposed project for at least thirty (30) days after publication of this notice in the Federal Register and in newspapers of general circulation in the counties previously identified. Any comments should be sent to RUS at the address given previously. All comments received will be considered.

Dated: July 18, 1996.

Adam M. Golodner,

Deputy Administrator, Program Operations.

[FR Doc. 96–18807 Filed 7–23–96; 8:45 am]

BILLING CODE 3410–15–M

DEPARTMENT OF COMMERCE

Submission For OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Annual Survey of Communication Services.

Form Number(s): B–516 thru 521.

Agency Approval Number: 0607–0706.

Type of Request: Extension of a currently approved collection.

Burden: 7,000 hours.

Number of Respondents: 1,775.

Avg Hours Per Response: 3.94 hours.

Needs and Uses: The Annual Survey of Communication Services (ASCS) is a vital component of a broad–based, multi–year program at the Census Bureau to expand coverage and improve statistics for service–related industries. The ASCS provides detailed estimates of revenue and expenses for the communication sector, including the telephone, radio and television broadcasting, cable and pay television, and other communication service industries. These data serve as inputs into the national income and product accounts calculated by the Bureau of Economic Analysis and the Bureau of Labor Statistics' Producer Price Indices. In addition, the Census Bureau uses the survey results in the planning and design stages of current and future econmic census questionnaires. Response to the ASCS provides information on the ability of respondents to report accurate and timely data from existing records. Also, areas of dynamic change in the communication sector and structural changes in major companies within the industry are identified, ensuring continued accuracy and complete coverage in the economic census.

Affected Public: Businesses or other for–profit institutions and not–for–profit institutions.

Frequency: Annually.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Jerry Coffey, (202) 395–7314.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, Acting DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Jerry Coffey, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: July 16, 1996.

Linda Engelmeier,

Acting Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 96–18727 Filed 7–23–96; 8:45 am]

BILLING CODE 3510–07–F

Submission For OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Current Population Survey––October 1996 School Enrollment Supplement.

Form Number(s): None.

Agency Approval Number: 0607–0464.

Type of Request: Reinstatement, with change.

Burden: 6,400 hours.

Number of Respondents: 48,000.

Avg Hours Per Response: 8 minutes.

Needs and Uses: The Census Bureau is requesting clearance for the collection of data concerning the School Enrollment Supplement to be conducted in conjunction with the October 1996 CPS. The Bureau of the Census and the Bureau of Labor Statistics (BLS) sponsor the basic annual school enrollment questions, which have been collected annually in the CPS for over 25 years. The National Center for Education Statistics (NCES) sponsors the inclusion of the additional questions on summer school enrollment. This survey provides information on public/private elementary and secondary school enrollment, and characteristics of private school students and their families, which is used for tracking historical trends and for policy planning and support. This year we will also ask questions about summer school enrollment and other organized activities in which the child participated during the previous summer. This survey is the only source of national data on the age distribution and family characteristics of college students, and the only source of demographic data on preprimary school enrollment. As part of the Federal Government's efforts to collect data and provide timely information to local governments for policymaking decisions, the survey provides national trends in employment and progress in school The data are used by Federal agencies; state, county, and city governments; and private organizations responsible for education to formulate and implement education policy. They are also used by employers and analysts to anticipate the composition of the labor force in the future.

Affected Public: Individuals or households.

Frequency: Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Jerry Coffey, (202) 395–7314.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, Acting DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Jerry Coffey, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: July 16, 1996.

Linda Engelmeier,

Acting Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 96–18728 Filed 7–23–96; 8:45 am]

BILLING CODE 3510–07–F

Bureau of the Census

Quarterly Survey of Residential Alteration and Repairs

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 September 23, 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 George A. Roff, Jr., Bureau of the Census, Room 2225, Building 4, Washington, DC 20233 on (301) 457–1605.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau is the preeminent collector and provider of timely, relevant and quality data about the people and economy of the United States. Economic data are the Census Bureau's primary program commitment during nondecennial census years. The Census Bureau, under the authority of Title 13, United States Code, Section 182, conducts this survey which allows us to prepare estimates of the expenditures for residential improvement and repairs. This segment of the construction industry amounted to over $115 billion in 1994. A portion of these data are collected on form SORAR–705, which is mailed quarterly to owners of rental or vacant residential properties. Since residential improvement and repairs are a large and growing economic activity, any measure of the construction industry is incomplete without inclusion of these data.

The Census Bureau uses the information to publish improvement and repair expenditures for rental or vacant residential properties. Data on improvements and repairs to owner-occupied properties are collected in the Consumer Expenditure Survey. Combined published estimates are used by a variety of private businesses and trade associations for marketing studies, economic forecasts and assessments of the construction industry. They also provide all levels of government with a tool to evaluate economic policy and measure progress towards established goals. For example, the Bureau of Economic Analysis (BEA) uses the improvement statistics to develop the structures component of gross private domestic investment in the national income and product accounts.

II. Method of Collection

The universe for this survey are the owners or designated representatives of the more than 40 million rental and vacant housing units in the United States. A sample of these owners—i.e., those identified in the Consumer Expenditure Survey—is mailed a questionnaire to report detailed improvement and repair expenditures for their entire property. Approximately 2,000 owners are queried each quarter.

The sample design uses a rotation procedure which brings one-fourth of the sample (approximately 500 properties) into the survey each quarter and takes one-fourth out of the survey each quarter. The data collected are adjusted for unreturned or unusable forms by region and metropolitan statistical area (MSA) status. The weights are adjusted so that sample counts of renter occupied and vacant housing units agree with independently derived controls from the Current Population Survey.

III. Data

OMB Number: 0607–0130.

Form Number: SORAR–705.

Type of Review: Regular Review.

Affected Public: Individuals or households, Businesses or Other for Profit Institutions, and State or Local Governments.

Estimated Number of Respondents: 2,000.

Estimated Time Per Response: .25 hrs per quarter.

Estimated Total Annual Burden Hours: 2,000.

Estimated Total Annual Cost: The cost to the government for this work is estimated to be $203 million.

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: July 18, 1996.

Linda Engelmeier,

Acting Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 96–18729 Filed 7–23–96; 8:45 am]

BILLING CODE 3510–07–P

Export Administration Bureau

[Docket Nos. AB3–95; AB2–95]

In the Matters of: Serfilco, Ltd. and Jack H. Berg, Respondents; Order Amending June 10, 1996 Order

On June 10, 1996, I issued a Final Decision and Order (hereinafter, the ''Final Decision'') affirming the findings of the Administrative Law Judge (hereinafter, ''ALJ''), that Serfilco, Ltd. and the company's president, Jack H. Berg, each committed violations of the antiboycott provisions of the Export Administration Regulations (15 CFR 768–799 (1996), as amended (61 FR 12714, March 25, 1996)) [1] (hereinafter, the ''Regulations''). In that Final Decision, I, inter alia, affirmed the ALJ's denial, for one year, of each Respondent's export privileges to Bahrain, Iraq, Kuwait, Lebanon, Libya, Oman, Qatar, Saudi Arabia, Syria, the United Arab Emirates, and the Republic of Yemen.

The Final Decision did not fully set forth the scope and breath of the denial of export privileges imposed on the Respondents. Pursuant to a motion filed by the Department requesting that I amend the Final Decision to include a recitation of the specific terms and conditions of the denials, I am issuing this Order which will clarify the manner in which the denials are to operate. The terms and conditions imposed by this Order are based on the Supplement No. 1 of Section 764 of the Regulations. Accordingly, the June 10, 1996 Final Decision is amended by adding the following after the last sentence of Section V of the decision:

Terms and Conditions of the Export Denials

First, that until June 10, 1997, Serfilco, Ltd., 1777 Shermer Road, Northbrook, Illinois, 60062–5360, and Jack H. Berg, with an address at Serfilco, Ltd., 1777 Shermer Road, Northbrook, Illinois 60062–5360, may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States to Bahrain, Iraq, Kuwait, Lebanon, Libya, Oman, Qatar, Saudi Arabia, Syria, the United Arab Emirates, or the Republic of Yemen, that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license,[2] License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefiting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

Second, that no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of either of the denied persons any item subject to the Regulations from the United States to Bahrain, Iraq, Kuwait, Lebanon, Libya, Oman, Qatar, Saudi Arabia, Syria, the United Arab Emirates, or the Republic of Yemen;

B. Take any action that facilitates the acquisition or attempted acquisition by either of the denied persons of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States to Bahrain, Iraq, Kuwait, Lebanon, Libya, Oman, Qatar, Saudi Arabia, Syria, the United Arab Emirates, or the Republic of Yemen, including financing or other support activities related to a transaction whereby a denied person acquires or attempts to acquire such ownership, possession, or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from either of the denied persons of any item subject to the Regulations that has been exported from the United States to Bahrain, Iraq, Kuwait, Lebanon, Libya, Oman, Qatar, Saudi Arabia, Syria, the United Arab Emirates, or the Republic of Yemen;

D. Obtain from either of the denied persons in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States to Bahrain, Iraq, Kuwait, Lebanon, Libya, Oman, Qatar, Saudi Arabia, Syria, the United Arab Emirates, or the Republic of Yemen; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States to Bahrain, Iraq, Kuwait, Lebanon, Libya, Oman, Qatar, Saudi Arabia, Syria, the United Arab Emirates, or the Republic of Yemen, and which is owned, possessed or controlled by a denied person, or service any item, of whatever origin, that is owned, possessed or controlled by either of the denied persons if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, that, after notice and opportunity for comment as provided in § 766.23 of the Regulation, any person, firm, corporation, or business organization related to either of the denied persons by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of this Order.

Fourth, that this Order does not prohibit any export, reexport, or other

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[1] The March 25, 1996 Federal Register publication redesignated the existing Regulations as 15 CFR Parts 768A–799A. In addition, the March 25, 1996 Federal Register publication restructured and reorganized the Regulations, designating them as an interim rule at 15 CFR Parts 730–774, effective April 24, 1996.

[2] For purposes of this Order, ''license'' includes any general license established in 15 CFR Parts 768A–799A.

transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

Fifth, that a copy of this Order shall be served on the Department, Serfilco, Ltd., and Jack H. Berg, and published in the Federal Register.

Entered this 17th day of July, 1996.

William A. Reinsch,

Under Secretary for Export Administration.

[FR Doc. 96–18797 Filed 7–23–96; 8:45 am]

BILLING CODE 3510–DT–M

International Trade Administration

Survey of International Air Travelers (In-Flight Survey)

ACTION: Proposed collection; 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 the 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 September 23, 1996.

ADDRESSES: Direct all written comments to Linda Engelmeier, Acting Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th & Constitution Avenue, NW., Washington, DC 20230. Phone number: (202) 482–3272.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to: Ron Erdmann, ITA's Tourism Industries, Room 1860, 1400 Constitution Ave, NW., Washington, DC 20230; phone: (202) 482–4554, and fax: (202) 482–2887.

SUPPLEMENTARY INFORMATION:

I. Abstract

The International Trade Administration, Tourism Industries office's ''Survey of International Air Travelers'' is the only source for estimating international travel and passenger fare exports and imports for this country. This program also supports the U.S. Department of Commerce's Bureau of Economic Analysis mandate to collect and report this type of information which is used to calculate GDP for the United States. This project also serves as the core data source for Tourism Industries. Numerous reports and analyses are developed to assist businesses in increasing U.S. exports in international travel. An economic impact of international travel on state economies, visitation estimates, traveler profiles, presentations and reports are generated by Tourism Industries to help the federal government agencies and the travel industry better understand the international market. It is also a service that the U.S. Department of Commerce provides to travel industry businesses seeking to increase international travel and passenger fare exports for the country. It provides the only comparable estimates of non-resident visitation to the states and cities within the U.S., as well as U.S. resident travel abroad. Traveler characteristics data are also collected to help travel related businesses better understand the international travelers to and from the U.S. so they can developed targeted marketing and other planning related materials.

II. Method of Collection

The collection is on U.S. and foreign flag airlines who voluntarily agree to allow us to survey their departing flights from the U.S. Additional surveys are also collected at U.S. departure airports and selected U.S. sites as cooperation is obtained from the travel industry. The survey is printed in several languages.

III. Data

OMB Number: 0605–0007 (new number to be assigned since this survey, previously conducted by the United States Travel and Tourism Administration, will now be conducted by ITA.

Form Number: Not applicable.

Type of Review: Renewal-Regular submission.

Affected Public: International travelers departing the United States 18 years or older which includes U.S. and non-U.S. residents.

Estimated Number of Respondents: 165,600.

Estimated Time Per Response: 15 minutes.

Estimated Total Annual Burden Hours: 24,840 hours.

Estimated Total Annual Cost: This is a $2 million research program. The government only funds $700,00 of this program. The remaining funds are obtained from inkind contributions of the airlines, airports and other travel industry partners as well as the sale of this data to the public. Respondents will not need to purchase equipment or materials to respond to this collection. There are no real costs to the respondents other than their time. On average, we are estimating that each respondent's time is worth about $11.00.

IV. Requested 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: July 17, 1996.

Linda Engelmeier,

Acting Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 96–18730 Filed 7–23–96; 8:45 am]

BILLING CODE: 3510–DR–U

National Oceanic and Atmospheric Administration

[I.D. 042696B]

Small Takes of Marine Mammals Incidental to Specified Activities; Lockheed Launch Vehicles at Vandenberg Air Force Base, CA

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

ACTION: Notice of issuance of an incidental harassment authorization.

SUMMARY: In accordance with provisions of the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that an Incidental Harassment Authorization to take small numbers of harbor seals by harassment incidental to launches of Lockheed-Martin's launch vehicles (LMLVs) at Space Launch Complex 6 (SLC–6), Vandenberg Air Force Base, CA (Vandenberg) has been issued.

EFFECTIVE DATE: This authorization is effective from July 18, 1996 through July 17, 1997.

ADDRESSES: The application, authorization and list of references used in this determination are available for review in the following offices: Marine Mammal Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910, and the Southwest Region, NMFS, 501 West Ocean Blvd. Long Beach, CA 90802.

FOR FURTHER INFORMATION CONTACT: Kenneth Hollingshead, Office of Protected Resources at 301–713–2055, or Irma Lagomarsino, Southwest Regional Office at 310–980–4016.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs NMFS to allow, upon request, the incidental, but not intentional, taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations are issued.

Permission may be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, and the permissible methods of taking and requirements pertaining to the monitoring and reporting of such taking are set forth.

The MMPA Amendments of 1994 established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. The MMPA defines ''harassment'' as:

> * * *any act of pursuit, torment, or annoyance which (a) has the potential to injure a marine mammal or marine mammal stock in the wild; or (b) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.

New subsection 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

Summary of Request

On April 1, 1996, NMFS received an application from the U.S. Air Force, Vandenberg, requesting continuation of an authorization for the harassment of small numbers of harbor seals incidental to launches of LMLVs at SLC–6, Vandenberg. These launches would place commercial payloads into low earth orbit. Because of the requirements for circumpolar trajectories of the LMLV and its payloads, the use of SLC–6 is the only feasible alternative for LMLV launches within the United States. As a result of the noise associated with the launch itself and the resultant sonic boom, these noises have the potential to cause a startle response to those harbor seals which haul out on the coastline south and southwest of Vandenberg and may be detectable to marine mammals west of the Channel Islands. Launch noise would be expected to occur over the coastal habitats in the vicinity of SLC–6 while low-level sonic booms could be heard west of the Channel Islands.

Comments and Responses

A notice of receipt of the application and the proposed authorization was published on May 2, 1996 (61 FR 19609) and a 30-day public comment period was provided on the application and proposed authorization. During the comment period, two letters were received. The comments contained in these letters are addressed below. Other than information necessary to respond to the comments, additional background information on the activity and request can be found in the proposed authorization notice and previous notices (60 FR 24840, May 10, 1995; 60 FR 38308, July 26, 1995) on LMLV launches. Therefore this information is not repeated here. These documents are available from NMFS (see ADDRESSES).

Comment 1: The Marine Mammal Commission (MMC) recommended that NMFS obtain and assess the monitoring results from the 1995 authorization to determine whether the conclusions made are justified.

Response 1: On August 15, 1995, Lockheed launched an LLV–1 rocket from SLC–6. Monitoring by population census, still photography, and video taping, indicated that, as expected, the launch noise produced a startle and flight response in hauled-out harbor seals at and near Rocky Point. Populations on beaches used for hauling out were reduced from approximately 191 animals to 21 animals during the day of the launch, as a result of launch activities, but returned to pre-launch status (193 harbor seals) by the morning following the launch (Pollard 1995).

The intensity of sonic booms from the LMLV, which are predicted to impinge on San Miguel Island at less than 60 dBA, are close enough to ambient noise that they are not expected to cause any disturbances of pinnipeds inhabiting the Channel Islands. During the launch of the first (and only) LLV, no evidence of disturbance to the rookery on San Miguel Island was observed immediately following the arrival of the sonic boom created by the rocket (Howorth 1995).

Comment 2: The MMC recommended that NMFS require that any marine mammal mortalities or serious injuries, or possible mortalities or injuries, be reported immediately.

Response 2: NMFS agrees and has conditioned the incidental harassment authorization accordingly.

Comment 3: The MMC recommended that NMFS and the Air Force consult to determine whether authorization under section 101(a)(5)(A) would be more appropriate than annual authorizations for each launch vehicle.

Response 3: Several previous authorization notices have noted that NMFS anticipates that 1-year authorizations for each rocket type will be replaced in the near future by a new set of regulations, under section 101(a)(5)(A) of the MMPA, governing incidental takes of marine mammals by launches of all rocket types from Vandenberg. An application for a small take authorization under section 101(a)(5)(A) of the MMPA is presently in preparation by the Air Force.

Comment 4: Save Our Coast was concerned about the adverse effect of increasing rocket launches from Vandenberg on harbor seals and considered monitoring to be of utmost importance.

Response 4: Monitoring continues to be required for this and all incidental harassment authorizations for activities at Vandenberg. Under the proposed programmatic authorization mentioned in Response 3, cumulative impacts by all rocket launches at Vandenberg will need to be addressed.

Conclusion

Since NMFS is assured that the taking will not result in more than the harassment (as defined by the MMPA Amendments of 1994) of a small number of harbor seals, would have only a negligible impact on the species, and would result in the least practicable impact on the stock, NMFS has determined that the requirements of section 101(a)(5)(D) have been met and the authorization can be issued.

Authorization

For the above reasons, NMFS has issued an incidental harassment authorization for 1 year for the above described activity provided the above

mentioned mitigation, monitoring and reporting requirements are undertaken.

Dated: July 17, 1996.

Patricia A. Montanio,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 96–18791 Filed 7–23–96; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Office of the Assistant Secretary of Defense for Public Affairs.

ACTION: Notice.

In compliance with Section 3505(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Assistant Secretary of Defense for Public Affairs announces the proposed reinstatement of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by September 23, 1996.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the Office of the Assistant Secretary for Public Affairs, ATTN: DPCR (LTC Roger Kaplan), 1400 Defense Pentagon, Washington, DC 20301–1400.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address or call the Directorate for Programs and Community Relations, at (703) 695–2036.

Title Associated Form, and OMB Number: Request for Armed Forces Participation in Public Events (Non-Aviation), DD Form 2536, OMB Number 0704–0290.

Needs and Uses: The information collection requirement is necessary to evaluate the eligibility of events to receive Armed Forces community relations support and to determine if requested military assets are available.

Affected Public: Individuals or households; State or local governments; Federal agencies or employees; Non-profit institutions.

Annual Burden Hours: 5,000.

Number of Respondents: 300.

Responses Per Respondent: 1.

Average Burden Per Response: 7 minutes.

Frequency: Annually.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Respondents are public affairs specialists who evaluate requests for Armed Forces support of patriotic events conducted in the civilian domain. DD Form 2536 records the military support requested, event data, and sponsoring organization information. The completed form provides the respondent with the minimum information necessary to determine if an event is eligible for military participation and whether the desired support is permissible and/or available. If the form is not provided, the review process is greatly increased because the respondent must make additional inquiries with the event sponsor. In addition, use of the form reduces the event sponsor's preparation time because the form eliminates the need for a detailed letter and because it contains DoD guidelines governing military support. Use of the form is essential to reduce processing time, to increase productivity, and to maximize responsiveness to the public.

Dated: July 18, 1996.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–18706 Filed 7–23–96; 8:45 am]

BILLING CODE 5000–04–M

Defense Logistics Agency

Privacy Act of 1974; Computer Matching Program Between the Department of the Treasury and the Defense Manpower Data Center of the Department of Defense

AGENCY: Defense Manpower Data Center, Defense Logistics Agency, Department of Defense.

ACTION: Proposed computer matching program between the Department of the Treasury and the Defense Manpower Data Center of the Department of Defense (DoD).

SUMMARY: Subsection (e)(12) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a) requires agencies to publish advance notice of any proposed or revised computer matching program by the matching agency for public comment. Defense Manpower Data Center (DMDC), as the matching agency under the Privacy Act of 1974, as amended, (5 U.S.C. 552a), is hereby giving constructive notice in lieu of direct notice to the record subjects of a proposed computer matching program between the Department of the Treasury and DMDC that their records are being matched by computer. The record subjects are delinquent debtors of the Bureau of the Public Debt, Department of the Treasury, who are current or former Federal employees receiving any Federal salary or benefit payments and are indebted or delinquent in their repayment of debts to the United States Government under certain programs administered by the Public Debt so as to permit the Public Debt to pursue and collect the debt by voluntary repayment or by administrative or salary offset procedures under the provisions of the Debt Collection Act of 1982.

DATES: This proposed action will become effective August 23, 1996, and the computer matching will proceed accordingly without further notice, unless comments are received which would result in a contrary determination or if the Office of Management and Budget or Congress objects thereto. Any public comment must be received before the effective date.

ADDRESSES: Any interested party may submit written comments to the Director, Defense Privacy Office, Crystal Mall 4, Room 920, 1941 Jefferson Davis Highway, Arlington, VA 22202–4502. Telephone (703) 607–2943.

SUPPLEMENTARY INFORMATION: Pursuant to subsection (o) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a), the Department of the Treasury and DMDC have concluded an agreement to conduct a computer matching program between the agencies. The purpose of the match is to exchange personal data between the agencies for debt collection from defaulters of obligations held by the Bureau of Public Debt under the Debt Collection Act of 1982. The match will yield the identity and location of the debtors within the Federal Government so that the Bureau can pursue recoupment of the debt by voluntary payment or by administrative or salary offset procedures. Computer

matching appeared to be the most efficient and effective manner to accomplish this task with the least amount of intrusion of personal privacy of the individuals concerned. It was therefore concluded and agreed upon that computer matching would be the best and least obtrusive manner and choice for accomplishing this requirement.

A copy of the computer matching agreement between the Department of the Treasury and DMDC is available to the public upon request. Requests should be submitted to the address caption above or to the Debt Collection Officer, Bureau of Public Debt, Hintgen Building, Room 106, P.O. Box 1328, Parkersburg, WV 26106–1328.

Set forth below is a public notice of the establishment of the computer matching program required by paragraph (e)(12) of the Privacy Act.

The matching agreement, as required by 5 U.S.C. 552a(r) of the Privacy Act, and an advance copy of this notice was submitted on July 8, 1996, to the Committee on Government Reform and Oversight of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget pursuant to paragraph 4d of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records about Individuals,' dated February 8, 1996 (61 FR 6427, February 20, 1996). This matching program is subject to review by OMB and Congress and shall not become effective until that review period of 30 days has elapsed.

Dated: July 18, 1996.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Computer Matching Program Between the Bureau of Public Debt, Department of the Treasury, and the Defense Manpower Data Center of the Department of Defense for Debt Collection

A. *Participating Agencies:* Participants in this computer matching program are the Bureau of Public Debt, Department of the Treasury and the Defense Manpower Data Center (DMDC), Department of Defense (DoD). The Bureau of Public Debt is the source agency, i.e., the agency disclosing the records for the purpose of the match. DMDC is the specific recipient or matching agency, i.e., the agency that actually performs the computer matching.

B. *Purpose of the match:* The purpose of the match is to identify and locate any matched Federal personnel, employed or retired, who owe delinquent debts to the Federal Government under certain programs administered by Public Debt. Public Debt will use this information to initiate independent collection of those debts under the provisions of the Debt Collection Act of 1982 when voluntary payment is not forthcoming. These collection efforts will include requests by Public Debt of the employing agency to apply administrative and/or salary offset procedures until such time as the obligation is paid in full.

C. *Authority for conducting the match:* The legal authority for conducting the matching program is contained in the Debt Collection Act of 1982 (Pub. L. 97–365), 31 U.S.C. Chapter 37, Subchapter I (General) and Subchapter II (Claims of the United States Government), 31 U.S.C. 3711 Collection and Compromise, 31 U.S.C. 3716 Administrative Offset, 5 U.S.C. 5514 Installment Deduction for Indebtedness (Salary Offset); 10 U.S.C. 136, as amended, Under Secretary of Defense Personnel and Readiness; 10 U.S.C. 138, as amended, Assistant Secretaries of Defense, Appointment Powers and Duties; Section 101(l) of Executive Order 12731; 4 CFR ch. II, Federal Claims Collection Standards (General Accounting Office - Department of Justice); 5 CFR 550.1101 550.1108 Collection by Offset from Indebted Government Employees (OPM) and 31 CFR part 5, subparts B and D (Department of Treasury).

D. *Records to be matched:* The systems of records maintained by the respective agencies under the Privacy Act of 1974, as amended, 5 U.S.C. 552a, from which records will be disclosed for the purpose of this computer match are as follows:

1. The Bureau of Public Debt will use personal data from the following Privacy Act record systems:

A. Treasury/BPD.001, entitled 'Personnel and Administrative Records,' last published in the Federal Register November 9, 1995, at 60 FR 56865.

B. Treasury/BPD.002, entitled 'United States Savings Type Securities,' last published in the Federal Register November 9, 1995, at 60 FR 56868.

C. Treasury/BPD.003, entitled 'United States Securities (Other than Savings Type Securities),' last published in the Federal Register November 9, 1995, at 60 FR 56870.

D. Treasury/DO.002, entitled 'Treasury Integrated Management Information System (TIMIS),' last published in the Federal Register November 9, 1995, at 60 FR 56651.

E. Treasury/DO.210, entitled 'Treasury Integrated Financial Management and Revenue System,' last published in the Federal Register November 9, 1995, at 60 FR 56675.

F. Treasury/DO.211, entitled 'Telephone Call Detail Records,' last published in the Federal Register November 9, 1995, at 60 FR 56677.

2. DOD will use personal data from the record system identified as S322.11 DMDC, entitled 'Federal Creditor Agency Debt Collection Database,' last published in the Federal Register at 58 FR 10875 on February 22, 1993.

E. *Description of computer matching program:* Public Debt, as the source agency, will provide DMDC with a magnetic tape which contains the names of delinquent debtors in programs Public Debt administers. Upon receipt of the computer tape file of debtor accounts, DMDC will perform a computer match using all nine digits of the SSN of the Public Debt file against a DMDC computer database. The DMDC database, established under an interagency agreement between DOD, OPM, OMB and the Treasury Department, consists of employment records of non-postal Federal employees and military members, active and retired. Matching records ('hits'), based on the SSN, will produce the member's name, service or agency, category of employee, and current work or home address. The hits or matches will be furnished to Public Debt. Public Debt is responsible for verifying and determining that the data on the DMDC reply tape file are consistent with Public Debt's source file and for resolving any discrepancies or inconsistencies on an individual basis. Public Debt will also be responsible for making final determinations as to positive identification, amount of indebtedness and recovery efforts as a result of the match.

F. *Individual notice and opportunity to contest:* Due process procedures will be provided by Public Debt to those individuals matched (hits) consisting of Public Debt's verification of debt; a minimum of 30-day written notice to the debtor explaining the debtor's rights; provision for debtor to examine and copy Public Debt's documentation of the debt; provision for the debtor to seek Public Debt's review of the debt (or in the case of the salary offset provision, opportunity for a hearing before an individual who is not under the supervision or control of the agency); and an opportunity for the individual to enter a written agreement satisfactory to

Public Debt for repayment. Only when all of the steps have been taken will Public Debt disclose pursuant to a routine use to effect a salary offset. Unless the individual notifies Public Debt otherwise within 30 days from the date of receipt of the notice, Public Debt will conclude that the data provided to the individual is correct and will take the next necessary action to recoup the debt. Failure to respond to the notice will imply as to the correctness of the notice and justification for taking the next step to collect the debt under the law.

G. *Inclusive dates of the matching program:* This computer matching program is subject to review by the Office of Management and Budget and Congress. If no objections are raised by either, and the mandatory 30 day public notice period for comment has expired for this Federal Register notice with no significant adverse public comments in receipt resulting in a contrary determination, then this computer matching program becomes effective and the respective agencies may begin the exchange of data 30 days after the date of this published notice at a mutually agreeable time and will be repeated on an annual basis. Under no circumstances shall the matching program be implemented before this 30 day public notice period for comment has elapsed as this time period cannot be waived. By agreement between the Department of the Treasury and DoD, the matching program will be in effect and continue for 18 months with an option to extend for 12 additional months unless one of the parties to the agreement advises the other by written request to terminate or modify the agreement.

H. *Address for receipt of public comments or inquiries:* Director, Defense Privacy Office, Crystal Mall 4, Room 920, 1941 Jefferson Davis Highway, Arlington, VA 22202–4502. Telephone (703) 607–2943.

[FR Doc. 96–18707 Filed 7–23–96; 8:45 am]

BILLING CODE 5000–04–F

Privacy Act of 1974: Computer Matching Program Between the Department of Defense and the Department of Health and Human Services

AGENCY: Defense Manpower Data Center, Defense Logistics Agency, Department of Defense (DoD).

ACTION: Notice of a computer matching program between the Department of Health and Human Services and the Department of Defense.

SUMMARY: Subsection (e)(12) of the Privacy Act, 5 U.S.C. 552a, requires agencies to publish advance notice of any proposed or revised computer matching program by the matching agency for public comment. The Department of Defense (DoD), as the matching agency under the Privacy Act, is hereby giving indirect or constructive notice in lieu of direct notice to the record subjects of this computer matching program between the Department of Health and Human Services (HHS) and DoD are entering into this Matching Agreement for purposes of identifying Federal employees with child support delinquencies in accordance with Executive Order 12953, dated February 27, 1995.

DATES: This proposed action is effective on August 23, 1996, when the computer matching agreement will become effective and matching will proceed accordingly without further notice, unless comments are received which would result in a contrary determination or if the Office of Management and Budget or Congress objects thereto. Any public comments must be received before the effective date.

ADDRESSES: Please submit written comments to the Director, Defense Privacy Office, 1941 Jefferson Davis Highway, Room 920, Arlington, VA 22202–4502. Telephone (703) 607–2943 or DSN 327–2943.

SUPPLEMENTARY INFORMATION: Pursuant to subsection (o) of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the DoD and the HHS has concluded an agreement to conduct a computer matching program between the agencies. The purpose of this Matching Program is to fulfill one of the objectives of Executive Order 12953. In order to establish the Executive Branch of the Federal Government as a model employer in promoting and facilitating the establishment and enforcement of child support owed by its current and retired civilian and Uniformed Services work force, periodic matches will be conducted to help in identifying non-Postal Federal civilian personnel, Uniformed Services personnel, military retirees, and military reservists, who may owe delinquent child support.

A copy of the computer matching agreement between the HHS and the DoD is available upon request to the public. Requests should be submitted to the address above or to Mr. Harold Staten, Chief, Program Operations Branch, Office of Child Support Enforcement, 4th Floor East, 370 L'Enfant Promenade, SW Washington, DC 20447.

Set forth below is a notice of the establishment of a computer matching program required by paragraph 6.c. of the Office of Management and Budget Guidelines on Computer Matching published in the Federal Register at 54 FR 25818 on June 19, 1989.

The matching agreement as required by 5 U.S.C. 552a(r) of the Privacy Act, was submitted on July 8, 1996, to the Committee on Government Reform and Oversight of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, pursuant to paragraph 4d of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records about Individuals,' dated February 8, 1996 (61 FR 6428, February 20, 1996). The matching program is subject to review by OMB and Congress and shall not become effective until that review period has elapsed.

Dated: July 18, 1996.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Computer Matching Program Between the Department of Defense and the Department of Health and Human Services

A. *Participating agencies:* Participants in this computer matching are the Office of Child Support Enforcement (OCSE), Administration for Children and Families (ACF) of the Department of Health and Human Services (HHS) and the Defense Manpower Data Center (DMDC) of the Department of Defense (DoD). The HHS is the source agency, i.e., the agency disclosing the records for the purpose of the match. The DMDC is the specific recipient agency or matching agency, i.e., the agency that actually performs the computer matching.

B. *Purpose of the match:* The purpose of this Matching Program is to fulfill one of the objectives of Executive Order 12953. In order to establish the Executive Branch of the Federal Government as a model employer in promoting and facilitating the establishment and enforcement of child support owed by its current and retired civilian and Uniformed Services work force, periodic matches will be conducted to help in identifying non-Postal Federal civilian personnel Uniformed Services personnel, military retirees, and military reservist, who may

owe delinquent child support. The list of hits will be forwarded to appropriate State Child Support Enforcement (CSE) agencies to determine, in each instance, whether wage withholding or other enforcement actions should be commenced. The DoD and the ACF do not intend to take any direct adverse financial, personnel, or disciplinary action as a result of such hits.

C. *Authority for conducting the match:* Legal authority for conducting matches for the general purpose of locating parents who are not paying child support, so that State CSE agencies can take action to secure such child support payments, is contained in Section 453 of the Social Security Act, 42 U.S.C. 653. Specific authority directing Federal agencies to conduct this crossmatch is contained in section 304 of Executive Order 12953 (February 27, 1995; 60 FR 11013, February 28, 1995).

D. *Records to be matched:* The systems of records maintained by the respective agencies under the Privacy Act, from which records will be disclosed for the proposed computer match are as follows:

The Department of Health and Human Services, will use records from a system identified as 09–09–0074, entitled Federal Parent Locator Service and Federal Tax Offset System, HHS/OCSE, Federal Register publication dates, August 24, 1990, p. 34764, Vol. 55, No. 165; December 13, 1988, p. 50111, Vol. 53 No. 239; August 11, 1987, pp. 29732-33, Vol. 52, No. 154; and October 13, 1982, pp. 45547-48, Vol. 47, No. 198.

DMDC will match the data provided by ACF against the Defense Logistics Agency system identified as S322.10 DMDC entitled 'Defense Manpower Data Center Data Base', published in the Federal Register on February 20, 1996, p. 6355, Vol. 61, No. 34.

E. *Description of computer matching program:* ACF will submit to DMDC a tape containing approximately 4.1 million delinquent obligors which is made up of individual record subjects containing the Noncustodial parent's (NCP's) Social Security Number (SSN), NCP's last name, other ACF or OCSE data as required for identification purposes to be matched against DMDC Data Base containing approximately 10 million records. DMDC will disclose to OCSE the following information for each match: NCP name, NCP SSN, NCP date of birth, NCP home address (if available), Employer's name, Employer's address (if available), Type of employment (if available) and annual salary.

G. *Inclusive dates of the matching program:* This computer matching program is subject to review by the Office of Management and Budget and Congress. If no objections are raised by either, and the mandatory 30 day public notice period for comment has expired for this Federal Register notice with no significant adverse public comments in receipt resulting in a contrary determination, then this computer matching program becomes effective and the respective agencies may begin the exchange of data 30 days after the date of this published notice at a mutually agreeable time and will be repeated on periodic basis. Under no circumstances shall the matching program be implemented before the 30 day public notice period for comment has elapsed as this time period cannot be waived. By agreement between HHS and DMDC, the matching program will be in effect and continue for 18 months with an option to extend it for 12 additional months.

H. *Address for receipt of public comments or inquiries:* Director, Defense Privacy Office, 1941 Jefferson Davis Highway, Room 920, Arlington, VA 22202–4502. Telephone (703) 607–2943.

[FR Doc. 96–18708 Filed 7–23–96; 8:45 am]

BILLING CODE 5000–04–F

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation

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), Oak Ridge Reservation.

DATE AND TIME: Wednesday, August 7, 1996, 6:00 pm–9:00 pm.

ADDRESSES: Oak Ridge Inn (formerly Holiday Inn), 420 South Illinois Avenue, Oak Ridge, Tennessee.

FOR FURTHER INFORMATION CONTACT: Sandy Perkins, Site-Specific Advisory Board Coordinator, Department of Energy Oak Ridge Operations Office, 105 Broadway, Oak Ridge, TN 37830, (423) 576–1590.

SUPPLEMENTARY INFORMATION: Purpose of the Board: The purpose of the Board is to make recommendations to DOE and in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

August Meeting Topics

This meeting will be a business meeting with no technical presentations planned. The Board will be working on the 1996 Self Evaluation and it's Annual Report.

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 Sandy Perkins at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments.

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 at the Department of Energy's Information Resource Center at 105 Broadway, Oak Ridge, TN between 8:30 am and 5:00 pm on Monday, Wednesday, and Friday; 8:30 am and 7:00 pm on Tuesday and Thursday; and 9:00 am and 1:00 pm on Saturday, or by writing to Sandy Perkins, Department of Energy Oak Ridge Operations Office, 105 Broadway, Oak Ridge, TN 37830, or by calling her at (423) 576–1590.

Issued at Washington, DC, on July 18, 1996.

Rachel M. Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 96–18775 Filed 7–23–96; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. RP92–237–026]

Alabama-Tennessee Natural Gas Company; Notice of Refund Report

July 18, 1996.

Take notice that on July 15, 1996, Alabama-Tennessee Gas Company (Alabama-Tennessee), tendered for filing a report of refunds made on July 1, 1996, pursuant to Appendix A–2, Paragraph 4 of the joint Stipulation and Agreement filed on September 21, 1993, in FERC Docket No. RP92–237–000, *et al.*, and the Commission's May 20, 1996, Order in FERC Docket Nos. RP92–237–022 and 023.

Alabama-Tennessee has requested that the Commission grant such waivers

as may be necessary to accept and approve the filing as submitted.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426 in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests must be filed on or before July 25, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken but will not service 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. 96–18743 Filed 7–23–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM96–12–23–000]

Eastern Shore Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

July 18, 1996.

Take notice that on July 16, 1996 Eastern Shore Natural Gas Company (ESNG) tendered for filing certain revised tariff sheets in the above captioned docket as part of its FERC Gas Tariff, First Revised Volume No. 1, with proposed effective dates of July 1, 1996 and August 1, 1996, respectively.

ESNG states that the purpose of the instant filing is to track rate changes attributable to (a) storage service purchased from Transcontinental Gas Pipe Line Corporation (Transco) under Transco's Rate Schedule GSS the costs of which are included in the rates and charges payable under ESNG's Rate Schedules GSS and PS–1 Excess Delivery Charge effective beginning July 1, 1996 and (b) storage service purchased from Columbia Gas Transmission Corporation (Columbia) under Columbia's Rate Schedules SST and FSS the costs of which are included in the rates and charges payable under ESNG's Rate Schedules CWS and CFSS effective August 1, 1996. This tracking filing is being made pursuant to Section 24 of the General Terms and Conditions of ESNG's FERC Gas Tariff to reflect changes in ESNG's jurisdictional rates.

ESNG states that copies of the filing have been served upon its jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rule 211 and Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR Section 385.211 and Section 385.214). 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.

Lois D. Cashell,

Secretary,

[FR Doc. 96–18738 Filed 7–23–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–634–000]

Mississippi River Transmission Corporation; Texas Gas Transmission Corporation; Notice of Joint Application

July 18, 1996.

Take notice that on July 11, 1996, Mississippi River Transmission Corporation (MRT), 1600 Smith, Houston, Texas 77002 and Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed a joint application pursuant to Section 7(b) of the Natural Gas Act requesting authority to abandon two exchange agreements, represented by MRT's Rate Schedules X–3 and X–10 and Texas Gas' Rate Schedules X–39 and X–60 and one transportation service represented by MRT's Rate Schedule X–22, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

MRT's Rate Schedule X–3 and Texas Gas' Rate Schedule X–39 were originally certificated by an order issued by the Commission in Docket No. CP72–97. This exchange agreement covered the exchange of natural gas at the outlets of the gasoline plants of Union Texas Petroleum in Bossier Parish, Louisiana and of Southwest Gas Producing Company in Lincoln Parish, Louisiana, where both MRT and Texas Gas received gas produced in fields in northern Louisiana.

MRT's Rate Schedule X–10 and Texas Gas' Rate Schedule X–60 were originally certificated in Docket No. CP74–243. This exchange covered the delivery from one party to the other at one of two exchange points located at the intersections of MRT's and Texas Gas' pipelines near Texas Gas' Bastrop, Louisiana, compressor station and MRT's Unionville, Louisiana compressor station. This exchange allowed MRT to inject maximum volumes of gas into its West and East Unionville Storage Fields during the summer injection period to help meet its winter season requirements.

MRT's Rate Schedule X–22 was originally certificated in Docket No. CP86–87. This transportation agreement allowed MRT to transport up to 10,000 Mcf/day on an interruptible basis for Texas Gas. Texas Gas was to purchase gas from Amoco Production Company's (Amoco) Woodlawn field in Harrison County, Texas to be delivered into an interconnection to MRT at the outlet side of Damson Gas Processing Company's Woodlawn field processing plant. MRT would then redeliver equivalent quantities of gas to Texas Gas by reducing amounts delivered to MRT by Union Texas Petroleum and by Kerr-McGee Corporation from their plants in Bossier and Lincoln Parishes, Louisiana.

MRT and Texas Gas state that these arrangements are no longer necessary or beneficial to the parties and have been terminated pursuant to mutual written agreement of the parties. Neither MRT or Texas Gas propose to abandon or rearrange any of their facilities as a result of the proposed abandonment.

Any person desiring to be heard or to make a protest with reference to said application should, on or before August 8, 1996, file with the Federal Energy Regulatory Commission (888 First Street, NE., Washington, DC. 20426) a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the Protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by

the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for MRT or Texas Gas to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 96–18745 Filed 7–23–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–630–000]

Mississippi Valley Gas Company v. Texas Gas Transmission Corporation; Notice of Complaint

July 18, 1996.

Take notice that on July 9, 1996, Mississippi Valley Gas Company (Mississippi Valley), P.O. Box 3348, Jackson, Mississippi 39207–3348, filed with the Commission in Docket No. CP–96–630–000 a complaint pursuant to Rule 206 of the Commission's rules of practice and procedure (18 CFR 385.206(a)) against Texas Gas Transmission Corporation (Texas Gas).

Mississippi Valley complains of the Texas Gas May 30, 1996, declared intention (filed in its pending Docket No. CP96–104–000 bypass case under the Natural Gas Act) to construct a delivery point under the Natural Gas Policy Act of 1978 to bypass Mississippi Valley's longstanding natural gas services to an end-user, USG Interiors, Inc. (Interiors) in Greenville, Mississippi. Mississippi Valley states that in the May 30, 1996 filing Texas Gas reports that Interiors has arranged to purchase and receive gas to be transported under NGPA Section 311 and that Texas Gas says it intends to construct the delivery point at issue under supposed NGPA Section 311 authority. Mississippi Valley states that any attempt to construct such a delivery point would be illegal and should be rejected.

Mississippi Valley concludes that the Texas Gas May 30, 1996 filing at Docket No. CP96–104–000 should be rejected in its entirety and in all respects and that Texas Gas lawfully may not construct the subject facilities under Section 311. Mississippi Valley further states that in lieu of acquiescing in that filing, the Commission should proceed with reasoned analysis of Texas Gas' pending December 15, 1995, CP96–104 proposal to bypass Mississippi Valley Gas Company's existing service to Interiors.

Any person desiring to be heard or to make a protest with reference to Mississippi Valley's complaint should file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or protest in accordance with the Commissions Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions, together with the answer of Respondent to the complaint and motions should be filed on or before August 19, 1996. Any person desiring to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–18746 Filed 7–23–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–45–000]

Northern Border Pipeline Company; Notice of Informal Settlement Conference

July 18, 1996.

Take notice that an informal settlement conference in this proceeding will be convened on Thursday, August 1, 1996, at 10:00 a.m. and if necessary, Friday, August 2, 1996, at 10:00 a.m. The settlement conference will be held at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, for the purpose of exploring the possible settlement of the above referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Betsy R. Carr at (202) 208–1240 or Anja M. Clark at (202) 208–2034.

Lois D. Cashell,

Secretary.

[FR Doc. 96–18740 Filed 7–23–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–407–008]

Questar Pipeline Company; Notice of Compliance Tariff Filing

July 18, 1996.

Take notice that on July 16, 1996, Questar Pipeline Company, tendered for filing and acceptance tariff sheets to its FERC Gas Tariff to comply with the Commission's July 1, 1996, order to become effective as indicated on the tariff sheets.

Questar tendered for filing and acceptance the following tariff sheets:

First Revised Volume No. 1

Third Substitute Alternate Fifth Revised Sheet No. 5
Second Substitute Fifth Revised Sheet No. 6
Substitute Third Revised Sheet No. 6A
Substitute First Revised Sheet No. 13
Substitute Second Revised Sheet No. 14
First Revised Sheet No. 80
First Revised Sheet No. 80A
Second Revised Sheet No. 81
Substitute Second Revised Sheet No. 92
Substitute First Revised Sheet No. 92A
Second Substitute First Revised Sheet No. 98
Second Substitute Original Sheet No. 98A
Second Substitute Original Sheet No. 98B
Third Revised Sheet No. 172
Third Revised Sheet No. 173

Original Volume No. 3

Second Substitute Fifteenth Revised Sheet No. 8

On March 8, 1996, Questar filed a comprehensive settlement, including pro forma tariff sheets, in this proceeding. The Commission issued an Order on Settlement and Rehearing on July 1, 1996, which accepted Questar's proposed comprehensive settlement and required Questar to file revised tariff language to provide for the flowthrough of affiliate penalty revenues to its other customers.

Questar has included on its proposed tariff sheet No. 80A the change required by the July 1 order. Questar states that the attached tariff sheets provide for the payment by Questar to non-affiliated firm shippers, the imbalance charges received from its affiliated shippers in an amount proportional to the reservation charge paid by each firm shipper. The payment to firm shippers may be credited against amounts due from the receiving shipper, if any.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rule 385.211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests must be filed as provided in Section 154.210 of the Commission's Regulation's. 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. 96–18741 Filed 7–23–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–312–000]

Tennessee Gas Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

July 18, 1996.

Take notice that on July 16, 1996, Tennessee Gas Pipeline Company (Tennessee) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following revised tariff sheets, to be effective September 1, 1996:

Third Revised Sheet No. 98
First Revised Sheet No. 109
Original Sheet No. 109A
Fourth Revised Sheet No. 128
Original Sheet No. 128A
Third Revised Sheet No. 154
Original Sheet No. 154A
Second Revised Sheet No. 155E
Third Revised Sheet No. 162
Fourth Revised Sheet No. 167
Third Revised Sheet No. 168
Third Revised Sheet No. 173
Original Sheet No. 173A
First Revised Sheet No. 219
Original Sheet No. 219A
Second Revised Sheet No. 226
Original Sheet No. 226A
Fourth Revised Sheet No. 317
Fourth Revised Sheet No. 318
Second Revised Sheet No. 324
First Revised Sheet No. 337A
First Revised Sheet No. 348

Tennessee states that the revised tariff sheets reflect conforming changes to Tennessee's tariff to permit Tennessee to charge negotiated rates for its transportation and storage services in accordance with the Statement of Policy issued on January 31, 1996 in Docket No. RM95–6–000 (74 FERC ¶ 61,076).

Any person desiring to be heard or to make any protest with reference to said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. All protests filed with the Commission will be considered in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of the filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–18739 Filed 7–23–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–197–014]

Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff

July 18, 1996.

Take notice that on July 15, 1996, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing certain revised tariff sheets to its FERC Gas Tariff, Third Revised Volume No. 1 and Original Volume No. 2, which tariff sheets are enumerated in Appendix A attached to the filing. The proposed effective date of the tariff sheets is August 1, 1996.

On June 19, 1996 Transco filed a Stipulation and Agreement (Agreement) in Docket Nos. RP95–197, *et al.* which, among other things, resolves Transco's cost of service, overall throughput level and mix of throughput for the Docket No. RP95–197 rate period commencing September 1, 1995. Article IV of the Agreement provides that, in order to implement the settlement rates as early as practical, Transco will file to request Commission authority to place the settlement rates in effect as of the first day of the first month following at least 30 days after the Agreement is filed (i.e. to be effective August 1, 1996).

Transco also agreed to include as part of such filing a request to make effective as of the same date ''latest estimated allocated data'' procedures as provided in Article V, Section I of the Agreement. Consistent with, and subject to, Articles IV and VII of the Agreement, the instant filing proposes to implement, subject to certain conditions, the settlement rates effective August 1, 1996. Additionally, the filing proposes to implement effective August 1, 1996 tariff provisions regarding ''latest estimated allocated data''.

Transco states that copies of the filing are being mailed to each of its customers, State Commissions and other interested parties.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before 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 in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–18742 Filed 7–23–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER95–626–002, et al.]

PSI Energy, Inc., et al.; Electric Rate and Corporate Regulation Filings

July 17, 1996.

Take notice that the following filings have been made with the Commission:

1. PSI Energy, Inc.

[Docket No. ER95–626–002]

Take notice that on June 25, 1996, PSI Energy, Inc. tendered for filing its refund report in the above-referenced docket.

Comment date: July 31, 1996, in accordance with Standard Paragraph E at the end of this notice.

2. Vermont Electric Transmission Company

[Docket Nos. ER96–76–000 and ER96–77–000]

Take notice that on July 1, 1996, Vermont Electric Transmission Company tendered for filing amendments in the above-referenced dockets.

Comment date: July 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

3. Vermont Electric Power Company

[Docket No. ER96–194–000]

Take notice that on July 8, 1996, Vermont Electric Power Company tendered for filing an amendment in the above-referenced docket.

Comment date: July 31, 1996, in accordance with Standard Paragraph E at the end of this notice.

4. Northwest Power Marketing Company, L.L.C.

[Docket No. ER96–688–001]

Take notice that on June 25, 1996, Northwest Power Marketing Company, L.L.C. tendered for filing its Rate Schedule FERC No. 1 and code of Conduct Regarding the Relationship between Kansas City Power & Light Company and Northwest Power Marketing Company, L.L.C. This filing was made in compliance with the Commission's Order of June 13, 1996, in this docket.

Comment date: July 31, 1996, in accordance with Standard Paragraph E at the end of this notice.

5. Minnesota Power & Light Company

[Docket No. ER96–1580–001]

Take notice that on June 26, 1996, Minnesota Power & Light Company tendered for filing revised point-to-point transmission service tariffs and its revised network service transmission tariffs.

Comment date: July 31, 1996, in accordance with Standard Paragraph E at the end of this notice.

6. Southwestern Electric Power Company

[Docket No. ER96–2067–000]

Take notice that on June 26, 1996, Arkansas Electric Cooperative Corporation tendered for filing a Certificate of Concurrence in the above-referenced docket.

Comment date: July 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

7. Preferred Energy Services, Inc.

[Docket No. ER96–2141–000]

Take notice that on July 1, 1996, Preferred Energy Services, Inc. tendered for filing additional information to its June 13, 1996, filing submitted in the above-referenced docket.

Comment date: July 31, 1996, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–18747 Filed 7–23–96; 8:45 am]

BILLING CODE 6717–01–P

[Project No. 1494–120]

Grand River Dam Authority; Notice of Availability of Draft Environmental Assessment

July 18, 1996.

A draft environmental assessment (DEA) is available for public review. The DEA is for an application to upgrade six of the project's generating units for the Pensacola Hydroelectric Project, Project No. 1494–120. The DEA finds that approval of the application would not constitute a major federal action significantly affecting the quality of the human environment. The Pensacola Hydroelectric Project is located on the Grand (Neosho) River in Craig, Delaware, Mayes, and Ottawa Counties, Oklahoma.

The DEA was written by staff in the Office of Hydropower Licensing, Federal Energy Regulatory Commission. Copies of the DEA can be viewed at the Commission's Public Reference Room, Room 2A, 888 First Street, NE., Washington, D.C. 20426. Copies can also be obtained by calling the project manager listed below.

Please submit any comments within 20 days from the date of this notice. Any comments, conclusions, or recommendations that draw upon studies, reports or other working papers of substance should be supported by appropriate documentation.

Comments should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. Please affix Project No. 1494–120 to all comments. For further information, please contact the project manager, Robert J. Fletcher, at (202) 219–1206.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–18748 Filed 7–23–96; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2365–011]

Madison Paper Industries; Notice of Availability of Draft Environmental Assessment

July 18, 1996.

A draft environmental assessment (DEA) is available for public review. The DEA is for an application to amend the Anson Hydroelectric Project. The application is to resurface the dam; reconfigure the permanent crest; raising the elevation from 241.67′ to 242.62′ (except for a 50-ft section which will be lowered to 242.62′) in order to accept an inflatable flashboard system; and install an inflatable flashboard system, raising the normal headpond elevation by 1.5 feet. The DEA finds that approval of the application would not constitute a major federal action significantly affecting the quality of the human environment. The Anson Hydroelectric Project is located on the Kennebec River in Somerset County, Maine.

The DEA was written by staff in the Office of Hydropower Licensing, Federal Energy Regulatory Commission. Copies of the DEA can be viewed at the Commission's Public Reference Room, Room 2A, 888 First Street, N.E., Washington, D.C. 20426. Copies can also be obtained by calling the project manager listed below.

Please submit any comments within 20 days from the date of this notice. Any comments, conclusions, or recommendations that draw upon studies, reports or other working papers of substance should be supported by appropriate documentation.

Comments should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. Please affix Project No. 2365–011 to all comments. For further information, please contact the project manager, Jean A. Potvin, at (202) 219–0022.

Lois D. Cashell,

Secretary.

[FR Doc. 96–18744 Filed 7–23–96; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–00193; FRL–5387–9]

National Advisory Committee for Acute Exposure Guideline Levels for Hazardous Substances (NAC/AEGL)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of open meeting.

SUMMARY: The second meeting of the National Advisory Committee for Acute Exposure Guideline Levels for Hazardous Substances (NAC/AEGL) will be held on August 5-7, 1996, in Washington, DC. Chemicals to be addressed at this meeting include ammonia, methyl mercaptan, hydrazine, hydrogen fluoride, hydrogen cyanide, cyanogen chloride, and 1,2-dichloroethylene.

DATES: The second meeting of the NAC/AEGL will be held from 10 a.m. to 5 p.m. on Monday, August 5; from 9 a.m. to 5 p.m. on August 6; and from 9 a.m. to noon on August 7, 1996.

ADDRESS: The meeting will be held in the Green Room on the third floor of the Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Paul Tobin, Office of Prevention, Pesticides, and Toxic Substances (7406), 401 M St. SW., Washington, DC. 20460, (202) 260–1736, e-mail: tobin.paul@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Chemicals to be addressed at this meeting of the NAC/AEGL include ammonia, methyl mercaptan, hydrazine, hydrogen fluoride, hydrogen cyanide, cyanogen chloride, and 1,2-dichloroethylene. For available information, questions, or to submit information on these chemicals, contact Paul S. Tobin, the Designated Federal Officer (DFO) (see FOR FURTHER INFORMATION CONTACT).

The meeting of the NAC/AEGL will be open to the public. Oral statements will be limited to 10 minutes. Anyone wishing to make an oral presentation should contact the DFO as indicated above as soon as possible. Since space is limited, those wishing to attend the meeting as observers should contact the NAC/AEGL DFO. Inquiries regarding the submission of written statements or chemical specific information should also be directed to the DFO.

Dated: July 18, 1996.

Joseph A. Carra,

Acting Director, Office Pollution Prevention and Toxics.

[FR Doc. 96–18832 Filed 7–19–96; 3:14 pm]

BILLING CODE 6560–50–F

[PF–600A; FRL–5384–7]

Valent U.S.A. Corp.; Notice of Withdrawal of Pesticide Petition for fenpropathrin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the withdrawal by the Valent U.S.A. Corp, of the food/feed addititive petition for regulation of residues of fenpropathrin in or on peanut oil and peanut soapstock.

FOR FURTHER INFORMATION CONTACT: By mail: George 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, 703–305–6100; e-mail: larocca.george@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: *FAP 4H5690*. Notice appeared in the Federal Register of July 13, 1994 (59 FR 35720) (PF-600), that Valent U.S.A. Corp., 1333 N. California Blvd., Walnut Creek, CA 94596-8025, proposed to amend 40 CFR parts 185 and 186 by establishing a food/feed additive regulation to permit residues of fenpropathrin, *alpha*-cyano-3-phenoxybenzyl 2,2,3,3-tetramethylcyclopropanecarboxylate, in peanut oil at 0.05 parts per million (ppm) and peanut soapstock at 0.02 ppm. The Valent U.S.A. Corp., has withdrawn that pesticide petition.

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: July 10, 1996.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 96–18390; Filed 7–23–96; 8:45 am]

BILLING CODE 6560–50–F

[OPP–181018; FRL 5384–5]

Pirate; Receipt of Application for Emergency Exemption, Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received specific exemption requests from the Tennessee Department of Agriculture (hereafter referred to as the ''Applicant'') to use the pesticide Pirate to treat up to 1,000,000 acres of cotton to control the beet armyworm (BAW). The Applicant proposes the use of a new (unregistered) chemical [40 CFR 166.24(a)(1)]. Therefore, in accordance with 40 CFR 166.24, EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATES: Comments must be received on or before August 8, 1996.

ADDRESSES: Three copies of written comments, bearing the identification notation ''OPP–181018,'' should be submitted by mail to: Public Response and Program Resource 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, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

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–181018]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as 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 provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 1132, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4:30 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Margarita Collantes, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Floor 6, Crystal Station #1, 2800 Jefferson Davis Highway, Arlington, VA, (703) 308–8347; e-mail: collantes.margarita@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at her discretion, exempt a state agency from any registration provision of FIFRA if she determines that emergency conditions exist which require such exemption. The Applicant has requested the Administrator to issue specific exemptions for the use of Pirate on cotton to control the beet armyworm. Information in accordance with 40 CFR part 166 was submitted as part of this request.

According to the Applicant, the rationale for requesting this emergency exemption is based on Pirate's proven ability to be effective against the the

BAW and the inability of the currently available insecticides to control the BAW. Boll weevil pheromone trap catches this spring indicate a very high population of overwintered boll weevils in West Virginia. Although the possibility of the BAW overwintering in West Tennessee is small, the summer generation of BAW have been known to disperse several hundred miles in wind currents from the south. Therefore, if hot, dry growing season occurs in 1996 it appears that the BAW infestations are likely to occur in Tennessee.

The use of pirate to control the BAW has been issued to most of the states within the southern cotton belt region this year. In an effort to mitigate risk to Federally-listed threatened and endangered species from potentially harmful exposure to Pirate, specific directions, restrictions, precautions and monitoring for wildlife mortality were required.

Under the proposed exemption, Pirate 3SC may be applied at a maximum rate of 1.5 to 2.0 lbs. active ingredient (a.i.) per acre (6.4 to 8.53 fl. ozs.) for control of the BAW, using ground or aerial application equipment in a minimum of 10 gallons per acre total volume by ground, or 5 gallons of spray solution per acre by air.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require publication of a notice of receipt of an application for a specific exemption proposing use of a new chemical (i.e., an active ingredient not contained in any currently registered pesticide), [40 CFR 166.24(a)(1)]. Pirate 3SC is an unregistered chemical. Such notice provides for opportunity for public comment on the application.

A record has been established for this notice under docket number [OPP–181018] (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 Resource 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 notice, 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. Accordingly, interested persons may submit written views on this subject to the Field Operations Division at the address above.

The Agency, accordingly, will review and consider all comments received during the comment period in determining whether to issue the emergency exemptions requested by the Tennessee Department of Agriculture.

List of Subjects

Environmental protection, Pesticides and pests, Emergency exemptions.

Dated: June 11, 1996.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 96–18393 Filed 7–23–96; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

FCC To Hold Open Commission Meeting Thursday, July 25, 1996; Sunshine Act Meeting

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, July 25, 1996, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street, NW., Washington, DC.

Item No., Bureau, Subject

1—Wireless Telecommunications—Title: Amendment of the Commission's Rules Concerning Low Power Radio and Automated Maritime Telecommunications System Operations in the 216–217 MHz Band (WT Docket No. 95–56, RM–7784). Summary: The Commission will consider the creation of a low power radio service in the 216-217 MHz band.

2—Cable Services—Title: Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation (MM Docket No. 92–266) and Cable Pricing Flexibility. Summary: The Commission will address the use of rate setting methods between regulated tiers of service, and the provision of additional flexibility with respect to the relative pricing of different tiers of service.

3—Office of Engineering and Technology—Title: Digital Television Systems and Their Impact upon the Existing Television Broadcast Service (MM Docket No. 87–268). Summary: The Commission will consider issues pertaining to the allotment of channels for the Digital Television Service.

Additional information concerning this meeting may be obtained from Audrey Spivack or David Fiske, Office of Public Affairs, telephone number (202) 418–0500.

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, International Transcription Services, Inc. at (202) 857–3800. Audio and Video Tapes of this meeting can be purchased from Telspan International at (301) 731–5355. This meeting can be viewed over George Mason University's ''Capitol Connection.'' For information on this service call (703) 993–3100.

Dated July 18, 1996.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–18982 Filed 7–22–96; 3:00 pm]

BILLING CODE 6712–01–F

[Report No. 2144]

Petitions for Reconsideration and Clarification of Action in Rulemaking Proceedings

July 18, 1996.

Petitions for reconsideration and clarification have been filed in the Commission's rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of these document are available for viewing and copying in Room 239, 1919 M Street, NW., Washington, DC or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857–3800. Oppositions to these petitions must be filed on or before August 8, 1996. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of Section 73.202(b), FM Broadcast Stations, Table of Allotments. (MM Docket

No. 90–66, RM–7139, RM–7368, RM–7369)

Number of Petitions Filed: 1

Subject: Reorganization and Revision of Parts 1, 2, 21 and 94 of the Rules to Establish a New Part 101 Governing Terrestrial Microwave Fixed Radio Services. (WT Docket No. 94–148)

Number of Petitions Filed: 6

Subject: Amendment of Part 95 of the Commission's Rules to Establish a Very Short Distance Two-way Voice Radio Service (WT Docket No. 95–102, RM–8499)

Number of Petitions Filed: 2

Subject: Amendment to the Commission's Rules Regarding a Plan for Sharing the Costs of Microwave Relocation. (WT Docket No. 95–157, RM–8643)

Number of Petitions Filed: 9

Subject: Definition of Markets for Purposes of the Cable Television Mandatory Television Broadcast Signal Carriage Rules. (CS Docket No. 95–178)

Number of Petitions Filed: 2

Subject: Implementation of Section 302 of the Telecommunications Act of 1996 (CS Docket No. 96–46)

Number of Petitions Filed: 19

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–18605 Filed 7–23–96; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Security for the Protection of the Public, Indemnification of Passengers for Nonperformance of Transportation; Notice of Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of Section 3, Public Law 89–777 (46 U.S.C. 817(e)) and the Federal Maritime Commission's implementing regulations at 46 CFR Part 540, as amended:

Seabourn Cruise Line Limited and Seabourn Maritime Management A/S, 55 Francisco Street, San Francisco, California 94133

Vessel: SEABOURN LEGEND

Dated: July 18, 1996.

Joseph C. Polking,

Secretary.

[FR Doc. 96–18711 Filed 7–23–96; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

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 August 16, 1996.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. First Midwest Financial, Inc., Storm Lake, Iowa; to become a bank holding company by acquiring 100 percent of the voting shares of Central West Bancorporation, Casey, Iowa, and thereby indirectly acquire Security State Bank, Stuart, Iowa.

In connection with this application First Midwest Financial, Inc., also has applied to acquire First Federal Savings Bank of the Midwest, Storm Lake, Iowa, and its subsidiaries, First Services Financial Limited, Storm Lake, Iowa, Brookings Service Corporation, Brooking, South Dakota, and First Midwest Financial, Inc., Storm Lake, Iowa, and thereby engage in operating a savings association, pursuant to § 225.25(b)(9) of the Board's Regulation Y, in trust activities, pursuant to § 225.25(b)(3) of the Board's Regulation Y, the sale of credit-related insurance, pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y, insurance agency activities in small towns, pursuant to § 225.25(b)(8)(iii) of the Board's Regulation Y, in securities brokerage activities, pursuant to § 225.25(b)(15) of the Board's Regulation Y, investment advice, pursuant to § 225.25(b)(4)(iii) of the Board's Regulation Y, and in making and servicing loans, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

B. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. DFC Acquisition Corporation Two, Kansas City, Missouri; to acquire 58.18 percent of the voting shares of Air Academy National Bancorp, Colorado Springs, Colorado, and thereby indirectly acquire Air Academy National Bank, Colorado Springs, Colorado.

2. FirstBank Holding Company of Colorado Employee Stock Ownership Plan, Lakewood, Colorado; and its subsidiary FirstBank Holding Company of Colorado, Lakewood, Colorado, to acquire 100 percent of the voting shares of FirstBank of Greeley, Greeley, Colorado.

3. Premier Bancorp, Inc., Denver, Colorado; to become a bank holding company by acquiring 100 percent of the voting shares of Premier Bank, Lenexa, Kansas.

Board of Governors of the Federal Reserve System, July 18, 1996.

Jennifer J. Johnson

Deputy Secretary of the Board

[FR Doc. 96–18778 Filed 7-23-96; 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 company listed in this notice has 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.

The 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 application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 7, 1996.

A. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. The Tokai Bank, Limited, Nagoya, Japan; to engage *de novo* through its subsidiary, Tokai Financial Services, Inc., Berwyn, Pennsylvania, in higher-residual-value leasing activities pursuant to § 225.25(b)(5)(ii) of the Board's Regulation Y. This activity will be conducted worldwide.

Board of Governors of the Federal Reserve System, July 18, 1996.

Jennifer J. Johnson

Deputy Secretary of the Board

[FR Doc. 96–18777 Filed 7-23-96; 8:45 am]

BILLING CODE 6210-01-F

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:00 a.m., Monday, July 29, 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. Proposals relating to Federal Reserve System benefits.
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: July 22, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–18915 Filed 7–22–96; 11:25 am]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION

Federal Information Resources Management Regulation Abolishment

AGENCY: Office of Policy, Planning and Evaluation, GSA.

ACTION: Notice.

Notice is hereby given that the Federal Information Resources Management Regulation (FIRMR) will be abolished pursuant to the Information Technology Management Reform Act of 1996 (ITMRA) effective August 8, 1996 at 12:00 a.m. (midnight). The abolishment of the FIRMR will give effect to the Information Technology Management Reform Act of 1996 by eliminating GSA's Governmentwide information technology (IT) regulations at the time ITMRA becomes effective. Of particular concern to agencies involved in an IT acquisition is that portion of the FIRMR setting forth the delegation of procurement authority process. The timing of the FIRMR's abolishment is to ensure that those agencies operating under a Brooks Act delegation of procurement authority are not deprived of acquisition authority before the agencies' independent procurement authority under section 5124 of ITMRA becomes effective on August 8, 1996.

All contracts established under Brooks Act delegations of procurement authority will remain in effect until modified or terminated by an authorized party under ITMRA. All Brooks Act delegations of procurement authority are superseded by agencies' independent procurement authority under ITMRA. Any procurements for Governmentwide Agency Contracts authorized under a specific Brooks Act delegations of procurement authority may proceed to award. All reporting requirements, established in specific Brooks Act delegations of procurement authority are canceled effective August 8, 1996 at 12:00 a.m. (midnight). All conditions and limitations established in specific Brooks Act delegations of procurement authority may be modified or terminated by agencies effective August 8, 1996 at 12:00 a.m. (midnight).

Agencies should note that although the FIRMR will be abolished, agencies are still required to use the FTS2000 program since its use is predicated on a statutory mandate. Public Law 104–52, at section 629, prohibits the expenditures of funds outside the FTS2000 unless there is an exception granted by the Administrator of General Services. Agencies should contact GSA's FTS Service at (703) 285–1020 with any questions concerning the use of FTS2000.

Agencies also are advised that certain portions of the FIRMR may be reissued as part of the Federal Acquisition Regulation and Federal Property Management Regulation. Additional information on this issue will be forthcoming.

Dated: July 16, 1996.

Fred L. Sims,

Deputy Associate Administrator for Information Technology.

[FR Doc. 96–18411 Filed 7–23–96; 8:45 am]

BILLING CODE 6820–25–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[ATSDR–111]

Notice of the Draft Priority List of Hazardous Substances at Department of Energy National Priorities List Sites That May be the Subject of Toxicological Profiles

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Agency for Toxic Substances and Disease Registry (ATSDR) has prepared a priority list of hazardous substances found on certain Department of Energy (DOE) sites. This list is similar to the priority list of hazardous substances prepared by ATSDR, in cooperation with the Environmental Protection Agency (EPA) under the authority of section 104(i)(3) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund), as amended by the Superfund Amendments and Reauthorization Act (SARA) [42 U.S.C. 9604(i)(3)]. This act requires ATSDR and EPA to prepare a list, in order of priority, of substances that are most commonly found among all facilities on the National Priorities List (NPL) and which are determined to pose the most significant potential threat to human health (see 52 FR 12866, April 17, 1987). This list is used to determine the order in which ATSDR's toxicological profiles are to be developed for the substances, and is based on three components: frequency of occurrence, toxicity, and human exposure potential of the substances found at NPL sites.

In developing the priority list of hazardous substances at DOE NPL sites, ATSDR used the same methodology as that for the CERCLA priority list, with the algorithm modified slightly. Consequently, this list is based on the substances' frequency of occurrence at DOE NPL sites, toxicity, and human exposure potential. This two-part list, that includes radionuclides (n=50) and nonradionuclides (n=150), will provide a mechanism for prioritizing the selection of candidate substances for the potential development of toxicological profiles by ATSDR. Of the 150 nonradionuclides listed, 121 are currently the subject of toxicological profiles. Of the 50 radionuclides listed, 4 toxicological profiles (Uranium, Thorium, Plutonium and Radium) have been developed.

This announcement provides notice that ATSDR has developed and is making available a draft document entitled Priority List of Hazardous Substances at DOE NPL Sites and Support Document. This priority list includes substances that have been determined to pose the most significant potential threat to human health at or around 22 DOE NPL hazardous waste sites.

DATES: Comments concerning this notice must be received by August 23, 1996.

ADDRESSES: Requests for a copy of the draft Priority List of Hazardous Substances at DOE NPL Sites and Support Document, or comments on this notice, should bear the docket control number ATSDR–111 and should be sent to the attention of Dr. Jim Holler, Agency for Toxic Substances and Disease Registry, Division of Toxicology, Emergency Response and Scientific Assessment Branch, 1600 Clifton Road, NE., Mailstop E–29, Atlanta, Georgia 30333. Requests for the draft Priority List of Hazardous Substances at DOE NPL Sites and Support Document must be in writing.

Comments on this notice will be available for public inspection when the priority list is issued in final at the Agency for Toxic Substances and Disease Registry, Building 4, Executive Park Drive, Atlanta, Georgia (not a mailing address), from 8:00 a.m. until 4:30 p.m., Monday through Friday, except for legal holidays. Because all public comments are available for public inspection, no confidential business information should be submitted in response to this notice.

FOR FURTHER INFORMATION CONTACT: Agency for Toxic Substances and Disease Registry, Division of Toxicology, Emergency Response and Scientific Assessment Branch, 1600 Clifton Road, NE., Mailstop E–29, Atlanta, Georgia 30333, telephone (404) 639–6300.

SUPPLEMENTARY INFORMATION: The sources of the substance information used in developing this priority list include DOE NPL site-specific documents submitted to ATSDR by EPA, State agencies, and other parties. ATSDR abstracted information from these site file documents, which contained information on substances found in various environmental media. This abstracted information was then entered into ATSDR's Hazardous Substance Release/Health Effects Database (HazDat). More than 100 documents have been abstracted, resulting in approximately 19,000 records entered into HazDat.

The ranking of substances on the Priority List of Hazardous Substances at DOE NPL sites is based on three criteria, which are combined to calculate the total score. ATSDR believes that the following three criteria are most relevant to public health: (1) Frequency of occurrence at DOE NPL sites—The presence of a substance in at least one environmental medium per operable unit at a DOE site constitutes one occurrence. A log scale approach was used to determine the frequency points. (2) Toxicity—If available, final reportable quantities (RQs) are used to assess the toxicity of nonradioactive substances during the listing activity. If a final RQ is not available, the RQ methodology is applied to candidate substances to establish a Toxicity/Environmental Score (TES). The TES is only used in scoring the substances regarding their toxicity, and does not represent regulatory amounts. For radioactive substances, the toxicity was based on a combination of the Annual Limits on Intake and the external exposure potential. (3) Potential for human exposure—The exposure component is based on the concentration of the substances in environmental media at the site. A relative source contribution is calculated for each substance. This component does not include the exposure status subcomponent that is included in the CERCLA priority listing algorithm because of a paucity of data on exposure status in the documents examined.

Using these three criteria, ATSDR ranked the hazard potential of each candidate substance according to the following algorithm:

$$\underset{\text{(1800 max. points)}}{\text{TOTAL SCORE}} = \underset{\text{(600 points)}}{\text{FREQUENCY}} + \underset{\text{(600 points)}}{\text{TOXICITY}} + \underset{\text{(600 points)}}{\text{POTENTIAL FOR HUMAN EXPOSURE}}$$

Substances were ordinally ranked based on their total score, with radionuclides and nonradionuclides ranked separately. The 470 candidate substances considered for the Priority List of Hazardous Substances at DOE NPL sites are those substances present at 22 DOE NPL sites, as indicated in site file documents. The 22 sites consist of 134 operable units.

The 22 DOE NPL sites included in this listing activity are as follows: Bonneville Power Authority; Brookhaven National Laboratory; Fernald Environmental Management Project; Hanford 100; Hanford 200; Hanford 300; Hanford 1100; Idaho National Engineering Laboratory; Lawrence Livermore National Laboratory—Site 300; Lawrence Livermore National Laboratory—Main Site; Los Alamos National Laboratory; Maywood Interim Storage Site; Monticello Mine Tailings; Mound Plant; Oak Ridge Reservation; Paducah Gaseous Diffusion Plant; Pantex; Portsmouth Gaseous Diffusion Plant; Rocky Flats Plant; Savannah River Site; WR Grace/Wayne Interim Storage Site; and Weldon Springs Site.

This priority list includes 50 radionuclide and 150 non-radionuclide substances that ATSDR has determined pose the most significant potential threat to human health. All candidate substances have been analyzed and ranked with the algorithm described previously. Substances on this priority list may become the subject of toxicological profiles prepared by ATSDR.

Dated: July 18, 1996.

Claire V. Broome,

Deputy Administrator, Agency for Toxic Substances and Disease Registry.

The top 20 radionuclides and top 20 nonradionuclides on the Priority List of Hazardous Substances at DOE NPL Sites are as follows:

Radionuclides:

1 THORIUM–232
2 URANIUM–235
3 RADIUM–228
4 URANIUM–238
5 RADIUM–226
6 COBALT–60
7 KRYPTON–85
8 AMERICIUM–241
9 URANIUM–234
10 POTASSIUM–40
11 EUROPIUM–152
12 NEPTUNIUM–237
13 CESIUM–137
14 PROTACTINIUM–231
15 STRONTIUM–90
16 KRYPTON–88
17 THALLIUM–208
18 THORIUM–228
19 PROTACTINIUM–234
20 ARGON–41

NonRadionuclides:

1 LEAD
2 ARSENIC
3 MERCURY, METALLIC
4 AROCLOR 1254
5 BENZO(B)FLUORANTHENE
6 BENZO(A)PYRENE
7 AROCLOR 1248
8 CADMIUM
9 BERYLLIUM
10 PHOSPHORUS
11 VINYL CHLORIDE
12 AROCLOR 1260
13 POLYCHLORINATED BIPHENYLS
14 CHLOROFORM
15 DIBENZO(A,H)ANTHRACENE
16 DIELDRIN
17 MANGANESE
18 CYANIDE
19 NICKEL
20 BENZENE

[FR Doc. 96–18766 Filed 7–23–96; 8:45 am]

BILLING CODE 4163–70–P

Centers for Disease Control and Prevention

Translation Advisory Committee for Diabetes Prevention and Control Programs: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Translation Advisory Committee for Diabetes Prevention and Control Programs.

Times and Dates: 8:30 a.m.–4:30 p.m., August 15, 1996. 8:30 a.m.–3 p.m., August 16, 1996.

Place: Decatur Holiday Inn Hotel and Conference Plaza, 130 Clairemont Avenue, Decatur, Georgia 30030, telephone 404/371–0204.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

Purpose. This committee is charged with advising the Director, CDC, regarding policy issues and broad strategies for diabetes translation activities and control programs designed to reduce risk factors, health services utilization, costs, morbidity, and mortality associated with diabetes and its complications. The Committee identifies research advances and technologies ready for translation into widespread community practice; recommends broad public health strategies to be implemented through public health interventions; identifies opportunities for surveillance and epidemiologic assessment of diabetes and related complications; and for the purpose of assuring the most effective use and organization of resources, maintains liaison and coordination of programs within the Federal, voluntary, and private sectors involved in the provision of services to people with diabetes.

Matters to be Discussed: Committee members will discuss assessment of CDC's State Diabetes Control Programs, the status of the National Diabetes Education Program, and goals and future areas of emphasis for the Division of Diabetes Translation.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Cheryl Shaw, Program Specialist, Division of Diabetes Translation, National Center for Chronic Disease Prevention and Health Promotion, CDC, 4770 Buford Highway, NE, M/S K–10, Atlanta, Georgia 30341–3724, telephone 770/488–5004.

Dated: July 18, 1996.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 96–18768 Filed 7–23–96; 8:45 am]

BILLING CODE 4163–18–M

Administration for Children and Families

[Program Announcement No. OCS–96–08A]

Notice of Clarification of Applicant Eligibility Under the Request for REACH Plans Under the Office of Community Services' FY 1996 Low-Income Home Energy Assistance Program, Residential Energy Assistance Challenge Option (REACH) Program

AGENCY: Office of Community Services, ACF, DHHS.

ACTION: Notice.

SUMMARY: This is a Clarification of Applicant Eligibility under Program Announcement No. OCS–96–08 (61 FR 35518–35545) for the Office of Community Services' Residential Energy Assistance Challenge Option (REACH) Program. The Administration for Children and Families (ACF), Office of Community Services (OCS) wishes to make clear that ''community-based nonprofit entities'' which are to be the CBO Recipients through which REACH services are to be delivered pursuant to Section 2607B(e) of the Low-Income Home Energy Assistance Act of 1981, as amended, 42 U.S.C. 8621 *et seq.*, includes those organizations described in section 673 of the Community Services Block Grant Act (42 U.S.C. 9902(1)) which are public agencies, that is, a department, agency or unit of local government.

FOR FURTHER INFORMATION CONTACT: Office of Community Services, Administration for Children and Families, Division of Community

Demonstration Programs, 370 L'Enfant Promenade, S.W., Fifth Floor, Washington, D.C. 20447, Attention: Richard Saul—(202) 401–9341; Anna Guidery—(202) 401–5318.

This Notice is accessible on the OCS Electronic Bulletin Board for downloading through your computer modem by calling 1–800–627–8886. For assistance in accessing the Bulletin Board, a Guide to Accessing and Downloading is available from Ms. Minnie Landry at (202) 401–5309.

The Catalog of Federal Domestic Assistance number for this program is 93.568.

I. Clarification of Definition

A. Section 2607B(e)(2)(A) of the Low-Income Home Energy Assistance Act of 1981, as amended, requires that each State REACH Plan include ''an assurance that such State will deliver services through community-based nonprofit entities in such State * * *''

B. Section 2607B(e)(2)(B) requires that ''in awarding grants or entering into contracts to carry out its REACH initiative, the State will give priority to organizations that—

(i) are described in section 673 of the Community Services Block Grant Act (42 U.S.C. 6863 *et seq.*) * * *'' That is, priority is to be given to Community Action Agencies. (This is one of three criteria for priority consideration.)

C. In its Program Announcement of July 5, 1996 (OCS–96–08), 61 FR 35518–35545, OCS included a definition of ''Community-based, nonprofit'' that defined it as ''a corporation or association * * *'' which has caused some confusion among prospective applicants as to whether a public Community Action Agency which is a unit of local government is eligible to be the ''community-based nonprofit entity'' through which REACH services are to be delivered. The answer is yes. ''Community-based nonprofit entities'' includes organizations described in section 673 of the Community Services Block Grant Act that are public agencies or entities such as public Community Action Agencies that are a unit of local government.

Dated: July 19, 1996.

Donald Sykes,

Director, Office of Community Services.

[FR Doc. 96–18830 Filed 7–23–96; 8:45 am]

BILLING CODE 4184–01–P

Food and Drug Administration

Advisory Committees; Notice of Meetings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

FDA has established an Advisory Committee Information Hotline (the hotline) using a voice-mail telephone system. The hotline provides the public with access to the most current information on FDA advisory committee meetings. The advisory committee hotline, which will disseminate current information and information updates, can be accessed by dialing 1–800–741–8138 or 301–443–0572. Each advisory committee is assigned a 5-digit number. This 5-digit number will appear in each individual notice of meeting. The hotline will enable the public to obtain information about a particular advisory committee by using the committee's 5-digit number. Information in the hotline is preliminary and may change before a meeting is actually held. The hotline will be updated when such changes are made.

MEETINGS: The following advisory committee meetings are announced:

Advisory Committee for Pharmaceutical Science (formerly Generic Drugs Advisory Committee)

Date, time, and place. August 15, 1996, 8 a.m., and August 16, 1996, 7:30 a.m., Holiday Inn—Gaithersburg, Goshen Ballroom, Two Montgomery Village Ave., Gaithersburg, MD.

Type of meeting and contact person. Open committee discussion, August 15, 1996, 8 a.m. to 1 p.m.; open public hearing, 1 p.m. to 2 p.m., unless public participation does not last that long; open committee discussion, 2 p.m. to 6:30 p.m.; open committee discussion, August 16, 1996, 7:30 a.m. to 10 a.m.; Kimberly L. Topper, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Advisory Committee for Pharmaceutical Science, code 12539. Please call the hotline for information concerning any possible changes.

General function of the committee. The committee gives advice on scientific and technical issues concerning the safety and effectiveness of human generic drug products for use in the treatment of a broad spectrum of human diseases.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before August 1, 1996, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On August 15, 1996, the committee will discuss the Biopharmaceutics Drug Classification System and Individual Bioequivalence. On August 16, 1996, the committee will discuss Product Quality Research, Laboratory-Based Clinical Pharmacology Research, and Clinic-Based Clinical Pharmacology Research.

Joint Meeting of the Advisory Committee for Pharmaceutical Science and the Pulmonary and Allergy Drugs Advisory Committee

Date, time, and place. August 16, 1996, 10 a.m., Holiday Inn—Gaithersburg, Goshen Ballroom, Two Montgomery Village Ave., Gaithersburg, MD.

Type of meeting and contact person. Open committee discussion, 10 a.m. to 11:30 a.m.; open public hearing, 11:30 a.m. to 12:30 p.m., unless public participation does not last that long; open committee discussion, 12:30 p.m. to 3:30 p.m.; Kimberly L. Topper, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Advisory Committee for Pharmaceutical Science, code 12539. Please call the hotline for information concerning any possible changes.

General function of the committees. The Advisory Committee for Pharmaceutical Science gives advice on scientific and technical issues concerning the safety and effectiveness of human generic drug products for use in the treatment of a broad spectrum of

human diseases. The Pulmonary-Allergy Drugs Advisory Committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in the treatment of pulmonary disease and diseases with allergic and/or immunologic mechanisms.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before August 1, 1996, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committees will discuss Bioequivalence of Albuterol Metered Dose Inhalers (MDI's).

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this Federal Register notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting may be requested in writing from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: July 15, 1996.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 96–18614 Filed 7–23–96; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

[R–131]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

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, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Reinstatement, without change, of a previously approved collection for which approval has expired; *Title of Information Collection:* Information Collection Requirements in BPD–458–F, Section 411.408(d)(2) and (f); *Form No.:* HCFA–R–131; *Use:* Physicians who do not accept assignment may bill a patient for services denied by Medicare as ''not reasonable and necessary,'' if they informed the patient, prior to furnishing the services, that Medicare was likely to deny part B payments for services and the patient, after being so informed, agrees to pay for the services. *Frequency:* On occasion; *Affected Public:* Individuals or Households; *Number of Respondents:* 237,322; *Total Annual Responses:* 925,904; *Total Annual Hours Requested:* 115,738.

To request copies of the proposed paperwork collections referenced above, E-mail your request, including your address, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly 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: July 16, 1996.

Edwin J. Glatzel,

Director, Management Planning and Analysis Staff, Office of Financial and Human Resources, Health Care Financing Administration.

[FR Doc. 96–18763 Filed 7–23–96; 8:45 am]

BILLING CODE 4120–03–U

Health Resources and Services Administration

Cooperative Agreement With the Telemedicine Research Center

AGENCY: Health Resources and Services Administration (HRSA), Health and Human Services (HHS).

SUMMARY: The Office of Rural Health Policy (ORHP), Health Resources and Services Administration, announces its intent to award funds in FY 1996 to support a cooperative agreement with the Telemedicine Research Center (TRC), Portland, Oregon.

The Office of Rural Health Policy funds 19 rural telemedicine projects through grants. It has been encouraged by the Office of Management and Budget and the Senate Committee on Appropriations to develop a standard data set for telemedicine evaluation and conduct an objective and scientific evaluation of telemedicine programs. The purpose of this cooperative agreement is to collect basic information about the operations, utilization, costs, benefits, and sustainability of the 19 rural telemedicine projects funded through the Office of Rural Health Policy. The specific objectives are (1) to develop standard data collection questions and instruments for the ongoing monitoring and evaluation of rural telemedicine projects and (2) to use the standard data collection questions and instruments over a one year period. The proposed data collection will require Office of Management and Budget approval under the Paperwork Reduction Act of 1995. The data collection will not take place until OMB approval has been obtained.

HRSA plans to award this cooperative agreement to the TRC because of its unique characteristics, skills, and superior qualifications in the area of telemedicine evaluation. The TRC was founded for the purpose of conducting multi-network telemedicine evaluations, and is the only organization that conducts multi-network telemedicine evaluations and analyzes the data across the multiple networks. Accordingly, HRSA has determined that there is adequate basis for awarding this cooperative agreement to the TRC without competition.

Authority: This cooperative agreement is authorized under section 301 of the Public Health Service Act, with funds appropriated under Public Law 104–134 (MAKING APPROPRIATIONS FOR FISCAL YEAR 1996, TO MAKE A FURTHER DOWN PAYMENT TOWARD A BALANCED BUDGET, AND FOR OTHER PURPOSES.)

AVAILABILITY OF FUNDS: Approximately $200,000 will be made available to support the cooperative agreement for a budget period of one year, beginning in FY 1996. The project period will be two years at a total cost of approximately $330,000.

OTHER AWARD INFORMATION: This program is not subject to the provision of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented by 45 CFR Part 100).

FOR FURTHER INFORMATION CONTACT: Dena S. Puskin, Sc.D., Deputy Director, Office of Rural Health Policy, 5600 Fishers Lane, Room 9–05, Rockville, MD 20857, 301–443–0835, dpuskin@hrsa.ssw.dhhs.gov.

Dated: July 18, 1996.

Ciro V. Sumaya,

Administrator.

[FR Doc. 96–18831 Filed 7–23–96; 8:45 am]

BILLING CODE 4160–15–P

Office of Inspector General

Program Exclusions: June 1996

AGENCY: Office of the Inspector General, HHS.

ACTION: Notice of program exclusions during the month of June 1996, the HHS Office of Inspector General imposed exclusions of the cases set forth below. When an exclusion is imposed, no program payment is made to anyone for any items or services (other than an emergency item or service not provided in a hospital emergency room) furnished, ordered or prescribed by an excluded party under the Medicare, Medicaid, Maternal and Child Health Services Block Grant and Block Grants to States for Social Services programs. In addition, no program payment is made to any business or facility, e.g., a hospital, that submits bills for payment for items or services provided by an excluded party. Program beneficiaries remain free to decide for themselves whether they will continue to use the services of an excluded party even though no program payments will be made for items and services provided by that excluded party. The exclusions have national effect and also apply to all Executive Branch procurement and non-procurement programs and activities.

Subject, city, state	Effective date
PROGRAM-RELATED CONVICTIONS	
AMRO, RAFIC A, ALLENTOWN, PA	07/05/96
ARNOTT, RONALD W, BELCHERTOWN, MA	06/30/96
BATES-JACKSON, DIARIS M, NORFOLK, VA	07/05/96
BEAL, ALLAN G, WESTPORT, NY	07/03/96
BRIONES, LEOPOLDO R, SAN BRUNO, CA	07/18/96
BROCCOLO, JOSEPH P, NEW ROCHELLE, NY	07/03/96
CERTIFIED AIR RESPIRATORY EQUI, SOUTHFIELD, MI	07/04/96
CESENA, REBECCA, SAN DIEGO, CA	07/18/96
CHISM, RHON G, EL RENO, OK	07/08/96
COY, JOHN ROSS, SAFFORD, AZ	07/18/96
CURRY, RICHARD, DETROIT, MI	07/04/96
DELONG, DENISE ANN, LOS FRESNOS, TX	07/09/96
DIXON, HOPE RENEE, DELIGHT, AR	07/09/96
DOSHI, RAJESH NAVNITLAL, STERLING HGTS, MI	07/04/96
ELGAILI, MAKKI B, MADISON, WI	07/04/96
ELLIS, LILY MARTIN, AZLE, TX	07/09/96
GARRISON, JEANETTE G, AUGUSTA, GA	07/08/96
GILL, CHARLES H JR, PORTLAND, ME	06/30/96
GRIFFIN, WELDON N, OKLAHOMA CITY, OK	07/08/96
HERRING, DIANE, BRIGHTON, MA	06/30/96
HOOVER, EVA P, PERU, IN	07/04/96
JOHNSON, DAVID M, OAKLAND, CA	07/18/96
JONES, JALETA, SACRAMENTO, CA	07/18/96
KELLY, DENNIS J, AUGUSTA, GA	07/08/96
L & R TRANSPORTATION, DETROIT, MI	07/04/96
LESTER, JAMES LEE, SANTE FE, NM	07/08/96
MANAGED RISK SERVICES, MARTINEZ, GA	07/08/96
MAYES, TOMMY LEE, GALAX, VA	07/05/96
MCMAHON, NORWOOD, VIRGINIA BEACH, VA	07/05/96
MEDSTAR AMBULANCE SERVICE, INC, ONALASKA, WI	07/04/96
MOON, DANA KAY, ALVARADO, TX	07/09/96
MORTON, TRESHA L, SHREVEPORT, LA	07/08/96
RICHARDS, JOHN E, ELGIN, FL	07/08/96
RIEDLINGER, BLAISE M, SAN DIEGO, CA	07/18/96
ROONEY, DIANE, PHILADELPHIA, PA	07/05/96
ROSS, DONDRA LEE, MERIDIAN, MS	07/08/96
SUBA, DAVID, SAVANNAH, GA	07/08/96

Subject, city, state	Effective date
THOMPSON, TOMMY E, TEXARKANA, TX	07/09/96
WEINBERGER, LEWIS, PINEVILLE, NC	07/08/96
WENDLER, KRISTOPHER, OVERLAND PARK, KS	06/27/96
PATIENT ABUSE/NEGLECT CONVICTIONS	
BEARD, ANGELA, LEAKSVILLE, MS	07/08/96
BJORKLUND, DONOVAN AUGUST, BLOOMINGTON, MN	07/04/96
BROWN, JACKLYN DENISE, CANTON, MS	07/08/96
BRULOTTE, CELESTE H, YAKIMA, WA	06/27/96
CORNELIUS, VALERIE, DETROIT, MI	07/04/96
CURRIER, HULDA JEAN, PRESCOTT, AZ	06/27/96
HERBERT, LISA, NEW BEDFORD, MA	06/30/96
HEINTZ, DONNA MARIE, BELLE FOURCHE, SD	06/27/96
HURST, DONALD KEITH, ABERDEEN, SD	06/27/96
JOHNSON-HUTCHINSON, JULIANNA, BRISTOL, RI	06/30/96
KING, THELMA M, BLUNT, SD	06/27/96
LAND, TIFFANY, LEAKSVILLE, MS	07/08/96
MANNING, DIANNE, HURON, SD	06/27/96
NORTON-RHODES, JOYCE LEE, SAFFORD, AZ	07/18/96
PEDERSON, KAREN, LEAKSVILLE, MS	07/08/96
PETTIGREW, ARNOLD AARON, BLOOMFIELD, NM	07/08/96
REITZEL, RYAN, SIOUX FALLS, SD	06/27/96
ROCCABELLO, BARBARA A, E PROVIDENCE, RI	06/30/96
SECTION, DWIGHT W, McALESTER, OK	07/08/96
SUINA, JOCELYN, COCHITI PUEBLO, NM	07/08/96
WASHINGTON, SHELLY LORRAINE, PORT ALLEN, LA	07/08/96
CONVICTION FOR HEALTH CARE FRAUD	
BLACKMON, IDA, SELMA, NC	07/08/96
GRAOR, ROBERT A, BRECKSVILLE, OH	07/04/96
KENNEDY, SANDRA MARIE, HOUSTON, TX	07/09/96
McGUIRE, JANE L, OWLS HEAD, ME	06/30/96
RETAMAR, RONNIE, CHINA, ME	06/30/96
SMOLEV, BARRY ALAN, LOS ANGELES, CA	07/18/96
TAYLOR-GILLIS, CHERYL, DAPHNE, AL	07/08/96
CONTROLLED SUBSTANCE CONVICTIONS	
BERNAT, DONALD R, YOUNGSTOWN, OH	07/04/96
PHILLIPS, RONALD B, BROOKHAVEN, PA	07/05/96
LICENSE REVOCATION/SUSPENSION/SURRENDER	
BAKER, HERBERT MARVIN, EDEN, NC	07/08/96
BALSAM, STEPHEN J, BURLINGTON, VT	06/30/96
BARQUIN, OTTO PEDRO, HUNTINGTON BCH, CA	07/18/96
BERLIN, STUART MARK, WESTLAKE, CA	06/27/96
BONESTEEL, WARREN E, GREENSBURG, PA	07/05/96
BOYAPATI, KALPANA, ROSEVILLE, MN	06/30/96
BOYD, DARLA PIKE, DALLAS, TX	07/09/96
CHAN, YING-MING, SAN DIEGO, CA	06/27/96
DENIER, JAMES M, GOLDSBORO, NC	07/08/96
EBERHARDT, ROBERT PAUL, BISMARCK, ND	06/27/96
ESTACIO-SUAREZ, MARIA C, HUNTINGTON, WV	07/03/96
FERGUSON, KARI JO, NACOGDOCHES, TX	07/09/96
FERRARO, LUCIA M, HUNTINGTON BCH, CA	07/18/96
FLOWERS, DAVID L, MEMPHIS, TN	07/08/96
FRANCO, RICARDO, SAN ANTONIO, TX	07/09/96
HECK, BARRY J, REDONDO BEACH, CA	07/18/96
HORMANN, RICHARD A, KINGWOOD, WV	07/03/96
JOHNSON, DON R, NELSONVILLE, OH	07/04/96
KARDUM, AUDREY ELAINE, HOUSTON, TX	07/09/96
KING, SUZANNE K, SALEM, MA	06/30/96
L'ARDENT, DENNIS R, LAS VEGAS, NV	07/18/96
LANG, SHARON L, ROCHESTER, MN	07/04/96
MALMBERG, DORELLE S, LAFAYETTE, MN	07/04/96
MATIAN, KAMAL, RESEDA, CA	07/18/96
McGARRY, RYAN, WARWICK, RI	06/30/96
MORGAN, JEFFREY C, MINNEAPOLIS MN	07/04/96
MORRIS, SHELLIE A, SAN RAFAEL, CA	07/18/96
MORSE, HOWARD T, PORT LUDLOW, OR	06/27/96
NELSON, TIMOTHY J, E WATERBORO, ME	06/30/96
PARK, DONALD E, SACRAMENTO, CA	07/18/96
ROBINSON, KIM E, CANNON FALLS, MN	07/04/96
SIEGEL, SHEILA, N HUNTINGDON, PA	07/05/96
ST HILAIRE, NORMAN R, CONCORD, NH	06/30/96
THAKUR, KISHORE S, RAYNHAM, MA	06/30/96
TORRES, CARLA HELEN, SAN LEANDRO, CA	07/18/96
TROYA, EDUARDO, FALL RIVER, MA	06/30/96
WARNICK-POWERS, LINDA L, MAPLE PLAIN, MN	07/04/96
WESTERMAN, JOHN NICHOLAS, MEMPHIS, TN	07/08/96
YATES, JUDITH M, SEBASTOPOL, CA	07/18/96
FEDERAL/STATE EXCLUSION/SUSPENSION	
HOLTEY, CRAIG R, MINNEAPOLIS, MN	07/04/96
SHAH, PRAGNA, MERRICK, NY	07/03/96
SMITH, THANIEL III, N ANSON, ME	06/30/96
FRAUD/KICKBACKS	
GLOBAL MEDICAL SYSTEMS, INC, NEW BRUNSWICK, NJ	05/01/96
MCCAULEY, ARLIS, EDINA, MN	04/19/96
OWNED/CONTROLLED BY CONVICTED/EXCLUDED	
AMERICAN MUNICIPAL AMBULANCE, SHREVEPORT, LA	07/08/96
HEMBREE CHIROPRACTIC, FAIRHOPE, AL	07/08/96
TRESHA L MORTON AMBULANCE, SHREVEPORT, LA	07/08/96
DEFAULT ON HEAL LOAN	
ADRAY, ALLIE A, DEARBORN MI	07/04/96
ANTICOLA, MARGARET M, DEPEW, NY	07/03/96
ANYAJI, GEORGE I, SAN DIEGO, CA	06/27/96
BAHRS, JOHN G, GAINESVILLE, FL	07/08/96
BRANCH, JOERALD D, BARTLETT, TN	07/08/96
CAMPBELL, DENNIS L, SHAFTER, CA	06/27/96
GRIGGS, DEBORAH L, ST CLAIR SHORES, MI	07/04/96
HAEZEBROUCK, JOSEPH V, MARIETTA, GA	07/08/96
HAMBY, MICHAEL LEE, MURFREESBORO, TN	07/08/96
HENRY, WILLIAM E, GILBERT, AZ	06/27/96
HUDSON, TEDIE L, SAN MARINO, CA	06/27/96
KELLY, JAMES T, MILLER PLACE, NY	07/03/96
KUNZ, FREDERICK W IV, METAIRIE, LA	07/08/96
LEGATE, ANDREW, WINSLOW, AZ	06/27/96
LUCA, ROBERT P, BROOKLYN, NY	07/03/96

Subject, city, state	Effective date
MAKER, JAMES ANTHONY II, HOMINY, OK	07/08/96
MALLARY, PETER M, CHICO, CA	06/27/96
MAXFIELD-BROWN, BOBBI L, EVANSVILLE, IN	07/04/96
MCCABE, PETER T, CARMEL, NY	07/03/96
MILLER, BRAD T, COSTA MESA, CA	06/27/96
NGUYEN, THUAN H, OAKLAND, CA	06/27/96
O'BRIEN, ROBERT, LINDEWALD, NJ	07/03/96
O'DAY, MARY P, HOUSTON, TX	07/09/96
PARKS, KEVIN LEO, POINT PLEASANT, NJ	07/03/96
PATTERSON, ROOSEVELT, EMPORIA, VA	07/05/96
PEREZ, NELSON, BROOKLYN, NY	07/03/96
RAMIREZ, RALPH, EL MONTE, CA	06/27/96
RASHID, PAUL L, MASON, MI	07/04/96
ROBERTS, GARY F, HUNTINGTON, WV	07/03/96
ROLOFF, ROBIN L, LAKEWOOD, CA	07/18/96
SCHLUTER, LYLE C A, UKIAH, CA	06/27/96
SCOFFIELD, MARK H, FRESNO, CA	07/18/96
SCOTT, MICHAEL D, ATMORE, AL	07/08/96
SHAPIRO, MICHAEL S, NEWHALL, CA	06/27/96
WALTERS, MALCOM, CLEVELAND HEIGHTS, OH	07/04/96
WALTMAN, BONNIE J, COLUMBIA, MD	07/03/96
WILBUR, RAYMOND C, NORTHFIELD, MN	06/11/96
ZIPKIN, MARTIN R, UNION, NJ	07/03/96

Dated: July 15, 1996.

William M. Libercci,

Director, Health Care Administrative Sanctions, Office of Enforcement and Compliance.

[FR Doc. 96–18753 Filed 7–23–96; 8:45 am]

BILLING CODE 4150–04–P

National Institutes of Health

National Cancer Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Cancer Institute Board of Scientific Counselors Basic Sciences Subcommittee which was published in the Federal Register on July 3, 1996 (61 FR 34856).

The Board of Scientific Counselors Basic Sciences Subcommittee was scheduled to meet on July 22–23, but will now meet on July 22 only. The open sessions will be from 9 a.m. to 9:30 a.m. and 12 noon to 1 p.m. The meeting will be closed to the public from 9:30 a.m. to 12 noon and from 1 p.m. to 6 p.m.

Dated: July 17, 1996.

Margery G. Grubb,

Senior Committee Management Specialist, NIH.

[FR Doc. 96–18737 Filed 7–23–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Mental Health; 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 of Mental Health Special Emphasis Panel:

Agenda/Purpose: To review and evaluate grant applications.

Committee Name: National Institute of Mental Health Special Emphasis Panel.
Date: July 25, 1996.
Time: 2 p.m.
Place: Parklawn, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857.
Contact Person: Donna Ricketts, Parklawn, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857. Telephone: 301, 443–3936.

Committee Name: National Institute of Mental Health Special Emphasis Panel.
Date: July 29, 1996.
Time: 8:30 a.m.
Place: Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, MD 20814.
Contact Person: Phyllis L. Zusman, Parklawn Building, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857. Telephone: 301, 443–1340.

Committee Name: National Institute of Mental Health Special Emphasis Panel.
Date: August 1, 1996.
Time: 2 p.m.
Place: Parklawn, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857.
Contact Person: Donna Ricketts, Parklawn, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857. Telephone: 301, 443–3936.

Committee Name: National Institute of Mental Health Special Emphasis Panel.
Date: August 9, 1996
Time: 2 p.m.
Place: Parklawn, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857.
Contact Person: Donna Ricketts, Parklawn, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857. Telephone: 301, 443–3936.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to the meetings due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Numbers 93.242, 93.281, 93.282)

Dated: July 17, 1996.

Margery G. Grubb,

Senior Committee Management Specialist, NIH.

[FR Doc. 96–18736 Filed 7–23–96; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.
Name of SEP: Clnical Sciences.
Date: July 24, 1996.
Time: 12:00 p.m.
Place: NIH, Rockledge 2, Room 4134, Telephone Conference.
Contact Person: Dr. Clark Lum, Scientific Review Administrator, 6701 Rockledge Drive, Room 4134, Bethesda, Maryland 20892, (301) 435–1195.

Name of SEP: Biological and Physiological Sciences.
Date: August 1, 1996.
Time: 3:00 p.m.
Place: NIH, Rockledge 2, Room 4148, Telephone Conference.
Contact Person: Dr. Phil Perkins, Scientific Review Administrator, 6701 Rockledge Drive, Room 4148, Bethesda, Maryland 20892, (301) 435–1718.

Name of SEP: Behaviorial and Neurosciences.
Date: August 2, 1996.
Time: 2:00 p.m.
Place: NIH, Rockledge 2, Room 5172, Telephone Conference.
Contact Person: Dr. Leonard Jakubczak, Scientific Review Administrator, 6701 Rockledge Drive, Room 5172, Bethesda, Maryland 20892, (301) 435–1247.

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 grant review and funding cycle.

Name of SEP: Biological and Physiological Sciences.
Date: August 6, 1996.
Time: 2:00 p.m.
Place: NIH, Rockledge 2, Room 6178, Telephone Conference.
Contact Person: Dr. Nancy Pearson, Scientific Review Administrator, 6701 Rockledge Drive, Room 6178, Bethesda, Maryland 20892, (301) 435–1047.

Name of SEP: Biological and Physiological Sciences.

Date: August 7, 1996.

Time: 2:00 p.m.

Place: NIH, Rockledge 2, Room 6178, Telephone Conference.

Contact Person: Dr. Nancy Pearson, Scientific Review Administrator, 6701 Rockledge Drive, Room 6178, Bethesda, Maryland 20892, (301) 435–1047.

Name of SEP: Microbiological and Immunological Sciences.

Date: August 8, 1996.

Time: 12:00 p.m.

Place: NIH, Rockledge 2, Room 4186, Telephone Conference.

Contact Person: Dr. Gerald Liddel, Scientific Review Administrator, 6701 Rockledge Drive, Room 4186, Bethesda, Maryland 20892, (301) 435–1150.

Name of SEP: Biological and Physiological Sciences.

Date: August 8, 1996.

Time: 3:00 p.m.

Place: NIH, Rockledge 2, Room 4148, Telephone Conference.

Contact Person: Dr. Phil Perkins, Scientific Review Administrator, 6701 Rockledge Drive, Room 4148, Bethesda, Maryland 20892, (301) 435–1718.

Name of SEP: Biological and Physiological Sciences.

Date: August 22, 1996.

Time: 3:00 p.m.

Place: NIH, Rockledge 2, Room 4148, Telephone Conference.

Contact Person: Dr. Phil Perkins, Scientific Review Administrator, 6701 Rockledge Drive, Room 4148, Bethesda, Maryland 20892, (301) 435–1718.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 16, 1996.

Margery G. Grubb,

Senior Committee Management Specialist, NIH.

[FR Doc. 96–18735 Filed 7–23–96; 8:45 am]

BILLING CODE 4140–01–M

Department of Health and Human Services

Office of Refugee Resettlement

Refugee Resettlement Program: Allocations to States of FY 1996 Funds for Refugee Social Services

AGENCY: Office of Refugee Resettlement (ORR), ACF, HHS.

ACTION: Final notice of allocations to States of FY 1996 funds for refugee[1] social services.

SUMMARY: This notice establishes the allocations to States of FY 1996 funds for social services under the Refugee Resettlement Program (RRP). This notice reflects the new social service provisions in the final rule published in the Federal Register on June 28, 1995, (60 FR 33584) which became effective October 1, 1995. This notice discontinues the special discretionary funds set-aside for services to former political prisoners from Vietnam.

EFFECTIVE DATE: July 24, 1996.

ADDRESSES: Office of Refugee Resettlement, Administration for Children and Families, 370 L'Enfant Promenade, SW., Washington, DC 20447.

FOR FURTHER INFORMATION CONTACT: Toyo Biddle, Director, Division of Refugee Self-Sufficiency, (202) 401–9250.

SUPPLEMENTARY INFORMATION: Notice of the proposed social service allocations to States was published in the Federal Register on May 6, 1996, (61 FR 20268). The population estimates that were used in the proposed notice have been adjusted as a result of additional arrival information.

I. Amounts For Allocation

The Office of Refugee Resettlement (ORR) has available $80,802,000 in FY 1996 refugee social service funds as part of the FY 1996 appropriation for the Department of Health and Human Services (Pub. L. 104–134). We are discontinuing in FY 1996 the special $2,000,000 discretionary funds set-aside for services to former political prisoners from Vietnam. However, ORR expects States to address the special needs of former political prisoners from Vietnam through their regular refugee social service funds as part of the States' 5-year eligible service population.

Of the total of $80,802,000, the Director of ORR is making available to States $68,681,700 (85%) under the allocation formula set out in this notice. These funds are available for the purpose of providing social services to refugees.

Refugee Social Service Funds

The population figures for the social service allocation include refugees, Cuban/Haitian entrants, and Amerasians from Vietnam since these populations may be served through funds addressed in this notice. (A State must, however, have an approved State plan for the Cuban/Haitian Entrant Program or indicate in its refugee program State plan that Cuban/Haitian entrants will be served in order to use funds on behalf of entrants as well as refugees.)

The Director is allocating $68,681,700 to States on the basis of each State's proportion of the national population of refugees who had been in the U.S. 3 years or less as of October 1, 1995 (including a floor amount for States which have small refugee populations).

The use of the 3-year population base in the allocation formula is required by section 412(c)(1)(B) of the Immigration and Nationality Act (INA) which states that the ''funds available for a fiscal year for grants and contracts [for social services] * * * shall be allocated among the States based on the total number of refugees (including children and adults) who arrived in the United States not more than 36 months before the beginning of such fiscal year and who are actually residing in each State (taking into account secondary migration) as of the beginning of the fiscal year.''

As established in the FY 1991 social services notice published in the Federal Register of August 29, 1991, section I, ''Allocation Amounts'' (56 FR 42745), a variable floor amount for States which have small refugee populations is

[1] In addition to persons who meet all requirements of 45 CFR 400.43, ''Requirements for documentation of refugee status,'' eligibility for refugee social services also includes: (1) Cuban and Haitian entrants, under section 501 of the Refugee Education Assistance Act of 1980 (Pub. L. 96–422); (2) certain Amerasians from Vietnam who are admitted to the U.S. as immigrants under section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988, as included in the FY 1988 Continuing Resolution (Pub. L. No. 100–202); and (3) certain Amerasians from Vietnam, including U.S. citizens, under title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Acts, 1989 (Pub. L. 100–461), 1990 (Pub. L. 101–167), and 1991 (Pub. L. 101–513). For convenience, the term ''refugee'' is used in this notice to encompass all such eligible persons unless the specific context indicates otherwise.

Refugees admitted to the U.S. under admissions numbers set aside for private-sector-initiative admissions are not eligible to be served under the social service program (or under other programs supported by Federal refugee funds) during their period of coverage under their sponsoring agency's agreement with the Department of State—usually two years from their date of arrival or until they obtain permanent resident alien status, whichever comes first.

calculated as follows: If the application of the regular allocation formula yields less than $100,000, then—

(1) a base amount of $75,000 is provided for a State with a population of 50 or fewer refugees who have been in the U.S. 3 years or less; and—

(2) for a State with more than 50 refugees who have been in the U.S. 3 years or less: (a) A floor has been calculated consisting of $50,000 plus the regular per capita allocation for refugees above 50 up to a total of $100,000 (in other words, the maximum under the floor formula is $100,000); (b) if this calculation has yielded less than $75,000, a base amount of $75,000 is provided for the State.

ORR has consistently supported floors for small States in order to provide sufficient funds to carry out a minimum service program. Given the range in numbers of refugees in the small States, we have concluded that a variable floor, as established in the FY 1991 notice, will be more reflective of needs than previous across-the-board floors.

The $12,120,300 in remaining social service funds (15% of the total funds available) will be used by ORR on a discretionary basis to provide funds for individual projects intended to contribute to the effectiveness and efficiency of the refugee resettlement program. Grant announcements on discretionary initiatives have been issued separately.

Population To Be Served

Although the allocation formula is based on the 3-year refugee population, in accordance with the current requirements of 45 CFR Part 400 Subpart I—Refugee Social Services, States are not required to limit social service programs to refugees who have been in the U.S. only 3 years. However, effective October 1, 1995, under new regulations published in the Federal Register on June 28, 1995, (60 FR 33584), States may not provide services funded by this notice, except for referral and interpreter services, to refugees who have been in the United States for more than 60 months (5 years). States may, however, continue to provide employability services through September 30, 1996, or until the services are completed, whichever occurs first, to refugees who have been in the U.S. for more than 60 months, who were receiving employability services, as defined in § 400.154, as of September 30, 1995, as part of an employability plan.

In accordance with § 400.147, States are required to provide services to refugees in the following order of priority, except in certain individual extreme circumstances: (a) All newly arriving refugees during their first year in the U.S., who apply for services; (b) refugees who are receiving cash assistance; (c) unemployed refugees who are not receiving cash assistance; and (d) employed refugees in need of services to retain employment or to attain economic independence.

ORR funds may not be used to provide services to United States citizens, since they are not covered under the authorizing legislation, with the following exceptions: (1) Under current regulations at 45 CFR 400.208, services may be provided to a U.S.-born minor child in a family in which both parents are refugees or, if only one parent is present, in which that parent is a refugee; and (2) under the FY 1989 Foreign Operations, Export Financing, and Related Programs Appropriations Act (Pub. L. 100–461), services may be provided to an Amerasian from Vietnam who is a U.S. citizen and who enters the U.S. after October 1, 1988.

Service Priorities

Refugee social service funding should be used to assist refugee families to achieve economic independence. To this end, States are required to ensure that a coherent family self-sufficiency plan is developed for each eligible family that addresses the family's needs from time of arrival until attainment of economic independence. (See §§ 400.79 and 400.156(g).) Each family self-sufficiency plan should address a family's needs for both employment-related services and other needed social services. The family self-sufficiency plan must include: (1) A determination of the income level a family would have to earn to exceed its cash grant and move into self-support without suffering a monetary penalty; (2) a strategy and timetable for obtaining that level of family income through the placement in employment of sufficient numbers of employable family members at sufficient wage levels; and (3) employability plans for every employable member of the family.

Reflecting section 412(a)(1)(A)(iv) of the INA, and in keeping with § 400.145, States must ensure that women have the same opportunities as men to participate in all services funded under this notice, including job placement services. In addition, services must be provided to the maximum extent feasible in a manner that includes the use of bilingual/bicultural women on service agency staffs to ensure adequate service access by refugee women. The Director also strongly encourages the inclusion of refugee women in management and board positions in agencies that serve refugees. In order to facilitate refugee self-support, the Director also expects States to implement strategies which address simultaneously the employment potential of both male and female wage earners in a family unit, particularly in the case of large families. States are expected to make every effort to assure the availability of day care services for children in order to allow women with children the opportunity to participate in employment services or to accept or retain employment. To accomplish this, day care may be treated as a priority employment-related service under the refugee social services program. Refugees who are participating in employment services or have accepted employment are eligible for day care services for children. For an employed refugee, day care funded by refugee social service dollars should be limited to one year after the refugee becomes employed. States are expected to use day care funding from other publicly funded mainstream programs as a prior resource and are expected to work with service providers to assure maximum access to other publicly funded resources for day care.

In accordance with § 400.146 in the new regulations, social service funds must be used primarily for employability services designed to enable refugees to obtain jobs within one year of becoming enrolled in services in order to achieve economic self-sufficiency as soon as possible. Social services may continue to be provided after a refugee has entered a job to help the refugee retain employment or move to a better job. Social service funds may not be used for long-term training programs such as vocational training that last for more than a year or educational programs that are not intended to lead to employment within a year.

In accordance with § 400.156, refugee social services must be provided, to the maximum extent feasible, in a manner that is culturally and linguistically compatible with a refugee's language and cultural background. In light of the increasingly diverse population of refugees who are resettling in this country, refugee service agencies will need to develop practical ways of providing culturally and linguistically appropriate services to a changing ethnic population.

Services funded under this notice must be refugee-specific services which are designed specifically to meet refugee needs and are in keeping with the rules and objectives of the refugee program. Vocational or job skills training, on-the-job training, or English language

training, however, need not be refugee-specific.

English language training must be provided in a concurrent, rather than sequential, time period with employment or with other employment-related activities.

When planning State refugee services, States must take into account the reception and placement (R & P) services provided by local resettlement agencies in order to utilize these resources in the overall program design and to ensure the provision of seamless, coordinated services to refugees that are not duplicative.

In order to provide culturally and linguistically compatible services in as cost-efficient a manner as possible in a time of limited resources, ORR encourages States and counties to promote and give special consideration to the provision of refugee social services through coalitions of refugee service organizations, such as coalitions of mutual assistance associations (MAAs), voluntary resettlement agencies, or a variety of service providers. ORR believes it is essential for refugee-serving organizations to form close partnerships in the provision of services to refugees in order to be able to respond adequately to a changing refugee picture. Coalition-building and consolidation of providers is particularly important in communities with multiple service providers in order to ensure better coordination of services and maximum use of funding for services by minimizing the funds used for multiple administrative overhead costs.

States should also expect to use funds available under this notice to pay for social services which are provided to refugees who participate in alternative projects. Section 412(e)(7)(A) of the INA provides that:

> The Secretary [of HHS] shall develop and implement alternative projects for refugees who have been in the United States less than thirty-six months, under which refugees are provided interim support, medical services, support [social] services, and case management, as needed, in a manner that encourages self-sufficiency, reduces welfare dependency, and fosters greater coordination among the resettlement agencies and service providers.

This provision is generally known as the Wilson/Fish Amendment. The Department has already issued a separate notice in the Federal Register with respect to applications for such projects (60 FR 15766, March 27, 1995). The notice on alternative projects does not contain provisions for the allocation of additional social service funds beyond the amounts established in this notice. Therefore a State which may wish to consider carrying out such a project should take note of this in planning its use of social service funds being allocated under the present notice.

Funding to MAAs

ORR no longer provides set-aside funds to refugee mutual assistance associations as a separate component under the social service notice; instead we have folded these funds into the social service formula allocation to States. Elimination of the MAA set-aside, however, does not represent any reduction in ORR's commitment to MAAs as important participants in refugee resettlement. ORR believes that the continued and/or increased utilization of qualified refugee mutual assistance associations in the delivery of social services helps to ensure the provision of culturally and linguistically appropriate services as well as increasing the effectiveness of the overall service system. Therefore, ORR expects States to use MAAs as service providers to the maximum extent possible. ORR strongly encourages States when contracting for services, including employment services, to give consideration to the special strengths of MAAs, whenever contract bidders are otherwise equally qualified, provided that the MAA has the capability to deliver services in a manner that is culturally and linguistically compatible with the background of the target population to be served. ORR also strongly encourages MAAs to ensure that their management and board composition reflect the major target populations to be served. ORR expects States to continue to assist MAAs in seeking other public and/or private funds for the provision of services to refugee clients.

States may use a portion of their social service grant, either through contracts or through the use of State/county staff, to provide technical assistance and organizational training to strengthen the capability of MAAs to provide employment services, particularly in States where MAA capability is weak or undeveloped.

ORR defines MAAs as organizations with the following qualifications:

a. The organization is legally incorporated as a nonprofit organization; and

b. Not less than 51% of the composition of the Board of Directors or governing board of the mutual assistance association is comprised of refugees or former refugees, including both refugee men and women.

II. Discussion of Comments Received

We received two letters of comment in response to the notice of proposed FY 1996 allocations to States for refugee social services. The comments are summarized below and are followed in each case by the Department's response.

Comment: One commenter opposed the use of 15 percent of social service funds for discretionary grants. The commenter recommended that these funds instead be distributed by formula to impacted areas with the requirement that each area receiving funds do an ''initiative'' type project that could be expanded, if successful, to the larger population.

Response: We continue to believe that it is necessary to maintain a portion of social service funds for discretionary use. The discretionary grant process allows greater flexibility than does the formula allocation process for carrying out national initiatives and special projects that respond to changing needs and circumstances in the refugee program.

Comment: One commenter objected to the allotment of a floor amount of social service funds to States with small refugee populations. In particular, the commenter suggested that a floor for States with less than 1,000 refugees should not be included in the allocation.

Response: We continue to believe that a minimum allocation for social services is necessary to cover basic costs which a State incurs in providing services, regardless of the number of refugees to be served. Therefore, we view the establishment of a floor as a reasonable approach to allocating funds to States with small refugee populations, where the use of the formula alone would yield too small an amount to be practical.

Comment: One commenter objected to unlimited State administrative costs and recommended that State administrative costs be capped at 5 percent of the grant amount.

Response: Current regulations at 45 CFR 400.206 allow reimbursement to States for 100 percent of their administrative costs. Therefore, imposing an administrative cap would require a regulatory change and could not be accomplished through a notice. All costs charged by States to social services grants for administration must meet Federal grant requirements and must be reasonable, necessary, and identifiable. Further, there is no statutory limitation on the amount of social services funds that can be used by States for administrative costs. We, therefore, have no plans to impose a cap on what a State may charge for

administrative costs, choosing instead to allow States to make that determination.

Comment: One commenter suggested that reductions in social services funding in some States may impact performance outcomes in FY 1996. The commenter further suggested that surpassing previous years' performance may become increasingly more difficult for States that receive less funds.

Response: States that receive reduced funding in comparison to previous years are States that have also experienced reduced numbers of refugee arrivals over the past three years. The performance measures developed by ORR, in conjunction with States, take into consideration the impact of reduced arrivals, and reduced funding, on performance outcomes by looking not only at actual outcome figures but also at outcomes in the context of total caseloads and as percentages of caseloads. We believe, therefore, that reduced funding should not impact the ability of States to continue to improve their performance outcomes since changing caseloads are taken into consideration in setting goals and assessing performance.

Comment: One commenter suggested that ORR should support a statutory change to provide that social services funds be allocated based on the five-year refugee population rather than the three-year population that is currently used. The commenter suggested that such a change would more equitably reflect State and local workloads.

Response: We do not believe there is a compelling enough reason to seek a statutory change that would change the social service allocation method from a three-year population base to a five-year population base. An argument can be made that basing social service allocations on a three-year population, by reflecting the pattern of more recent refugee arrivals, ensures that funds are allocated to those States most in need of additional funds in meeting the needs of new arrivals.

Comment: One commenter suggested that ORR is asking for an inappropriate amount of detail in specifying what the family self-sufficiency plan must include. The commenter suggested that the information to be collected would not necessarily enable the refugee to obtain a job earlier or for a longer period of time. The commenter further suggested that the exercise of developing family self-sufficiency plans would require more paperwork and staff time and would result in increased administrative costs.

Response: We believe that social services providers should focus on the family, not on the individual refugee, as the unit of intervention. The purpose of the family self-sufficiency plan is to ensure that the refugee family as a whole is enabled to become self-supporting as quickly as possible. The plan, as described in the notice, ensures that providers will make a determination of the total amount of income that a family would have to earn to become self-sufficient. It also ensures that a strategy and timetable will be developed for obtaining the necessary level of income to move the family off assistance. Although the additional information required for a family self-sufficiency plan may not result in an individual refugee obtaining a job earlier or for a longer period of time, there is evidence that the development of such plans result in earlier family self-sufficiency through the attainment of jobs for one or more wage-earners at self-supporting wages. We believe that the long-term benefits of this approach to family self-sufficiency will outweigh any additional paperwork or staff time that may be required. Further, we believe that, by increasing the efficiency and effectiveness of the refugee program in promoting family self-sufficiency, this approach will result in decreased, rather than increased, overall, long-term administrative costs.

III. Allocation Formula

Of the funds available for FY 1996 for social services, $68,681,700 is allocated to States in accordance with the formula specified below. A State's allowable allocation is calculated as follows:

1. The total amount of funds determined by the Director to be available for this purpose; divided by—

2. The total number of refugees and Cuban/Haitian entrants who arrived in the United States not more than 3 years prior to the beginning of the fiscal year for which the funds are appropriated and the number of Amerasians from Vietnam eligible for refugee social services, as shown by the ORR Refugee Data System. The resulting per capita amount will be multiplied by—

3. The number of persons in item 2, above, in the State as of October 1, 1995, adjusted for estimated secondary migration.

The calculation above yields the formula allocation for each State. Minimum allocations for small States are taken into account.

IV. Basis of Population Estimates

The population estimates for the allocation of funds in FY 1996 are based on data on refugee arrivals from the ORR Refugee Data System, adjusted as of October 1, 1995, for estimated secondary migration. The data base includes refugees of all nationalities, Amerasians from Vietnam, and Cuban and Haitian entrants.

For fiscal year 1996, ORR's formula allocations for the States for social services are based on the numbers of refugees and Amerasians who arrived, and on the numbers of entrants who arrived or were resettled, during the preceding three fiscal years: 1993, 1994, and 1995, based on final arrival data by State. Therefore, estimates have been developed of the numbers of refugees and entrants with arrival or resettlement dates between October 1, 1992, and September 30, 1995, who are thought to be living in each State as of October 1, 1995. Refugees admitted under the Federal Government's private-sector initiative are not included, since their assistance and services are to be provided by the private sponsoring organizations under an agreement with the Department of State.

The estimates of secondary migration were based on data submitted by all participating States on Form ORR–11 on secondary migrants who have resided in the U.S. for 36 months or less, as of September 30, 1995. The total migration reported by each State was summed, yielding in- and out-migration figures and a net migration figure for each State. The net migration figure was applied to the State's total arrival figure, resulting in a revised population estimate.

Estimates were developed separately for refugees and entrants and then combined into a total estimated 3-year refugee/entrant population for each State. Eligible Amerasians are included in the refugee figures.

At this time, ORR entrant arrival data do not include Cuban parolees who came to the U.S. directly from Havana in FY 1995 under the U.S. Bilateral Agreement with Cuba. Reliable data on these parolees are difficult to obtain since these parolees are not resettled through sponsoring agencies. One State, the State of Florida, was able to provide appropriate documentation to ORR regarding the number of Havana parolee arrivals to that State. We have adjusted the 3-year population to include Havana parolees to that State based on the data it submitted. For those States that were not able to submit documentation on Havana parolee arrivals, we have decided, in the absence of actual data, to credit each State that received entrant arrivals during the 3-year period from FY 1993–FY 1995 with a prorated share of the parolees who came to the U.S. directly from Havana in FY 1995. We believe it is a reasonable proxy to base the proration on the percentage of the total 3-year entrant population that each county received. The allocations in this

notice reflect these additional parolee numbers.

Table 1, below, shows the estimated 3-year populations, as of October 1, 1995, of refugees (col. 1), entrants, including Havana parolees (col. 2); total refugee/entrant population, (col. 3); the formula amounts which the population estimates yield (col. 4); and the allocation amounts after allowing for the minimum amounts (col. 5).

V. Allocation Amounts

Funding subsequent to the publication of this notice will be contingent upon the submittal and approval of a State annual services plan that is developed on the basis of a local consultative process, as required by § 400.11(b)(2) in the ORR regulations. The following amounts are allocated for refugee social services in FY 1996:

TABLE 1.—ESTIMATED 3-YEAR REFUGEE/ENTRANT POPULATIONS OF STATES PARTICIPATING IN THE REFUGEE PROGRAM AND SOCIAL SERVICE FORMULA AMOUNTS AND ALLOCATIONS FOR FY 1996

State	Refugees[1] (1)	Entrants[1] (2)	Total population (3)	Formula amount (4)	Allocation (5)
Alabama	618	79	697	$124,525	$124,525
Alaska[2]	0	0	0	0	0
Arizona	3,574	520	4,094	731,428	731,428
Arkansas	317	6	323	57,707	98,774
California	78,043	1,194	79,237	14,156,375	14,156,375
Colorado	3,808	15	3,823	683,012	683,012
Connecticut	2,903	269	3,172	566,705	566,705
Delaware	89	6	95	16,973	75,000
Dist. of Columbia	1,746	12	1,758	314,082	314,082
Florida	13,826	41,546	55,372	9,892,687	9,892,687
Georgia	9,811	241	10,052	1,795,877	1,795,877
Hawaii	758	0	758	135,423	135,423
Idaho	1,090	5	1,095	195,631	195,631
Illinois	12,642	336	12,978	2,318,632	2,318,632
Indiana	1,140	15	1,155	206,351	206,351
Iowa	3,461	5	3,466	619,231	619,231
Kansas	2,112	14	2,126	379,828	379,828
Kentucky[4]	2,301	208	2,509	448,255	448,255
Louisiana	2,030	286	2,316	413,773	413,773
Maine	724	1	725	129,528	129,528
Maryland	6,349	177	6,526	1,165,926	1,165,926
Massachusetts	10,009	205	10,214	1,824,819	1,824,819
Michigan	7,725	235	7,960	1,422,123	1,422,123
Minnesota	9,846	25	9,871	1,763,540	1,763,540
Mississippi	111	41	152	27,156	75,000
Missouri	4,998	31	5,029	898,474	898,474
Montana	182	0	182	32,516	75,000
Nebraska	1,847	7	1,854	331,233	331,233
Nevada[4]	769	935	1,704	304,434	304,434
New Hampshire	686	1	687	122,738	122,738
New Jersey	6,371	1,481	7,852	1,402,828	1,402,828
New Mexico	948	1,160	2,108	376,612	376,612
New York	60,179	1,409	61,588	11,003,229	11,003,229
North Carolina	3,221	26	3,247	580,105	580,105
North Dakota	1,044	5	1,049	187,413	187,413
Ohio	5,094	25	5,119	914,554	914,554
Oklahoma	1,351	16	1,367	244,226	244,226
Oregon	5,149	343	5,492	981,193	981,193
Pennslyvania	9,759	175	9,934	1,774,795	1,774,795
Rhode Island	656	4	660	117,915	117,915
South Carolina	503	2	505	90,223	100,000
South Dakota	658	0	658	117,557	117,557
Tennessee	3,408	81	3,489	623,340	623,340
Texas	15,889	1,170	17,059	3,047,738	3,047,738
Utah	1,774	0	1,774	316,940	316,940
Vermont	720	0	720	128,634	128,634
Virginia	5,905	220	6,125	1,094,284	1,094,284
Washington	119,081	27	19,108	3,413,809	3,413,809
West Virginia	27	1	28	5,002	75,000
Wisconsin	5,095	16	5,111	913,124	913,124
Wyoming[2]	0	0	0	0	0
Total	330,347	52,576	382,923	68,412,503	68,681,700

[1] Includes 8240 Havana Parolees (HP's) to Florida and Havana parolees credited to States other than Florida based on States' proportion of the 3-year entrant population in the U.S.
[2] Alaska and Wyoming on longer participate in the Refugee Program.
[3] A portion of the California allocation is expected to be awarded to continue a Wilson/Fish project in San Diego.
[4] The allocation for Kentucky and Nevada is expected to be awarded to continue a Wilson/Fish project.

VI. Paperwork Reduction Act

This notice does not create any reporting or recordkeeping requirements requiring OMB clearance.

(Catalog of Federal Domestic Assistance No. 93.566 Refugee Assistance—State Administered Programs)

Dated: July 18, 1996.

Lavinia Limon,

Director, Office of Refugee Resettlement.

[FR Doc. 96–18829 Filed 7–23–96; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. FR–4086–N–11]

Notice of Proposed Information Collection; Comment Request

AGENCY: Office of the Secretary, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments due*: September 23, 1996.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Marianne C. DeConti, Reports Liaison Officer, Office of the Secretary, Department of Housing and Urban Development, 451 7th Street, SW., Room 10218, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Richard S. Allan, 202–708–0370 (this is not a toll-free number) for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

The Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (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; (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 collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Record of Employee Interview.

OMB Control Number, if applicable: 2510–0009.

Description of the need for the information and proposed use: This information is utilized by HUD and local agency officials administering HUD-assisted programs to record interviews of construction workers for the purpose of establishing the degree of accuracy of contractor payroll records and the nature and extent of violations, if any. The information may be used as evidence in proceedings against the contractor in labor standards investigations.

Agency form numbers, if applicable: HUD–11.

Members of affected public: Individuals or Households, State, Local, or Tribal Government, and the Federal Government.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: Reporting (20,000 respondents × 1 time per year × 20 minutes per respondent=5,000 burden hours) + Recordkeeping (1,000 respondents × 1 time per year × 5 hours=5,000 burden hours)=10,000 total burden hours.

Status of the proposed information collection: Reinstatement, no changes.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: July 10, 1996.

Richard S. Allan.

Deputy Assistant to the Secretary for Labor Relations.

[FR Doc. 96–18814 Filed 7–23–96; 8:45 am]

BILLING CODE 4210–32–M

[Docket No. FR–4086–N–07]

Office of the Assistant Secretary for Community Planning and Development; Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due September 23, 1996.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Reports Liaison Officer, Shelia E. Jones, Department of Housing & Urban Development, 451 7th Street, SW., Room 7230, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Vernessa Whitfield, 202/708–2035 (this is not a toll-free number) for copies of the proposed forms and other available documents:

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

The Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (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; (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 collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Youthbuild Program.

OMB Control Number, if applicable: 2506–0142.

Description of the need for the information and proposed use: Information collected from NOFA will be used by HUD to select grant awardees as required by the HUD Reform Act. Information collected from reports will be used to monitor and evaluate progress of grantees and programs.

Agency form numbers, if applicable: Youthbuild Application, HUD–40202, SF1199A, HUD–27054.

Members of affected public: Not-for profit institutions and state, local or tribal governments.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:

Number of Respondents: 400.

Frequency of Reports: Semi-annually.

Hours of response: hours of response—45.

Status of the proposed information collection: Extension of currently approved collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: July 17, 1996.

Andrew Cuomo,

Assistant Secretary for Community Planning and Development.

[FR Doc. 96–18815 Filed 7–23–96; 8:45 am]

BILLING CODE 4210–29–M

Office of the Secretary

[Docket No. FR–4086–N–12]

Office of Lead-Based Paint Abatement and Poisoning Prevention; Notice of Proposed Information Collection; Comment Request

AGENCY: Office of Lead-Based Paint Abatement and Poisoning Prevention, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments due:* September 23, 1996.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Ms. Ruth Wright, Reports Liaison Officer, Office of Lead-Based Paint Abatement and Poisoning Prevention, Department of Housing and Urban Development, 451 7th St., SW., Room B–133, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Peter J. Ashley, (202) 755–1785 ext. 115 (this is not a toll free number), for copies of the proposed forms.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

The Notice is seeking comments from members of the public and affected agencies concerning the proposed collection of information to:

(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;

(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 collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: NOFA for Research to Improve the Evaluation and Control of Residential Lead-Based Paint Hazards.

OMB Control Number: To be requested.

Description of the Need for the Information and Proposed Use: This information collection is required in connection with the upcoming issuance of a NOFA announcing the availability of approximately $2.5 million for grants or cooperative agreements for research on specific topic areas related to residential lead hazard evaluation and control. Grants are authorized under sections 1051 and 1052 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, which is Title X of the Housing and Community Development Act of 1992.

Results from this research will be used to update the HUD *Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing.* It is anticipated that this targeted research will also increase both the accuracy of residential lead hazard evaluation and the effectiveness of residential lead hazard reduction interventions, while improving the cost-effectiveness of the entire process. This research should contribute to an eventual reduction in the national prevalence of childhood lead poisoning.

Agency form numbers: None.

Members of Affected Public: Potential applicants include non-profit and for-profit organizations, academic institutions, and state and local governments.

Estimation of the Total Number of Hours Needed to Prepare the Information Collection including Number of Respondents, Frequency of Response, and Hours of Response:

	Number of respondents	Frequency of responses	Hours per response	Burden hours
Application development	20	1	90	1,800

Status of the Proposed Information Collection: New request.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: July 12, 1996

Stevenson Weitz,

Director, Planning and Standards Division.

[FR Doc. 96–18816 Filed 7–23–96; 8:45 am]

BILLING CODE 4210–01–M

[Docket No. FR–4086–N–10]

Office of the Assistant Secretary for Community Planning and Development; Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments due:* September 23, 1996.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Reports Liaison Officer, Shelia E. Jones, Department of Housing & Urban Development, 451 7th Street, SW., Room 7230, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Maggie Taylor (202) 708–4300 (this is not a toll-free number) for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

The Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (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; (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 collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Grantee Annual Report for the Supportive Housing Demonstration Program.

OMB Control Number, if applicable: 2506–0126.

Description of the need for the information and proposed use: The GAR provides information to HUD necessary for program monitoring and evaluation.

Agency form numbers, if applicable: HUD–40076–A.

Members of affected public: Grantees that have received SHDP funding from 1987 to 1992

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:

Activity	Number of respondents	Frequency of response	Response hours	Burden hours
Record-keeping	343	1 annually	45	15,435
Report preparation	343	1 annually	20	6,860
				22,295

Status of the proposed information collection: Information is currently being collected.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: July 17, 1996.

Andrew Cuomo,

Assistant Secretary for Community Planning and Development.

[FR Doc. 96–18817 Filed 7–23–96; 8:45 am]

BILLING CODE 4210–29–M

[Docket No. FR–4086–N–09]

Office of the Assistant Secretary for Community Planning and Development; Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due September 23, 1996.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Reports Liaison Officer, Shelia E. Jones, Department of Housing & Urban Development, 451 7th Street, SW, Room 7230, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Maggie Taylor (202) 708–4300 (this is not a toll-free number) for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

The Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (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; (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 collected techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Annual Progress Report for Competitive Homeless Assistance Programs.

OMB Control Number, if applicable: 2506–0145.

Description of the need for the information and proposed use: The APR provides information to HUD necessary for program monitoring and evaluation.

Agency form numbers, if applicable: HUD–40118.

Members of affected public: Grantees that have received HUD funding from 1987 to the present.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:

Activity	Number of respondents	Frequency of response	Response hours	Burden hours
Record-keeping	2165	1 annually	45	97,425
Report preparation	2165	1 annually	20	43,300
				140,725

Status of the proposed information collection: Information is currently being collected.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: July 17, 1996.

Andrew Cuomo,

Assistant Secretary for Community Planning and Development.

[FR Doc. 96–18818 Filed 7–23–96; 8:45 am]

BILLING CODE 4210–29–M

[Docket No. FR–4086–N–08]

Office of The Assistant Secretary for Community Planning and Development; Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments due:* September 23, 1996.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Reports Liaison Officer, Shelia E. Jones, Department of Housing & Urban Development, 451—7th Street, SW., Room 7230, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: For copies of the proposed forms and other available documents: William Hanson, (202) 708–0614 EXT. 4582 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1955 (44 U.S.C. Chapter 35, as amended).

The Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (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; (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 collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Urban Homesteading Program, Semi-Annual Progress Report.

OMB Control Number, if applicable: 2506–0042.

Description of the need for the information and proposed use: The information is needed to assist HUD in determining if Local Urban Homesteading Agencies (LUHAs) are meeting the requirements of HUD's Urban Homesteading Program—Section 810 of The Housing and Community Act of 1974 (Pub. L. 93–383 as amended), and HUD's requirements published at 24 CFR 590. Under These requirements, LUHAs are required to supply data and make available records necessary for HUD's monitoring of the LUHA's local homesteading programs to determine weather the LUHAs are making reasonable progress in moving properties through the stages of the homesteading process, including, acquisition, homesteader selection, conditional conveyance, rehabilitation, and final conveyance. The monitoring process will allow HUD to determine all property provided to the LUHAs with Section 810 funding are ultimately accounted for and used by the LUHAs as required by the statute and regulation.

Agency form numbers, if applicable: HUD–40062–A.

Members of affected public: State and local governments, public housing authorities and nonprofit organizations which have agreements with HUD to operate as Local Urban Homesteading Agencies under the Section 810 Urban Homesteading Program.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: Total hours needed to collect information, 525 (300 for record-keeping and 225 for response to report [only 75 percent of the respondents need to submit report, i.e., 150 respondents × two reports per year × 75 percent × 1 hour per response = 250 hours]) Number of respondents—150; frequency of responses—semi-annually; hours per response—1. Status of the proposed information collection: Reinstatement, with change, or a previously approved collection for which approval has expired.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: July 17, 1996.

Andrew Cuomo,

Assistant Secretary for Community Planning and Development.

[FR Doc. 96–18819 Filed 7–23–96; 8:45 am]

BILLING CODE 4210–29–M

[Docket No. FR–4117–N–01]

Office of the Assistant Secretary for Housing-Federal Housing Commissioner; Notice of Sale of HUD-Held Multifamily Mortgage Loans

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice of North and Central Regions nonperforming mortgage loan sale.

SUMMARY: This notice announces the Department's intention to sell unsubsidized mortgage loans (Mortgage Loans), without Federal Housing Administration (FHA) insurance. The Mortgage Loans are classified as nonperforming or subperforming, and are secured by properties located primarily throughout the north and central regions of the United States. The Mortgage Loans will be offered for sale on a whole loan basis, in a competitive auction. This notice describes the bidding process for these Mortgage Loans. The Mortgage Loans will be offered for sale only to qualified bidders.

DATES: Bidders' Information Packages will be available in June 1996 to qualified bidders. Closing is expected in mid-August to mid-September.

ADDRESSES: Bidders' Information Packages will be available from FHA's Financial Advisor, Cushman & Wakefield, by contacting John Howley, at 202–467–0600. Bidders' Information Packages and information about individual Mortgage Loans (Bid Materials) will be made available only to parties who complete a Confidentiality Agreement and Bidder Qualification Statement and are deemed qualified bidders. To obtain a Confidentiality Agreement and Bidder Qualification Statement contact John Howley at Cushman & Wakefield, at 202–467–0600. Bidders' Information Packages will be forwarded by regular mail unless a party makes special arrangements to receive the information through expedited delivery.

Asset review files for all the Mortgage Loans will be available for review by qualified bidders at the due diligence facility located at 1800 M Street, NW., Suite 300–South, Washington, DC 20036, beginning June 17, 1996. The facility will close on July 26, 1996. The facility will be open to qualified bidders between the hours of 9:00 a.m. and 6:00 p.m., EDT, Monday through Friday. Access to the facility can be arranged by contacting Rick Copeland, Tradewinds International, Inc., by telephone at (202) 530–0841 Ext. 29. Asset review files may also be ordered from Tradewinds International, Inc. and sent to qualified bidders in the manner described in the Bidders' Information Package.

FOR FURTHER INFORMATION CONTACT: Audrey Hinton, Associate Director for Program Operations, Office of Multifamily Asset Management and Disposition, Room 6160, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–3730 Ext. 2691. Hearing or speech-impaired individuals may call (202) 708–4594 (TTY). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: The Mortgage Loans encumber properties located in 23 states and the District of Columbia, with a significant number of such properties concentrated in the north and central regions of the United States (Maryland, Ohio, Pennsylvania, Indiana, District of Columbia, Virginia, Connecticut, Massachusetts, Tennessee, Rhode Island and Kentucky). A final listing of the specific properties involved in the Sale is included in the Bidders' Information Package. The Mortgage Loans have experienced varying levels of delinquency; some are subject to provisional workout agreements. The Department reserves the right to add Mortgage Loans to the Sale that are not secured by properties in these jurisdictions.

The Department will offer qualified bidders an opportunity to bid competitively on the Mortgage Loans. Bids may be offered for one or all of the Mortgage Loans, as well as for any combination of the Mortgage Loans. More particularly, a bidder may bid on as many individual Mortgage Loans as the bidder chooses. However, no bidder may bid on more than 20 pools of Mortgage Loans (i.e., combinations of 2 or more Mortgage Loans). Further, a bidder may condition acceptance of its bids for individual Mortgage Loans upon being the successful bidder of Mortgage Loans with a minimum aggregate unpaid principal balance. The Department will accept those bids that optimize the gross proceeds from the Sale.

The Bidding Process

The Bidders' Information Package describes in detail the procedures for participating in the Sale and includes bid forms, a loan sale agreement (Loan Sale Agreement), and certain information concerning each of the Mortgage Loans, such as the unpaid principal balance and interest rate. Also included in the Bidders' Information Package is a computer diskette with general portfolio information and selected data fields on each Mortgage Loan.

The Department will distribute the Bidders' Information Packages for a period of approximately 6 weeks prior to the date that bids are due (Bid Date). Bidders' Information Packages have been available since June 1996. The Bidders' Information Package may be supplemented from time to time prior to the Bid Date. Interested parties may request a Bidders' Information Package as described above.

Bidders must include a 5 percent initial deposit with their bids. If a bidder submits multiple bids, the initial deposit will be limited to 5 percent of the bidder's single largest bid amount. The initial deposit for a bidder who has created a pool or a number of pools (but not more than 20 pools as provided above) is limited to 5 percent of the single largest bid amount of the bidder's pool bids. The successful bidders will be notified within 5 business days after the Bid Date (Award Date). An additional deposit will be required from each successful bidder within 2 business days after the Award Date. This additional deposit when added to the initial deposit must total 10 percent of the bidder's successful bids. More specifically, if a bidder submits multiple individual bids, the additional deposit when added to the initial deposit must total 10 percent of the aggregate unpaid principal of all of the bidder's successful bids. Similarly, if a bidder submits a pool bid or multiple pool bids, the additional deposit must total 10 percent of the aggregate unpaid principal of all of the bidder's successful pool bids.

The Department will assign its interest in a Mortgage Loan to a successful bidder at the closing, which is expected to occur no later than September 18, 1996. If the successful bidder fails to abide by the terms of the Loan Sale Agreement, including paying the Department any remaining sums due pursuant to the Loan Sale Agreement and closing on an agreed upon date within the time period provided by the Loan Sale Agreement, the Department shall retain as liquidated damages the initial and additional deposit (plus accrued interest) from the successful bidder.

These are expected to be the essential terms of sale, but are subject to change. Information regarding any such changes along with any other supplements to the Bidders' Information Package will be made available to parties who request and obtain a Bidders' Information Package. The Loan Sale Agreement, which is included in the Bidders' Information Package, provides

additional details. To ensure a competitive bidding process, the terms of sale are not subject to negotiation.

Due Diligence Facility

During the 6 week period prior to the Bid Date, a due diligence facility will be open to prospective qualified bidders, at which the Department will provide information such as environmental and title reports and market data. The address of the facility is specified above. The Department reserves the right to charge a reasonable fee to recover its costs in duplicating and forwarding any information requested by an interested party, as well as an access fee to the due diligence facility, which will be credited to the purchase of any asset review files.

Timely Bids and Deposits

Each bidder assumes all risks of loss relating to its own bidding mistakes and its failure to deliver, or cause to be delivered, on a timely basis and in the manner specified by the Department, each bid form, earnest money deposit and Loan Sale Agreement required to be submitted by the bidder.

Ties for High Bidder

In the event there is a tie for a high bid, the Department, through its Financial Advisor, will contact the parties with the tie bid and afford each of them an opportunity to offer a best and final bid. The successful bidder will be the one with the highest bid. If a tie continues after the best and final offers are submitted or the bidders do not respond, or do not respond within the time period established by the Department, the successful bidder will be determined by lottery. Notwithstanding the above, the Department reserves the right to withdraw any Mortgage Loan(s) subject to a tie bid.

Status of Mortgage Loans

As of June 1, 1996, significantly all of the Mortgage Loans were classified as delinquent or subperforming because they had been delinquent at least once within the past 12 months. Mortgage Loans may become performing on or before the date that title is transferred to the successful bidder. The Department reserves the right to include in the sale current Mortgage Loans.

Application of Replacement Reserve and Certain Escrows

If a Mortgage Loan is delinquent at the time of closing, to the extent the Department determines is permissible, the Department will apply to the amount due the Department under the Mortgage Loan funds in the replacement reserve and other escrow accounts. Thereafter, the balances in the replacement reserve and escrow accounts, if any, will be transferred to the new mortgagee. If a Mortgage Loan is current at the time of closing, the funds in the replacement reserve account governed by the regulatory agreement and will be returned to the mortgagor in accordance with such terms and conditions as may be established by the Department, and all other replacement reserve and escrow accounts will be transferred to the new mortgagee.

Qualification of Bidders/Ineligible Bidders

Qualified bidders, interested parties who have such knowledge and experience in financial and business matters so as to be capable of evaluating the merits and risks of acquiring the Mortgage Loans, and who are not otherwise ineligible to bid (as described below), may bid on the Mortgage Loans.

The following individuals and entities (either alone or in combination with others) are ineligible to bid on any one or combination of the Mortgage Loans included in the Sale:

(1) Any individual or entity debarred from doing business with the Department pursuant to 24 CFR part 24;

(2) Any employee of the Department, any member of any such employee's household and any entity controlled by any such employee or member of such an employee's household;

(3) Any person or entity which employs or uses the services of an employee of the Department (other than in such employee's official capacity) either (a) who is involved in the Sale or (b) to assist in the preparation of a bid for the Mortgage Loans;

(4) Any contractor, subcontractor and/or consultant (including any agent of the foregoing) who performed services for, or on behalf of, the Department in connection with the Sale, or any affiliate of any such contractor, subcontractor, consultant or agent;

(5) Any individual that was a principal and/or employee of any entity or individual described in paragraph (4) above at any time during which the entity or individual performed services for, or on behalf of, the Department in connection with the Sale;

(6) Any individual or entity that uses the services of any person described in paragraph (5) above in preparing its bid on the Mortgage Loans;

(7) Any entity or individual that served as a loan servicer or performed other services for, or on behalf of the Department, with respect to any of the Mortgage Loans included in the Sale at any time during the 2-year period prior to July 30, 1996, or any affiliate thereof; and

(8) Any individual that was a principal and/or employee of any entity or individual described in paragraph (7) above at any time during the 2-year period prior to July 30, 1996.

FHA Reservation of Rights

The Department reserves the right to withdraw Mortgage Loans from the Sale and to terminate the Sale, at any time, for any reason and without any liability, prior to the Award Date, without prejudice to its right to include any withdrawn Mortgage Loan in a future sale. The Department also reserves the right to reject any and all bids, in its sole discretion, for any reason, and without any liability.

Mortgage Loan Sale Policy

Significantly all of the Mortgage Loans are nonperforming or subperforming. All of the Mortgage Loans are unsubsidized, and there is no project-based Section 8 assistance on any of the projects. Therefore, the Department has determined that, pursuant to final regulations governing FHA mortgage loan sales, published in the Federal Register on March 21, 1996 (61 FR 11684) (Mortgage Sale Regulations), the Mortgage Loans will be sold without FHA insurance. The Mortgage Sale Regulations also provide for the exclusion of certain delinquent unsubsidized mortgages from sales where it appears that (1) foreclosure appears unavoidable, and (2) the project is occupied by very low-income tenants who are not receiving housing assistance and would be likely to pay rent in excess of 30 percent of their adjusted monthly income if the mortgage were to be sold and foreclosed (61 FR 11690, § 290.35). The Department's interpretation of this provision is set forth in the preamble to the February 6, 1996 interim rule (61 FR 4580–81). The Department has made an administrative determination that the Mortgage Loans do not meet the criteria for exclusion. If the Department determines that there are any such Mortgage Loans, they will be removed from this Sale.

The Department selected a competitive auction as the method to sell the Mortgage Loans primarily to satisfy the requirements of the Mortgage Sale Regulations (61 FR 11690, § 290.30). This method of sale also optimizes the Department's return on the sale of these Mortgage Loans, affords the greatest opportunity for all qualified bidders to bid on the Mortgage Loans, and provides the quickest and most

efficient vehicle for the Department to dispose of the Mortgage Loans.

At one time, the Department considered and discussed with industry participants a loan sale procedure that afforded the borrowers the opportunity to acquire their Mortgage Loans on a noncompetitive basis prior to offering the Mortgage Loans for sale to others (Borrower Settlement Option). For the reasons set forth above, however, the Department decided to dispose of these Mortgage Loans through a competitive auction.

Freedom of Information Requests

The Department has approved a policy for responding to Freedom of Information Act requests for information on the Department's multifamily mortgage loan sales. The purpose of this policy is to clarify for the public and potential purchasers the types of sales information that will be disclosed in connection with the Department's multifamily mortgage sales program. The policy strikes a balance between the Department's policy of disclosing as much information as possible to the public and (i) the harm premature release of this information will have upon bidders and (ii) the harm to the American taxpayer by fettering the Department's ability to comply with the specific mandates of the Multifamily Housing Property Disposition Reform Act of 1994 to reduce losses to the FHA fund through mortgage sales.

Given the foregoing, the Department's policy with respect to Freedom Of Information Act requests is as follows:

(i) The Department has determined that after the Award Date it will disclose the aggregate number of bidders and the aggregated proceeds the Department expects from the sale, as well as the bid information materials that the Department provided to the bidders (not subject to a privacy or confidentiality exemption).

(ii) After all sales are closed the Department will release (a) a list of all who received bid materials, (b) a list of all bidders, (c) a list of all winning bidders, and (d) the aggregate amount paid by each successful bidder of multiple mortgage loans (whether bid as a pool or otherwise).

(iii) No earlier than one year after all of the sales are closed, the Department will disclose individual winning mortgage loan bid prices.

Scope of Notice

This notice applies to the North and Central Regions Nonperforming Mortgage Loan Sale, and does not establish the Department's policy for the sale of any other mortgage loans.

Dated: July 18, 1996.

Stephanie A. Smith,

Acting General Deputy Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 96–18820 Filed 7–23–96; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10© of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

PRT–817149

Applicant: Duke University Primate Center, Durham NC.

The applicant requests a permit to export tissue samples from Coquerel's Sifaka (*Propithecus verreauxi coquereli*), lesser mouse lemur (*Microcebus murinus*), Coquerel's mouse lemur (*Microcebus coquereli*) and red-fronted brown lemur (*Eulemur fulvus rufus*) for the purpose of scientific research.

PRT–817218

Applicant: Denver Zoological Gardens, Denver, CO.

The applicant requests a permit to import one male Sumatran orangutan (*Pongo pygmaeus abelii*) from Calgary Zoo, Alberta, Canada, for the purpose of enhancement of the propagation of the species.

PRT–817261

Applicant: Department of Biology, University of California, San Diego, CA.

The applicant requests a permit to import hair samples from wild and captive-held gentle lemurs (*Hapalemur grisens alaotrensis*) from Madagascar and Jersey for scientific research related to population genetics.

PRT–817260

Applicant: Department of Biology, University of California, San Diego, CA.

The applicant requests a permit to import blood and hair samples from captive-held Asian elephants (*Elephas maximus*) from Thailand for scientific research related to population genetics.

PRT–817259

Applicant: Department of Biology, University of California, San Diego, CA.

The applicant requests a permit to import shed feathers from helmeted hornbills (*Buceros vigil*) throughout its range for scientific research related to population genetics.

PRT–817096

Applicant: Cleveland Metro Parks Zoo, Cleveland, OH.

The applicant requests a permit to import up to six captive-held bicolored tamarins (*Sanguinus bicolor bicolor*) from the Brazilian Institute for the Environment and Renewable Natural Resources, Manus, Brazil, for the purpose of enhancement of the propagation of the species.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 430, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act,* by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 430, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: July 19, 1996.

Mary Ellen Amtower,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 96–18785 Filed 7–23–96; 8:45 am]

BILLING CODE 4310–55–P

Bureau of Land Management

[CO–930–1020–04–WEED]

Notice of Final Supplementary Rules to Require the Use of Certified Noxious Weed-Free Forage on Bureau of Land Management-Administered Lands in Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of final supplementary rules to require the use of certified noxious weed-free forage on Bureau of Land Management-administered lands in Colorado.

SUMMARY: Beginning August 1, 1996, The State Director of the Bureau of Land Management (BLM) in Colorado will require that all BLM visitors and permittees in Colorado use certified noxious weed-free hay, straw, or mulch when visiting BLM administered lands in Colorado. This requirement affects

visitors who use hay or straw on the BLM administered lands in Colorado such as: Recreationists using pack and saddle stock, ranchers with grazing permits, outfitters, and contractors who use straw or other mulch for reseeding purposes. These individuals or groups are required to purchase certified noxious weed-free forage products, or use other approved products, such as processed grains and pellets while on BLM administered lands in Colorado. During the first year BLM will emphasize education and awareness of the new regulation and the certification program.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Colorado State Office, Carol Spurrier, Resource Services, Plant and Animal Sciences Team, 2850 Youngfield Street, Lakewood, CO 80215, or telephone (303) 239–3725.

SUPPLEMENTARY INFORMATION: BLM Colorado published a Notice of Proposed Supplementary Rules on February 1, 1996, in the Federal Register. That notice listed a thirty day comment period. Thirty-three people commented on the proposal. Twenty four of those comments were from people who supported the proposal. Nonsupportive comments were addressed in an Environmental Assessment of the proposed supplementary rule. The Environmental Assessment, Finding of No Significant Impact (FONSI), and Decision Record are available in the Public Room of the Colorado State Office between 9 a.m. and 4 p.m., Monday through Friday. The Public Room telephone number is (303) 239–3600. The address is 2850 Youngfield Street, Lakewood, CO 80215–7076.

Noxious weeds are a serious problem in the western United States. Estimates of the rapid spread of weeds in the west include 2,300 acres per day on BLM administered lands and 4,600 acres per day on all western public lands. Species like Leafy Spurge, Spotted Knapweed, Russian Knapweed, Musk Thistle, Dalmatian Toadflax, Purple Loosestrife, and many others are alien to the United States and have no natural enemies to keep their populations in balance. Consequently, these undesirable weeds invade healthy ecosystems, displace native vegetation, reduce species diversity, and destroy wildlife habitat. Widespread infestations lead to soil erosion and stream sedimentation.

Furthermore, noxious weed invasions weaken reforestation efforts, reduce domestic and wild ungulates' grazing capacity, occasionally irritate public land users by aggravating allergies and other ailments, and threaten federally protected plants and animals.

To curb the spread of noxious weeds, a growing number of Western States have jointly developed noxious weed-free forage certification standards, and, in cooperation with various federal, state, and county agencies, passed weed management laws. Because hay and other forage products containing noxious weed seed are part of the infestation problem, Colorado has developed a state hay inspection-certification-identification process, participates in a regional inspection-certification-identification process, and encourages forage producers in Colorado to grow noxious weed-free products. The Colorado Department of Agriculture Division of Plant Industry has documented that in the first two years of the program, 101 growers in Colorado produced 5,547.49 acres of certified forage including grass hay, alfalfa hay, a mixture of grass and alfalfa hay, as well as barley and wheat straw as of October 30, 1995.

Region Two of the United States Forest Service, Department of Agriculture, implemented a similar policy for National Forest lands in Colorado and surrounding states in 1994. The BLM in Colorado implemented a standard stipulation on all Special Recreation Permits in 1994 requiring holders of those permits to use certified weed-free products. This proposal will provide a standard regulation for all users of BLM lands in Colorado and will provide for coordinated management with National Forest lands across jurisdictional lines.

In cooperation with the state of Colorado and the U.S. Forest Service, the BLM is proposing—for all BLM administered lands within Colorado—a ban on hay, straw or mulch that has not been certified. This proposal includes a public information plan to ensure that: (1) This ban is well publicized and understood; and (2) BLM visitors and land users will know where they can purchase state-certified hay or other products. During the first year of implementing this new regulation, BLM will emphasize education and awareness of the regulation and the certification program. After the first year, BLM will emphasize enforcement of the new regulation.

These supplementary rules will not appear in the Code of Federal Regulations.

The principal author of these proposed supplementary rules is Carol Spurrier, Botanist, of the Colorado State Office, BLM.

For the reasons stated above, under the authority of 43 CFR 8365.1–6, the Colorado State Office, BLM, finalizes supplementary rules to read as follows: Supplementary Rules to Require the Use of Certified Noxious Weed-Free Forage on Bureau of Land Management-Administered Lands in Colorado

(a)(1) To prevent the spread of weeds on BLM-administered lands in Colorado, effective August 1, 1996, all BLM lands within the state of Colorado, at all times of the year, shall be closed to possessing or storing hay, straw, or mulch that has not been certified as free of prohibited noxious weed seed.

(2) Certification will comply with ''Regional Standards'' jointly developed by the states of Colorado, Idaho, Montana, Utah, Wyoming, and Nebraska for noxious weed seed free and noxious weed free forage.

(3) The following persons are exempt from this order: anyone with a permit signed by BLM's authorized officer at the Resource Area Office specifically authorizing the use of noncertified hay, straw or mulch within that Resource Area.

(b) Any person who knowingly and willfully violates the provisions of these supplemental rules regarding the use of noncertified noxious weed-free hay, straw, or mulch when visiting Bureau of Land Management administered lands in Colorado, without authorization required, may be commanded to appear before a designated United States Magistrate and may be subject to a fine of not more than $1,000 or imprisonment of not more than 12 months, or both, as defined in 43 United States Code § 1733(a).

Dated: July 12, 1996.

Robert V. Abbey,

Associate State Director, Bureau of Land Management, Colorado.

[FR Doc. 96–18787 Filed 7–23–96; 8:45 am]

BILLING CODE 4310–JB–P

National Park Service

Notice of Inventory Completion for Native American Human Remains from Northern New Mexico in the Possession of the Colorado Springs Pioneers Museum, Colorado Springs, CO

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003 (d), of the completion of an inventory of human remains in the possession of the Colorado Springs Pioneers Museum, Colorado Springs, CO.

A detailed assessment of the human remains was made by Colorado Springs Pioneers Museum professional staff in consultation with representatives of the Hopi Tribe, the Pueblo of San Juan, the Pueblo of Santa Clara, and the Pueblo of Zuni.

In 1911, human remains representing four individuals were recovered from the Pesedeuinge Pueblo site in Northern New Mexico during excavations funded by the El Paso County Pioneer Association on private land. In 1941, the resulting collection was donated to the Colorado Springs Pioneers Museum by the El Paso County Pioneer Association. No known individuals were identified. No associated funerary objects can be identified.

The Pesedeuinge site has been identified as an Anasazi occupation site during 1200–1475 AD and 1510–1680 AD based on ceramics, tool manufacture, and architecture. The oral history of San Juan Pueblo indicates Pesedeuinge is an ancestral home and was also used as a place of refuge. Consultation evidence also indicates affiliation with the Pueblo of Santa Clara, the Pueblo of Zuni, and the Hopi Tribe.

Based on the above mentioned information, officials of the Colorado Springs Pioneers Museum have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of four individuals of Native American ancestry. Officials of the Colorado Springs Pioneers Museum have also determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and the Hopi Tribe, the Pueblo of San Juan, the Pueblo of Santa Clara, and the Pueblo of Zuni.

This notice has been sent to officials of the Hopi Tribe, the Pueblo of San Juan, the Pueblo of Santa Clara, and the Pueblo of Zuni. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact David Ryan, Museum Registrar, Colorado Springs Pioneers Museum, 215 S. Tejon, Colorado Springs, CO 80903–2283; telephone: (716) 578–6650, before August 23, 1996. Repatriation of the human remains and associated funerary objects to the Hopi Tribe, the Pueblo of San Juan, the Pueblo of Santa Clara, and the Pueblo of Zuni may begin after that date if no additional claimants come forward.

Dated: July 11, 1996.

Francis P. McManamon,

Departmental Consulting Archeologist, Chief, Archeology & Ethnography Program.

[FR Doc. 96–18606 Filed 7–23–96; 8:45 am]

BILLING CODE 4310–70–F

Notice of Intent to Repatriate Cultural Items in the Possession of the Nevada Test Site, Nevada Operations Office, Department of Energy, Las Vegas, NV

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 25 U.S.C. 3005 (a)(2), of the intent to repatriate cultural items in the possession of the Nevada Test Site, Nevada Operations Office, Department of Energy which meets the definition of ''sacred object'' and ''unassociated funerary object'' under Section 2 of the Act.

Between 1977–1990, twelve items were recovered from site 26NY4015 in the Nevada Test Site during a legally authorized survey. The items consist of ceramics, groundstones, glass beads, bifaces, tin strips, glass buttons, a pipe fragment, pendants, a stone drill, and one piece of incised stone. These items were recovered in the same vicinity where Native American human remains had previously been recovered. Consultation evidence indicates these items are consistent with funerary objects typically included with Western Shoshone and Paiute burials and are believed to have come from the same burial site.

Also between 1977 and 1990, 22 items were recovered from six archeological sites during legally authorized excavations within the Nevada Test Site. The 22 items include glass beads, stone pendent fragements, projectile points, a metal awl, and one stone shaft straightener. Consultation evidence and oral tradition presented by tribal representatives and traditional religious leaders indicate these objects are specific ceremonial objects within Western Shoshone and Paiute traditions and are needed by Native American religious leaders for the practice of traditional Native American religions by their present-day adherents.

Based on the above-mentioned information, Department of Energy officials have determined that, pursuant to 25 U.S.C. 3001(3)(C), these 22 cultural items are specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents. Officials of the Department of Energy have also determined that, pursuant to 25 U.S.C. 3001(3)(B), these twelve cultural items are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed form a specific burial site of an Native American individual. Finally, Department of Energy officials have further determined that, pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity which can be reasonably traced between these items and the Benton Paiute Tribe, Big Pine Paiute Tribe, Bishop Paiute Tribe, the Chemehuevi Paiute Tribe, the Colorado River Indian Tribes, the Duckwater Shoshone Tribe, the Ely Shoshone Tribe, the Fort Independence Indian Community of Paiute Indians, the Lone Pine Paiute Tribe, the Las Vegas Paiute Tribe, the Kaibab Paiute Tribe, the Moapa Band of Paiutes, the Paiute Indian Tribe of Utah, the Timbisha Shoshone Tribe, and the Yomba Shoshone Tribe.

This notice has been sent to officials of the Benton Paiute Tribe, Big Pine Paiute Tribe, Bishop Paiute Tribe, the Chemehuevi Paiute Tribe, the Colorado River Indian Tribes, the Duckwater Shoshone Tribe, the Ely Shoshone Tribe, the Fort Independence Indian Community of Paiute Indians, the Lone Pine Paiute Tribe, the Las Vegas Paiute Tribe, the Kaibab Paiute Tribe, the Moapa Band of Paiutes, the Paiute Indian Tribe of Utah, the Timbisha Shoshone Tribe, and the Yomba Shoshone Tribe; and the Pahrump Paiute Tribe, the Las Vegas Indian Center, and Owens Valley Board of Trustees, three Native American groups. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these objects should contact Robert C. Furlow, NAGPRA Program Manager, DOE Nevada Operations Office, P.O. Box 98518, Las Vegas, NV 89193–8518, telephone (702) 295–0845, fax (702) 295–1455 before August 23, 1996. Repatriation of these objects to the Benton Paiute Tribe, Big Pine Paiute Tribe, Bishop Paiute Tribe, the Chemehuevi Paiute Tribe, the Colorado River Indian Tribes, the Duckwater Shoshone Tribe, the Ely Shoshone Tribe, the Fort Independence Indian Community of Paiute Indians, the Lone Pine Paiute Tribe, the Las Vegas Paiute Tribe, the Kaibab Paiute Tribe, the Moapa Band of Paiutes, the Paiute Indian Tribe of Utah, the Timbisha Shoshone Tribe, and the Yomba Shoshone Tribe may begin after

that date if no additional claimants come forward.

Dated: July 16, 1996.

Francis P. McManamon,

Departmental Consulting Archeologist, Chief, Archeology & Ethnongraphy Program.

[FR Doc. 96–18607 Filed 7–23–96; 8:45 am]

BILLING CODE 4310–70–F

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing that the information collection request for the title described below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The information collection request describes the nature of the information collection and the expected burden and cost.

DATES: Comments must be submitted on or before August 23, 1996, to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information and related form, contact John A. Trelease at (202) 208–2783.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget regulations at 5 CFR part 1320, which implement provisions of the paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). OSM has submitted a request to OMB to renew its approval of the collection of information found at 30 CFR part 745, State-Federal Cooperative Agreements. OSM is requesting a 3-year term of approval for this information collection activity.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this collection of information is listed in 30 CFR part 745, which is 1029–0092.

As required under 5 CFR 1320.8(d), a Federal Register notice soliciting comments on these collections of information was published on May 3, 1996 (61 FR 19957). No comments were received. This notice provides the public with an additional 30 days in which to comment.

The following information is provided for the information collection: (1) title of the information collection; (2) OMB control number; (3) summary of the information collection activity; and (4) frequency of collection, description of the respondents, estimated total annual responses, and the total annual reporting and recordkeeping burden for the collection of information. Where appropriate, OSM has revised burden estimates to reflect current reporting levels, adjustments based on reestimates of the burden or number of respondents, and programmatic changes.

Title: State-Federal cooperative agreements—30 CFR part 745.

OMB Control Number: 1029–0092.

Summary: 30 CFR part 745 requires that States submit information when entering into a cooperative agreement with the Secretary of the Interior. OSM uses the information to make findings that the State has an approved program and will carry out the responsibilities mandated in the Surface Mining Control and Reclamation Act to regulate surface coal mining and reclamation activities.

Bureau Form Number: None.

Frequency of Collection: On occasion.

Description of Respondents: State governments which regulate coal.

Total Annual Responses: 21.

Total Annual Burden Hours: 14,300.

Send comments on the need for the collection of information for the performance of the functions of the agency; the accuracy of the agency's burden estimates; ways to enhance the quality, utility and clarity of the information collection; and ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information, to the following address. Please refer to the appropriate OMB control number in all correspondence.

ADDRESSES: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Department of Interior Desk Officer, 725 17th Street, NW., Washington, DC 20503.

Dated: July 18, 1996.

Gene E. Krueger,

Acting Chief, Office of Technology Development and Transfer.

[FR Doc. 96–18784 Filed 7–23–96; 8:45 am]

BILLING CODE 4310–05–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–343]

Annual Statistical Report on U.S. Imports of Textiles and Apparel

AGENCY: United States International Trade Commission.

ACTION: Continuation of reports and change of title of investigation.

EFFECTIVE DATE: July 16, 1996.

SUMMARY: On June 15, 1993, the Commission initiated the current investigation for the purpose of compiling and publishing reports on U.S. imports of textiles and apparel under the Multifiber Arrangement (MFA). The Commission has published similar reports since 1981. In the notice of investigation published in the Federal Register of June 23, 1993 (58 FR 34064), the Commission announced that it would publish reports in June 1993, April 1994, and April 1995. After receiving numerous requests from the public for the report, the Commission has decided to continue publishing the reports through 1998, after which the Commission will again review the question of whether to continue issuing such reports. The Commission has also changed the title of the investigation to reflect the fact the MFA has been replaced by the Uruguay Round Agreement on Textiles and Clothing (ATC). The report was formerly titled, ''U.S. Imports of Textiles and Apparel Under the Multifiber Arrangement.''

The format of the reports will remain similar to that of previous reports, providing both quantity and value data for a four-year period at a level of country and product detail that is not readily available from other sources. The reports also will provide statistics on U.S. textile and apparel imports, by fibers, broad product groups, and regional country groups. In addition, detailed data will be presented in terms of the nearly 150 product categories used to administer the U.S. textile and apparel trade agreements program for the top supplying countries with which the United States has quotas.

FOR FURTHER INFORMATION CONTACT: Information on these reports may be obtained from Jackie W. Jones, Office of Industries (202–205–3466). The media should contact Margaret O'Laughlin, Office of External Relations (202–205–1819). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on (202–205–1810).

Issued: July 17, 1996.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 96–18795 Filed 7–23–96; 8:45 am]

BILLING CODE 7020–02–P

[Investigations Nos. 701–TA–365–366 (Final) and 731–TA–734–735 (Final)]

Certain Pasta From Italy and Turkey

Determinations

On the basis of the record [1] developed in the subject investigations, the Commission determines,[2] pursuant to section 705(b) of the Tariff Act of 1930 (the Act),[3] that an industry in the United States is materially injured by reason of imports from Italy and Turkey of certain pasta [4] that have been found by the Department of Commerce to be subsidized by the Governments of Italy and Turkey.

On the basis of the record developed in the subject investigations, the Commission also determines,[5] pursuant to section 735(b) of the Act,[6] that an industry in the United States is materially injured by reason of imports from Italy and Turkey of certain pasta that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted these investigations effective October 17, 1995, and January 17, 1996, following preliminary determinations by the Department of Commerce that imports of certain pasta from Italy and Turkey were being subsidized within the meaning of section 703(b) of the Act,[7] and were being sold at LTFV within the meaning of section 733(b) of the Act.[8]

Notice of the institution of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notices in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notices in the Federal Register of November 28, 1995, and February 7, 1996.[9] The hearing was held in Washington, DC, on June 5, 1996, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on July 17, 1996. The views of the Commission are contained in USITC Publication 2977 (July 1996), entitled ''Certain Pasta from Italy and Turkey: Investigations Nos. 701–TA–365–366 (Final) and 731–TA–734–735 (Final).''

Issued: July 19, 1996.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 96–18794 Filed 7–23–96; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 337–TA–376]

Certain Variable Speed Wind Turbines and Components Thereof; Notice of Commission Decision To Review Portions of an Initial Determination; and Schedule for the Filing of Written Submissions on the Issues Under Review, and on Remedy, the Public Interest, and Bonding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review certain portions of the initial determination (ID) issued by the presiding administrative law judge (ALJ) on May 30, 1996, in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Mark D. Kelly, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3106.

SUPPLEMENTARY INFORMATION: This patent-based section 337 investigation was instituted by the Commission on May 30, 1995 (60 F.R. 28167 (May 30, 1995)) based on a complaint filed by Kenetech Windpower, Inc., of Livermore, CA. Complainant alleged a violation of section 337 in the importation, sale for importation, and/or the sale within the United States after importation of certain variable speed wind turbines and components thereof, by reason of infringement of claim 131 of U.S. Letters Patent 5,083,039 (''the '039 patent''), and claim 51 of U.S. Letters Patent 5,225,712 (''the '712 patent''), both patents owned by complainant. The Commission's notice of investigation named Enercon GmbH of Aurich, Germany and The New World Power Corporation of Lime Rock, Connecticut, as respondents.

The ALJ held an evidentiary hearing on the merits which concluded on February 6, 1996, and issued his final ID finding a violation of section 337 on May 30, 1996. He found that there had been a sale for importation of the accused products; that claim 131 of the '039 patent has been literally infringed; that claim 51 of the '712 patent was not infringed, either literally or under the doctrine of equivalents; and that complainant's activities with respect to the '039 and '712 patents satisfy the domestic industry requirements of section 337.

Having examined the record in this investigation, including the ID, the Commission has determined to review the issue of interpretation of claim 131 of the '039 patent and the issue of infringement of that claim in light of that interpretation. The Commission has determined not to review the remainder of the ID. On review, the Commission is particularly interested in answers to the following questions:

The U.S. Court of Appeals for the Federal Circuit stated in *Markman* v. *Westview Instruments, Inc.*, 52 F.3d 967, 34 USPQ2d 1321 (Fed. Cir. 1995)(en banc) aff'd ____ U.S. ____, 116 S.Ct. 1384, 64 U.S.L.W. 4263 (April 23, 1996):

> ''Extrinsic evidence may demonstrate the state of the prior art at the time of the invention. It is useful 'to show what was then old, to distinguish what was new, and to aid the court in the construction of the patent.' ''

Markman, supra at 34 USPQ2d 1330 (citation omitted).

Relying only upon the excerpts of record from the Mohan et al. reference (X–182C):

1. Explain with regard to claim 131, how, if at all, the Mohan et al. reference may be used to demonstrate the state of the prior art at the time of the claimed invention; i.e., how, if at all, the Mohan et al. reference may be used to show

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[1] The record is defined in section 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

[2] Commissioner Watson dissenting.

[3] 19 USC § 1671d(b).

[4] The imported product subject to these investigations, ''certain pasta,'' as defined by the U.S. Department of Commerce (''Commerce''), consists of dry non-egg pasta in packages of 5 pounds (2.27 kilograms) or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastases, vitamins, coloring and flavorings, and up to 2 percent egg white. The pasta is typically sold in the retail market, in fiberboard or cardboard cartons or polyethylene or polypropylene bags of varying dimensions. Certain pasta is described by Commerce as being classified in subheading 1902.19.20 of the Harmonized Tariff Schedule of the United States (HTS). Excluded from the scope of these investigations are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non-egg dry pasta containing up to 2 percent egg white. Also excluded from the scope of the investigations concerning Italy are imports of dry organic pasta that are accompanied by the appropriate certificate issued by the Associazione Marchigiana Agricultura Biologica (AMAB).

[5] Commissioner Watson dissenting.

[6] 19 USC § 1673d(b).

[7] 19 USC. § 1671b(b).

[8] 19 USC § 1673b(b).

[9] 60 FR 58638 and 61 FR 4681.

what was old at the time of the '039 invention, in order to distinguish what was new. Explain in detail how, if at all, the Mohan et al. reference should be used to aid in interpreting claim 131.

2. What are the differences, if any, between what the Mohan et al. reference discloses to one of ordinary skill in the art at the time of the claimed invention and the invention of claim 131, as interpreted by the ALJ?

3. What are the differences, if any, between what the Mohan et al. reference discloses to one of ordinary skill in the art at the time of the claimed invention and the invention of claim 131, as interpreted by respondents?

In connection with final disposition of this investigation, the Commission may issue (1) an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) cease and desist orders that could result in respondents being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or are likely to do so. For background, see the Commission Opinion, *In the Matter of Certain Devices for Connecting Computers via Telephone Lines,* Inv. No. 337–TA–360.

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation. The Commission notes the pending bankruptcy petition of complainant and asks the parties to address its relevance, if any, to the question of remedy.

If the Commission orders some form of remedy, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under a bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed.

Written Submissions: The parties to the investigation are requested to file written submissions on the issues under review. The submissions should be concise and thoroughly referenced to the record in this investigation, including references to specific exhibits and testimony. Additionally, the parties to the investigation, interested government agencies, and any other interested persons are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the June 12, 1996, recommended determination by the ALJ on remedy and bonding. Complainant and the Commission investigative attorney are also requested to submit proposed remedial orders for the Commission's consideration. The written submissions and proposed remedial orders must be filed no later than the close of business on July 31, 1996. Reply submissions must be filed no later than the close of business on August 7, 1996. No further submissions will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file with the Office of the Secretary the original document and 14 true copies thereof on or before the deadlines stated above. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment is granted by the Commission will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) and sections 210.45–.51 of the Commission's Rules of Practice and Procedure (19 CFR 210.45–.51).

Copies of the public version of the ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street S.W., Washington, D.C. 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

Issued: July 17, 1996.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 96–18796 Filed 7–23–96; 8:45 am]

BILLING CODE 7020–02–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Meeting

July 17, 1996.

TIME AND DATE: 10:00 a.m., Thursday, July 25, 1996.

PLACE: Room 6005, 6th Floor, 1730 K Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. Jim Walter Resources, Inc., Docket Nos. SE 94–74, SE 94–84, and SE 94–115. (Issues include whether violations of 30 CFR §§ 75.400 & 75.1725(a) were the result of the operator's unwarrantable failure to comply with the standards.)

2. Consolidation Coal Co., Docket No. WEVA 94–19. (Issues include whether the operator qualified for the exemptions contained in 30 CFR § 75.340(b) (4) & (6) to the underground water pump standard set forth in 30 CFR § 75.340(a); whether the alleged violation resulted from the operator's unwarrantable failure; and whether the alleged violation was ''serious''.)

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR § 2706.150(a)(3) and § 2706.160(d).

CONTACT PERSON FOR MORE INFO: Jean Ellen (202) 653–5629/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Jean H. Ellen,

Chief Docket Clerk.

[FR Doc. 96–18886 Filed 7–22–96; 9:45 am]

BILLING CODE 6735–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (96–087)]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that Containerless Research, Inc., of Evanston, Illinois, has applied for an exclusive license to practice the invention described in U.S. Patent No. 4,521,854, entitled ''Closed Loop Electrostatic Levitation System,'' which was issued on June 4, 1985, to the United States of America as represented by the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Thomas H. Jones, Patent Counsel, NASA Management Office-JPL.

DATES: Responses to this notice must be received by September 23, 1996.

FOR FURTHER INFORMATION CONTACT: Thomas H. Jones, Patent Counsel, NASA Management Office-JPL, Mail Station 180–801, Pasadena, CA 91109; telephone (818) 354–5179.

Dated: July 17, 1996.

Edward A. Frankle,

General Counsel.

[FR Doc. 96–18804 Filed 7–23–96; 8:45 am]

BILLING CODE 7510–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee Meeting on Planning and Procedures; Notice of Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on August 6, 1996, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c) (2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and matters the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Tuesday, August 6, 1996—1:00 p.m. until 3:00 p.m.

The Subcommittee will discuss proposed ACRS activities and related matters. It may also discuss the status of appointment of members to the ACRS. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff person named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements, and the time allotted therefor can be obtained by contacting the cognizant ACRS staff person, Dr. John T. Larkins (telephone: 301/415–7360) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: July 18, 1996.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 96–18779 Filed 7–23–96; 8:45 am]

BILLING CODE 7590–01–P

Advisory Committee on Reactor Safeguards, Subcommittee Meeting on Probabilistic Risk Assessment; Notice of Meeting

The ACRS Subcommittee on Probabilistic Risk Assessment will hold a meeting on August 7, 1996, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, August 7, 1996—8:30 a.m. until the conclusion of business.

The Subcommittee will discuss risk-based inservice testing and inservice inspection requirements, pilot applications for risk-informed and performance-based regulations, and related matters. The Subcommittee will also continue its discussion of issues identified in the Staff Requirements Memoranda dated May 15 and June 11, 1996, including: the role of performance-based regulation in the PRA Implementation Plan; plant-specific application of safety goals; and requirements for risk neutrality versus the allowance for acceptable increases in risk. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the cognizant ACRS staff engineer, Mr. Michael T. Markley (telephone 301/415–6885) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes to the agenda, etc., that may have occurred.

Dated: July 18, 1996.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 96–18780 Filed 7–23–96; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals

July 1, 1996.

This report is submitted in fulfillment of the requirement of Section 1014(e) of the Congressional Budget and Impoundment Control Act of 1974 (Public Law 93–344). Section 1014(e) requires a monthly report listing all budget authority for the current fiscal year for which, as of the first day of the month, a special message had been transmitted to Congress.

This report gives the status, as of July 1, 1996, of 24 rescission proposals and six deferrals contained in eight special messages for FY 1996. These messages were transmitted to Congress on October 19, 1995; and on February 21, February 23, March 5, March 13, April 12, May 14, and June 24, 1996.

Rescissions (Attachments A and C)

As of July 1, 1996, 24 rescission proposals totaling $1.4 billion had been transmitted to the Congress. Congress approved eight of the Administration's rescission proposals in P.L. 104–134. A total of $963.4 million of the rescissions proposed by the President was rescinded by that measure. Attachment C shows the status of the FY 1996 rescission proposals.

Deferrals (Attachments B and D)

As of July 1, 1996, $2,338.4 million in budget authority was being deferred from obligation. Attachment D shows the status of each deferral reported during FY 1996.

Information From Special Messages

The special messages containing information on the rescission proposals and deferrals that are covered by this cumulative report are printed in the editions of the Federal Register cited below:

60 FR 55154, Friday, October 27, 1995
61 FR 8691, Tuesday, March 5, 1996
61 FR 10812, Friday, March 15, 1996
61 FR 13350, Tuesday, March 26, 1996
61 FR 17915, Tuesday, April 23, 1996
61 FR 26226, Friday, May 24, 1996
61 FR 34909, Wednesday, July 3, 1996

Jacob J. Lew,

Acting Director.

ATTACHMENT A.—STATUS OF FY 1996 RESCISSIONS

[In millions of dollars]

	Budgetary resources
Rescissions proposed by the President	1,425.9

ATTACHMENT A.—STATUS OF FY 1996 RESCISSIONS—Continued

[In millions of dollars]

	Budgetary resources
Rejected by the Congress	−462.5
Amounts rescinded by P.L. 104–134	−963.4
Currently before the Congress	0

ATTACHMENT B.—STATUS OF FY 1996 DEFERRALS

[In millions of dollars]

	Budgetary resources
Deferrals proposed by the President	3,689.7
Routine Executive releases through July 1, 1996 (OMB/Agency releases of $1,351.3 million, partially offset by cumulative positive adjustment of $4 thousand.)	−1,351.3
Overturned by the Congress.	
Currently before the Congress	2,338.4

BILLING CODE 3110–01–M

ATTACHMENT C
Status of FY 1996 Rescission Proposals - As of July 1, 1996
(Amounts in thousands of dollars)

Agency/Bureau/Account	Rescission Number	Amounts Pending Before Congress: Less than 45 days	Amounts Pending Before Congress: More than 45 days	Date of Message	Previously Withheld and Made Available	Date Made Available	Amount Rescinded	Congressional Action
DEPARTMENT OF AGRICULTURE								
Cooperative State Research, Education, and Extension Service								
Buildings and facilities	R96-8		12,000	3-5-96	12,000	5-6-96		
DEPARTMENT OF DEFENSE								
Procurement								
Aircraft procurement, Army	R96-11		140,000	4-12-96	140,000	6-10-96		
Procurement of ammunition, Army	R96-12		47,200	4-12-96	47,200	6-10-96		
Other procurement, Army	R96-13		5,800	4-12-96	5,800	6-10-96		
Procurement of ammunition, Navy and Marine Corps	R96-15		10,000	4-12-96	10,000	6-10-96		
Shipbuilding and conversion, Navy	R96-14		9,200	4-12-96	9,200	6-10-96		
Missile procurement, Air Force	R96-1		310,000	2-21-96			310,000	P.L. 104-134
Other procurement, Air Force	R96-2		265,000	2-21-96			265,000	P.L. 104-134
National guard and reserve equipment	R96-16		13,600	4-12-96	13,600	6-17-96		
Research, Development, Test, and Evaluation								
Research, development, test, and evaluation Army	R96-4		19,500	2-23-96			19,500	P.L. 104-134
	R96-17		9,600	4-12-96	9,600	6-10-96		
Research, development, test, and evaluation Navy	R96-5		35,000	2-23-96			35,000	P.L. 104-134
	R96-18		39,800	4-12-96	39,800	6-10-96		
Research, development, test, and evaluation Air Force	R96-3		245,000	2-21-96			245,000	P.L. 104-134
	R96-6		44,900	2-23-96			44,900	P.L. 104-134
	R96-19		58,000	4-12-96	58,000	6-10-96		

1/ Funds never withheld from obligation.

ATTACHMENT C
Status of FY 1996 Rescission Proposals - As of July 1, 1996
(Amounts in thousands of dollars)

Agency/Bureau/Account	Rescission Number	Amounts Pending Before Congress: Less than 45 days	Amounts Pending Before Congress: More than 45 days	Date of Message	Previously Withheld and Made Available	Date Made Available	Amount Rescinded	Congressional Action
DEPARTMENT OF DEFENSE - Continued								
Research, development, test, and evaluation								
Defense-wide	R96-7		40,600	2-23-96			40,600	P.L. 104-134
	R96-20		67,200	4-12-96	67,200	6-19-96		
Military Construction								
Military contruction, Army	R96-21		10,000	3-13-96	10,000	6-7-96		
Military contruction, Navy	R96-22		8,000	3-13-96	8,000	6-5-96		
Military contruction, Air Force	R96-23		15,000	3-13-96	15,000	5-23-96		
Military contruction, Defense-wide	R96-24		13,000	3-13-96	13,000	6-7-96		
Military contruction, Air National Guard	R96-25		4,000	3-13-96	4,000	6-7-96		
GENERAL SERVICES ADMINISTRATION								
Real Property Activities								
Federal buildings fund	R96-9		3,500	3-5-96	1/		3,400	P.L. 104-134
TOTAL RESCISSIONS		**0**	**1,425,900**		**462,400**		**963,400**	

1/ Funds never withheld from obligation.

ATTACHMENT D
Status of FY 1996 Deferrals - As of July 1, 1996
(Amounts in thousands of dollars)

Agency/Bureau/Account	Deferral Number	Amounts Transmitted: Original Request	Amounts Transmitted: Subsequent Change (+)	Date of Message	Releases(-): Cumulative OMB/ Agency	Releases(-): Congressionally Required	Congressional Action	Cumulative Adjustments (+)	Amount Deferred as of 7-1-96
FUNDS APPROPRIATED TO THE PRESIDENT									
International Security Assistance									
Economic support fund and International Fund for Ireland	D96-1	75,000		10-19-95					
	D96-1A		1,942,076	2-23-96	1,211,441			4	805,639
Foreign military financing program	D96-4	1,385,140		2-23-96					
	D96-4A		26	5-14-96	33,325				1,351,841
Foreign military financing loan program	D96-5	64,400		2-23-96					64,400
Agency for International Development									
International disaster assistance, Executive	D96-6	124,625		2-23-96	84,000				40,625
DEPARTMENT OF STATE									
Other									
United States emergency refugee and migration assistance fund	D96-3	40,486		10-19-95					
	D96-3A		50,545	3-5-96	22,546				68,486
SOCIAL SECURITY ADMINISTRATION									
Limitation on administrative expenses	D96-2	7,321		10-19-95					
	D96-2A		44	6-24-96					7,365
TOTAL, DEFERRALS		**1,696,972**	**1,992,692**		**1,351,312**			**4**	**2,338,355**

[FR Doc. 96–18776 Filed 7–23–96; 8:45 am]
BILLING CODE 3110–01–C

PENSION BENEFIT GUARANTY CORPORATION

Pendency of Request for Exemption From the Bond/Escrow Requirement Relating To the Sale of Assets by an Employer who Contributes to a Multiemployer Plan; St. Louis Cardinals, L.P.

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of pendency of request.

SUMMARY: This notice advises interested persons that the Pension Benefit Guaranty Corporation has received a request from The St. Louis Cardinals, L.P., a Missouri limited partnership, for an exemption from the bond/escrow requirement of section 4204(a)(1)(B) of the Employee Retirement Income Security Act of 1974, as amended, with respect to the Major League Baseball Players Benefit Plan. Section 4204(a)(1) provides that the sale of assets by an employer that contributes to a multiemployer pension plan will not result in a complete or partial withdrawal from the plan if certain conditions are met. One of these conditions is that the purchaser post a bond or deposit money in escrow for the five-plan-year period beginning after the sale. The PBGC is authorized to grant individual and class exemptions from this requirement. Before granting an exemption the PBGC is required to give interested persons an opportunity to comment on the exemption request. The purpose of this notice is to advise interested persons of the exemption request and solicit their views on it.

DATES: Comments must be submitted on or before September 9, 1996.

ADDRESSES: All written comments (at least three copies) should be addressed to: Pension Benefit Guaranty Corporation, Office of the General Counsel, 1200 K Street, N.W., Washington, D.C. 20005–4026, or hand-delivered to Suite 340 at the above address between 9:00 a.m. and 4:00 p.m., Monday through Friday. The non-confidential portions of the request for an exemption and the comments received will be available for public inspection at the PBGC Communications and Public Affairs Department, Suite 240, at the above address, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Ralph L. Landy, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, N.W., Washington, D.C. 20005–4026; telephone 202–326–4127 (202–326–4179 for TTY and TDD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

Background

Section 4204 of the Employee Retirement Income Security Act of 1974, as amended by the Multiemployer Pension Plan Amendments Act of 1980 (''ERISA'' or ''the Act''), provides that a bona fide arm's-length sale of assets of a contributing employer to an unrelated party will not be considered a withdrawal if three conditions are met. These conditions, enumerated in section 4204(a)(1) (A)–(C), are that—

(A) the purchaser has an obligation to contribute to the plan with respect to the operations for substantially the same number of contribution base units for which the seller was obligated to contribute;

(B) the purchaser obtains a bond or places an amount in escrow, for a period of five plan years after the sale, in an amount equal to the greater of the seller's average required annual contribution to the plan for the three plan years preceding the year in which the sale occurred or the seller's required annual contribution for the plan year preceding the year in which the sale occurred (the amount of the bond or escrow is doubled if the plan is in reorganization in the year in which the sale occurred); and

(C) the contract of sale provides that if the purchaser withdraws from the plan within the first five plan years beginning after the sale and fails to pay any of its liability to the plan, the seller shall be secondarily liable for the liability it (the seller) would have had but for section 4204.

The bond or escrow described above would be paid to the plan if the purchaser withdraws from the plan or fails to make any required contributions to the plan within the first five plan years beginning after the sale.

Additionally, section 4204(b)(1) provides that if a sale of assets is covered by section 4204, the purchaser assumes by operation of law the contribution record of the seller for the plan year in which the sale occurred and the preceding four plan years.

Section 4204(c) of ERISA authorizes the Pension Benefit Guaranty Corporation (''PBGC'') to grant individual or class variances or exemptions from the purchaser's bond/escrow requirement of section 4204(a)(1)(B) when warranted. The legislative history of section 4204 indicates a Congressional intent that the sales rules be administered in a manner that assures protection of the plan with the least practicable intrusion into normal business transactions. Senate Committee on Labor and Human Resources, 96th Cong., 2nd Sess., S.1076, The Multiemployer Pension Plan Amendments Act of 1980: Summary and Analysis of Considerations 16 (Comm. Print, April 1980); 128 Cong. Rec. S10117 (July 29, 1980). The granting of an exemption or variance from the bond/escrow requirement does not constitute a finding by the PBGC that a particular transaction satisfies the other requirements of section 4204(a)(1). Such questions are to be decided by the plan sponsor in the first instance, and any disputes are to be resolved in arbitration. 29 U.S.C. Sections 1382, 1399, 1401.

Under the PBGC's regulation on variances for sales of assets (29 CFR Part 2643), a request for a variance or waiver of the bond/escrow requirement under any of the tests established in the regulation (29 CFR 2643.12–2643.14) is to be made to the plan in question. The PBGC will consider waiver requests only when the request is not based on satisfaction of one of the four regulatory tests or when the parties assert that the financial information necessary to show satisfaction of one of the regulatory tests is privileged or confidential financial information within the meaning of 5 U.S.C. section 552(b)(4) (the Freedom of Information Act).

Under section 2643.3 of the regulation, the PBGC shall approve a request for a variance or exemption if it determines that approval of the request is warranted, in that it—

(1) would more effectively or equitably carry out the purposes of Title IV of the Act; and

(2) would not significantly increase the risk of financial loss to the plan.

Section 4204(c) of ERISA and section 2643.3(b) of the regulation require the PBGC to publish a notice of the pendency of a request for a variance or exemption in the Federal Register, and to provide interested parties with an opportunity to comment on the proposed variance or exemption.

The Request

The PBGC has received a request from the St. Louis Cardinals, L.P. (''the Buyer'') for an exemption from the bond/escrow requirement of section 4204(a)(1)(B) with respect to its purchase of the St. Louis Cardinals Baseball Team from the St. Louis Baseball Club, Inc. (''the Seller'') on

March 21, 1996. In the request, the Buyer represents among other things that:

1. The Seller was obligated to contribute to the Major League Baseball Players Benefit Plan (the ''Plan'') for certain employees of the sold operations.

2. The Buyer is a Missouri limited partnership.

3. The Buyer has agreed to assume the obligation to contribute to the Plan for substantially the same number of contribution base units as the seller.

4. The Seller has agreed to be secondarily liable for any withdrawal liability it would have had with respect to the sold operations (if not for section 4204) should the Buyer withdraw from the Plan within the five plan years following the sale and fail to pay its withdrawal liability.

5. The estimated amount of the unfunded vested benefits allocable to the Seller with respect to the operations subject to the sale is $7,340,095.

6. The amount of the bond/escrow required under section 4204(a)(1)(B) is approximately $873,000.

7. The transaction had to be approved by Major League Baseball which required that the debt-equity ratio of the Buyer be no more than 60 percent. The Buyer submitted a financial statement that shows that its net tangible assets exceed the unfunded vested benefits allocable to the Seller with respect to the purchased operations. The Buyer has requested confidential treatment of its financial statements on the ground that they are confidential within the meaning of 5 U.S.C. section 552.

8. A copy of the request, excluding the financial statement of the Buyer, was sent to the Fund and to the collective bargaining representative of the Seller's employees.

Comments

All interested persons are invited to submit written comments on the pending exemption request to the above address. All comments will be made a part of the record. Comments received, as well as the relevant non-confidential information submitted in support of the request, will be available for public inspection at the address set forth above.

Issued at Washington, D.C., on this 16th day of July, 1996.

Martin Slate,

Executive Director.

[FR Doc. 96–18652 Filed 7–23–96; 8:45 am]

BILLING CODE 7708–01–P

Pendency of Request For Exemption From the Bond/Escrow Requirement Relating to the Sale of Assets by An Employer Who Contributes to a Multiemployer Plan; Tuscan Dairy Farms, Inc.

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of pendency of request.

SUMMARY: This notice advises interested persons that the Pension Benefit Guaranty Corporation has received a request from Tuscan Dairy Farms, Inc. (''Tuscan'') for an exemption from the bond/escrow requirement of section 4204(a)(1)(B) of the Employee Retirement Income Security Act of 1974, as amended, with respect to the Local 584 Pension Trust Fund, in connection with Tuscan's purchase of certain assets from American Farms, Inc., Progressive Milk Co., Ltd. and 339 Milk, Inc. Section 4204(a)(1) provides that the sale of assets by an employer that contributes to a multiemployer pension plan will not result in a complete or partial withdrawal from the plan if certain conditions are met. One of these conditions is that the purchaser post a bond or deposit money in escrow for the five-plan-year period beginning after the sale. The PBGC is authorized to grant individual and class exemptions from this requirement. Before granting an exemption the PBGC is required to give interested persons an opportunity to comment on the exemption request. The purpose of this notice is to advise interested persons of the exemption request and solicit their views on it.

DATES: Comments must be submitted on or before September 9, 1996.

ADDRESSES: All written comments (at least three copies) should be addressed to: Pension Benefit Guaranty Corporation, Office of the General Counsel, 1200 K Street, N.W., Washington, D.C. 20005–4026, or hand-delivered to Suite 340 at the above address between 9:00 a.m. and 4:00 p.m., Monday through Friday. The non-confidential portions of the request for an exemption and the comments received will be available for public inspection at the PBGC Communications and Public Affairs Department, Suite 240, at the above address, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Karen L. Morris, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, N.W., Washington, D.C. 20005–4026; telephone 202–326–4127 (202–326–4179 for TTY and TDD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

Background

Section 4204 of the Employee Retirement Income Security Act of 1974, as amended by the Multiemployer Pension Plan Amendments Act of 1980 (''ERISA'' or the ''Act''), provides that a bona fide arm's-length sale of assets of a contributing employer to an unrelated party will not be considered a withdrawal if three conditions are met. These conditions, enumerated in section 4204(a)(1) (A)–(C), are that—

(A) the purchaser has an obligation to contribute to the plan with respect to the operations for substantially the same number of contribution base units for which the seller was obligated to contribute;

(B) the purchaser obtains a bond or places an amount in escrow, for a period of five plan years after the sale, in an amount equal to the greater of the seller's average required annual contribution to the plan for the three plan years preceding the year in which the sale occurred or the seller's required annual contribution for the plan year preceding the year in which the sale occurred (the amount of the bond or escrow is doubled if the plan is in reorganization in the year in which the sale occurred); and

(C) the contract of sale provides that if the purchaser withdraws from the plan within the first five plan years beginning after the sale and fails to pay any of its liability to the plan, the seller shall be secondarily liable for the liability it (the seller) would have had but for section 4204.

The bond or escrow described above would be paid to the plan if the purchaser withdraws from the plan or fails to make any required contributions to the plan within the first five plan years beginning after the sale.

Additionally, section 4204(b)(1) provides that if a sale of assets is covered by section 4204, the purchaser assumes by operation of law the contribution record of the seller for the plan year in which the sale occurred and the preceding four plan years.

Section 4204(c) of ERISA authorizes the Pension Benefit Guaranty Corporation (''PBGC'') to grant individual or class variances or exemptions from the purchaser's bond/escrow requirement of section 4204(a)(1)(B) when warranted. The legislative history of section 4204 indicates a Congressional intent that the sales rules be administered in a manner that assures protection of the plan with the least practicable intrusion into normal business transactions. Senate Committee on Labor and Human

Resources, 96th Cong., 2nd Sess., S.1076, The Multiemployer Pension Plan Amendments Act of 1980: Summary and Analysis of Considerations 16 (Comm. Print, April 1980); 128 Cong. Rec. S10117 (July 29, 1980). The granting of an exemption or variance from the bond/escrow requirement does not constitute a finding by the PBGC that a particular transaction satisfies the other requirements of section 4204(a)(1). Such questions are to be decided by the plan sponsor in the first instance, and any disputes are to be resolved in arbitration. 29 U.S.C. Sections 1382, 1399, 1401.

Under the PBGC's regulation on variances for sales of assets (29 CFR Part 2643), a request for a variance or waiver of the bond/escrow requirement under any of the tests established in the regulation (29 CFR 2643.12–2643.14) is to be made to the plan in question. The PBGC will consider waiver requests only when the request is not based on satisfaction of one of the four regulatory tests or when the parties assert that the financial information necessary to show satisfaction of one of the regulatory tests is privileged or confidential financial information within the meaning of 5 U.S.C. section 552(b)(4) of the Freedom of Information Act.

Under section 2643.3 of the regulation, the PBGC shall approve a request for a variance or exemption if it determines that approval of the request is warranted, in that it—

(1) would more effectively or equitably carry out the purposes of Title IV of the Act; and

(2) would not significantly increase the risk of financial loss to the plan.

Section 4204(c) of ERISA and section 2643.3(b) of the regulation require the PBGC to publish a notice of the pendency of a request for a variance or exemption in the Federal Register, and to provide interested parties with an opportunity to comment on the proposed variance or exemption.

The Request

The PBGC has received a request from Tuscan Dairy Farms, Inc. (the ''Purchaser''), for an exemption from the bond/escrow requirement of section 4204(a)(1)(B) with respect to its purchase of certain assets of American Farms, Inc., Progressive Milk Co., Ltd., and 339 Milk, Inc. (the ''Sellers''). In support of the request, the Purchaser represents among other things that:

1. On August 18, 1995, the Purchaser acquired certain assets of the Sellers.

2. The Sellers were obligated to contribute to the Local 584 Pension Trust Fund (the ''Plan'') for certain employees at operations subject to the sale.

3. The Purchaser is required to contribute to the Plan for substantially the same number of contribution base units with respect to employees of the Sellers who work at operations subject to the sale.

4. The Sellers have agreed to be secondarily liable for any withdrawal liability they would have had with respect to the sold operations (if not for section 4204) should the Purchaser withdraw from the Plan within the five plan years following the sale and fail to pay its withdrawal liability.

5. The Purchaser has agreed to provide a bond to the Fund in compliance with 4204(a)(1)(B), while reserving the right to seek a variance.

6. The estimated amount of the unfunded vested benefits allocable to the Sellers with respect to the operations subject to the sale is $177,657. The Purchaser does not have an estimate of the unfunded vested benefits allocable to it for its other operations covered under the Plan.

7. The amount of the bond/escrow that would be required under section 4204(a)(1)(B) of ERISA is approximately $123,905.

8. The Purchaser submitted a financial statement showing the amount of its net tangible assets. The Purchaser asserted that even though it does not have an estimate of the unfunded vested benefits allocable to its other operations, even if the total unfunded vested benefits of the Fund were allocated to those other operations, Purchaser's net tangible assets exceed the sum of the unfunded vested benefits allocable to the Sellers and the maximum amount that could be allocable to its other operations. The Purchaser has requested confidential treatment of its financial statements on the ground that they are confidential within the meaning of 5 U.S.C. section 552.

9. The Purchaser has sent by certified mail, return receipt requested, a complete copy of the request, excluding the agreements between the Seller and Purchaser, certain exhibits, financial statements of the Purchaser, and certain financial data recited in the request, to the Plan, counsel to the Plan, and to the collective bargaining representative of the Sellers' employees.

Comments

All interested persons are invited to submit written comments on the pending exemption request to the above address. All comments will be made a part of the record. Comments received, as well as the relevant non-confidential information submitted in support of the request, will be available for public inspection at the address set forth above.

Issued at Washington, D.C., on this 16th day of July, 1996.

Martin Slate,

Executive Director.

[FR Doc. 96–18653 Filed 7–23–96; 8:45 am]

BILLING CODE 7708–01–P

POSTAL SERVICE

Board of Governors; Sunshine Act Meeting

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 CFR Section 7.5) and the Government in the Sunshine Act (5 U.S.C. Section 552b), hereby gives notice that it intends to hold a meeting at 1:00 p.m. on Monday, August 5, 1996, and at 9:00 a.m. on Tuesday, August 6, 1996, in Detroit, Michigan.

The August 5 meeting is closed to the public (see 61 FR 36586, July 11, 1996). The August 6 meeting is open to the public and will be held at the Marriott Dearborn Inn, 20301 Oakwood Boulevard, Dearborn, in Salon 3. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meeting should be addressed to the Secretary of the Board, Thomas J. Koerber, at (202) 268–4800.

Agenda

Monday Session

August 5—1:00 p.m. (Closed)

1. Consideration of the Postal Rate Commission Opinion and Recommended Decision in Docket No. MC96–2, Preferred Rates Classification Reform II. (John H. Ward, Vice President, Marketing Systems).

Tuesday Session

August 6—9:00 a.m. (Open)

1. Minutes of the Previous Meeting, July 1–2, 1996.

2. Remarks of the Postmaster General/Chief Executive Officer. (Marvin Runyon)

3. Capital Investments.

a. Kansas City Philatelic Fulfillment Service Center. (Loren E. Smith, Chief Marketing Officer)

b. Robotics Tray Handling, Phase I. (William J. Dowling, Vice President, Engineering)

4. Quarterly Report on Service Performance. (Yvonne D. Maguire, Vice President and Consumer Advocate)

5. Quarterly Report on Financial Performance, (Michael J. Riley, Chief Financial Officer)

6. Report on Great Lakes Area Operations. (J.T. Weeker, Vice President, Great Lakes Area)

7. Tentative Agenda for the September 9–10, 1996, meeting in Washington, D.C.

Thomas J. Koerber,

Secretary.

[FR Doc. 96–18992 Filed 7–22–96; 3:52 pm]

BILLING CODE 7710–12–M

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Approval:

Rule 10b–18, SEC File No. 270–416; OMB Control No. 3235-new.
Rule 15c1–5, SEC File No. 270–422, OMB Control No. 3235-new.
Rule 15c1–6, SEC File No. 270–423, OMB Control No. 3235-new.
Rule 17Ad–3 (b), SEC File No. 270–424, OMB Control No. 3235-new.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is publishing the following summaries of collections for public comment.

Rule 10b–18 under the Securities Exchange Act of 1934 (''Exchange Act'') provides that an issuer or any affiliated purchaser of an issuer will not incur liability under Section 9(a)(2) of the Exchange Act, or Rule 10b–5 under the Exchange Act, if its purchases of the issuer's common stock are effected in compliance with the manner, timing, price, and volume limitations of the rule.

The rule implicitly requires an issuer or any affiliated purchaser seeking to avail itself of the safe harbor to collect information regarding the manner, time, price, and volume of its purchases of the issuer's common stock, on a transaction by transaction basis, in order to verify compliance with the rule's safe harbor conditions. Each year there are approximately 820 share repurchase programs conducted in accordance with Rule 10b–18.

For each such repurchase program, an average of approximately 8 hours is spent collecting the requisite information. Thus, the total compliance burden per year is approximately 6,560 burden hours.

Rule 15c1–5 requires that broker-dealers, who are under the control of the issuer of any security, shall disclose, in writing, the existence of such control to customers before entering into any contract for the purchase or sale of such security. The information required by the rule is necessary for the execution of the Commission's mandate under the Exchange Act to prevent fraudulent, manipulative, and deceptive acts and practices by broker-dealers.

For Rule 15c1–5 there are approximately 425 respondents (5% of the approximately 8500 registered broker-dealers), each response takes approximately 10 hours to complete for an aggregate total of 4,250 burden hours.

Rule 15c1–6 requires that broker-dealers, who are participating in the primary or secondary distribution of a security, shall disclose their interests in the distribution, in writing, at or before the completion of any transaction when entering into a contract for the purchase or sale of such security. The information required by the rule is necessary for the execution of the Commission's mandate under the Exchange Act to prevent fraudulent, manipulative, and deceptive acts and practices by broker-dealers.

For Rule 15c1–6 there are approximately 850 respondents (10% of the registered broker-dealers), each response takes approximately 10 hours to complete for an aggregate total of 8,500 hours to comply with this rule.

Rule 17Ad–3(b) requires registered transfer agents, which for each of two consecutive months fails to turn around at least 75% of all routine items in accordance with the requirements of Rule 17Ad–2(a) or to process at least 75% of all items in accordance with the requirements of Rule 17Ad–2(b) to send to the chief executive officer of each issuer for which such registered transfer agents acts a copy of the written notice required under Rule 17Ad–2(c), (d), and (h). The issuer may use the information contained in the notices in several ways: (1) To provide an early warning to the issuer of the transfer agent's non-compliance with the Commission's minimum performance standards regarding registered transfer agents, and (2) to assure that issuers are aware of certain problems and poor performances with respect to the transfer agents that are servicing the issuer's securities. If the issuer does not receive notice of a registered transfer agent's failure to comply with the Commission's minimum performance standards then the issuer will be unable to take remedial action to correct the problem or to find another registered transfer agent. The Commission estimates that the annual cost to respondents is minimal. Pursuant to Rule 17Ad–3(b), a transfer agent that has already filed a Notice of Non-Compliance with the Commission pursuant to Rule 17Ad–2 will only be required to send a copy of that notice to issuers for which it acts when that transfer agent fails to turnaround 75% of all routine items or to process 75% of all items. The Commission estimates that of the 8 transfer agents that file the Notice of Non-Compliance pursuant Rule 17Ad–2, only 2 transfer agents will meet the requirements of Rule 17Ad–3(b). If a transfer agent fails to meet the minimum requirements under 17Ad–3(b), such transfer agent is simply sending a copy of a form that had already been produced for the Commission. The Commission estimates a cost of approximately $30.00 for each half hour; therefore, each year transfer agents will spend approximately 2 hours and $120 complying with the provisions of the rule.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

July 15, 1996.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–18713 Filed 7–23–96; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–22081; 812–10206]

Sirrom Capital Corporation, et al.; Notice of Application

July 17, 1996.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: Sirrom Capital Corporation (''Sirrom'').

RELEVANT ACT SECTIONS: Order requested under section 57(c) of the Act for an

exemption from section 57(a)(1) of the Act.

SUMMARY OF APPLICATION: The order would permit Sirrom to purchase a limited partnership interest in Harris Williams & Co., L.P. (''Harris Williams'') from Sirrom Ltd., an affiliated person of an affiliated person of Sirrom.

FILING DATE: The application was filed on June 13, 1996 and amended on July 17, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 12, 1996 and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549. Applicant, 500 Church Street, Suite 200, Nashville, Tennessee 37219.

FOR FURTHER INFORMATION CONTACT: Sarah A. Buescher, Staff Attorney, at (202) 942–0573, or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Sirrom is a business development company (''BDC'') within the meaning of section 2(a)(48) of the Act.[1] Sirrom's strategic objective is to provide financial services to small and medium sized growth businesses. Its shares of common stock are traded on The Nasdaq Market's National Market. Sirrom Capital Acquisition Corporation (''Sirrom Sub'') is a wholly-owned subsidiary of Sirrom. Harris Williams is a merger and acquisition advisory firm that provides advisory services with respect to small and medium sized companies that are similar in size to Sirrom's portfolio companies. Harris Williams & Co. (''HW Corp.'') is general partner of Harris Williams and holds an 80 percent partnership interest in Harris Williams. Sirrom Ltd., a family-owned investment partnership, owns a 20 percent limited partnership interest in Harris Williams (''Minority Interest'') and is Harris Williams' sole limited partner. Dr. Morris, a director and chairman of the board of Sirrom, owns half of the general partner of Sirrom Ltd., and he and his immediate family beneficially own 55 percent of Sirrom Ltd.

2. Sirrom proposes to acquire all of the outstanding partnership interests of Harris Williams through (i) the purchase of the Minority Interest owned by Sirrom Ltd., and (ii) a merger of Sirrom Sub with and into HW Corp. in exchange for shares of Sirrom. Applicants request an order pursuant to section 57(c) of the Act exempting Sirrom's purchase of the Minority Interest from Sirrom Ltd. from section 57(a)(1) of the Act.

3. On April 15, 1996, Sirrom and Harris Williams entered into a letter of intent concerning the proposed acquisition. The terms of the letter were the result of arm's length negotiations between Mr. Miller, president and chief executive officer of Sirrom, and Messrs. Harris and Williams, acting on behalf of Harris Williams. The letter was approved by Sirrom's board of directors on April 18, 1996, with Dr. Morris abstaining from the discussion and vote. The parties then conducted due diligence and negotiated the terms of a definitive agreement (''Acquisition Agreement''), which included as conditions to the transaction that Sirrom's shareholders approve the transaction and that prior to the solicitation of approval from shareholders, Sirrom's board receive an opinion from an investment banking firm that the transaction was fair from a financial point of view to Sirrom. The Acquisition Agreement was approved by written consent of Sirrom's board on May 14, 1996, with Dr. Morris abstaining. On June 5, 1996, NatWest Markets submitted its opinion to Sirrom's board that the transaction was fair, from a financial point of view, to Sirrom. NatWest Markets is not affiliated with Sirrom, Harris Williams, or HW Corp. On June 6, 1996, Sirrom's board recommended approval of the proposed purchase and merger by Sirrom's shareholders. No member of Sirrom's board, except Dr. Morris, is an affiliated person of Harris Williams or HW Corp.

4. Pursuant to the terms of the Acquisition Agreement, Sirrom will purchase the Minority Interest in Harris Williams held by Sirrom Ltd. in exchange for 180,500 shares of Sirrom common stock (subject to adjustment in the event the average Sirrom stock price is below $21 or above $26), or aggregate consideration of between $3,790,500 and $4,693,000. The shares will be ''restricted securities'' under rule 144 of the Securities Act of 1933 and will not be transferable except under limited circumstances for up to a three-year period by Sirrom Ltd.

5. In the merger, Sirrom Sub will merge with and into HW Corp. pursuant to which each outstanding share of HW Corp. common stock, other than shares held by HW Corp. shareholders who have exercised and perfected dissenter's rights of appraisal under the Virginia Stock Corporation Act, will be canceled and converted into the right to receive 7,079.442 shares of Sirrom common stock. Because there are 108.695 shares of HW Corp. common stock outstanding, HW Corp. shareholders will receive an aggregate of 769,500 shares of Sirrom common stock (subject to adjustment in the event the average Sirrom stock price is below $21 or above $26). Each issued and outstanding share of common stock of Sirrom Sub, no par value per share, shall remain outstanding and unchanged as shares of common stock of the surviving corporation, and the surviving corporation shall be a subsidiary of Sirrom.

Applicant's Legal Analysis

1. Section 57(a) of the Act provides that it is unlawful for any person who is related to a BDC in a manner described in section 57(b), acting as principal, knowingly to sell any security or other property to the BDC or to any company controlled by the BDC except securities of which the buyer is the issuer or of which the seller is the issuer and which are part of a general offering to holders of a class of its securities. Section 57(b) provides that section 57(a) applies to any director, officer, employee of a BDC or any person who is an affiliated person of any such person within the meaning of section 2(a)(3)(C) of the Act. Section 2(a)(3)(C) defines an ''affiliated person'' to include any person directly or indirectly controlling, controlled by, or under common control with such other person. Section 2(a)(9) of the Act provides that any person owning more than 25 percent of the outstanding voting securities of a company is presumed to control the company.

2. Dr. John Morris is chairman of the board and a director of Sirrom and is

[1] Section 2(a)(48) defines a BDC to be any closed-end investment company that operates for the purpose of making investments in securities described in sections 55(a)(1) through 55(a)(3) of the Act and makes available significant managerial assistance with respect to the issuers of such securities. Such issuers are small, nascent companies whose securities typically are illiquid.

therefore an affiliated person of Sirrom. Because Dr. Morris also owns half of the general partner of Sirrom Ltd., and he and his family beneficially own approximately 55% of Sirrom Ltd., Sirrom Ltd. is deemed an affiliated person of an affiliated person of Sirrom and as such is subject to section 57(a). The purchase by Sirrom of the Minority Interest from Sirrom Ltd. is therefore prohibited by section 57(a).

3. Section 57(c) of the Act provides that the SEC may exempt a proposed transaction from section 57(a) if evidence establishes that (i) the terms of the proposed transaction, including the consideration to be paid or received, are reasonable, fair, and do not involve overreaching of the BDC or its shareholders on the part of any person concerned; (ii) the proposed transaction is consistent with the policy of the BDC, as recited in its filings with the SEC, its registration statement, and its reports to shareholders; and (iii) the proposed transaction is consistent with the general purposes of the Act.

4. Applicant represents that the proposed acquisition serves a valid business purpose. After its review of the transaction, applicant's board determined that (a) the acquisition of Harris Williams was accretive to pro forma combined operating earnings for the first quarter of 1996 and was anticipated to be accretive to Sirrom's earnings for the full 1996 year; (b) Harris Williams' small-business merger and acquisition advisory services are strategically complementary to Sirrom's overall small business lending business, providing significant opportunities for cross-selling both to customers and referral sources, as well as enhancing Sirrom's overall ability to realize a liquidity event on its portfolio investments; and (c) Harris Williams provides a source for significant additional fee income to Sirrom without the funding and capital requirements associated with Sirrom's lending business, providing diversification in income and growth potential.

5. Applicant represents that the terms of the Acquisition are the result of arm's length negotiations and special procedures to assure fairness. Sirrom's board and management realized that any proposed sale of Harris Williams to Sirrom would involve a potential conflict of interest. Therefore, Dr. Morris recused himself from all discussions and negotiations relating to the transactions. Sirrom's board also conditioned the consummation of the transaction on the receipt, prior to the solicitation of Sirrom's shareholders, of an opinion from an investment banking firm that the transaction was fair, from a financial point of view, to Sirrom. For these reasons, applicants represent that the transaction satisfies the requirements of section 57(c).

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–18801 Filed 7–23–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37447; File No. SR––96–27]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange, Inc. Relating to the Listing and Trading of Indexed Term Notes

July 17, 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 July 15, 1996, the American Stock Exchange, Inc. (''Amex'' 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 Amex. 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 approve for listing and trading under Section 107A of the Amex *Company Guide*, Indexed Term Notes based in whole or in part on changes in the value of 29 healthcare/biotechnology industry securities.

The text of the proposed rule change is available at the Office of the Secretary, the Amex, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange 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 Amex 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

Pursuant to Section 107A of the Amex *Company Guide*, the Exchange may approve for listing and trading securities which cannot be readily categorized under the listing criteria for common and preferred stocks, bonds, debentures, or warrants.[1] The Amex now proposes to list for trading under Section 107A of the *Company Guide*, Indexed Term Notes whose value, in whole or in part, will be tied to an index consisting of 29 actively traded healthcare/biotechnology industry securities (the ''Index'').[2]

The Indexed Term Notes will be non-convertible debt securities and will conform to the listing guidelines under Section 107A of the *Company Guide*. Although a specific maturity date will not be established until the time of the offering, the Indexed Term Notes will provide for maturity within a period of not less than one nor more than seven years from the date of issue. Indexed Term Notes may provide for periodic payments and/or payments at maturity based in whole or in part on changes in the value of the Index. At maturity holders of the Indexed Term Notes will receive not less than 90% of the initial issue price. Consistent with other structured products, the Exchange will distribute a circular to its membership, prior to the commencement of trading, providing guidance with regard to member firm compliance responsibilities, including appropriate suitability criteria and/or guidelines.

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[1] *See* Securities Exchange Act Release No. 27753 (March 1, 1990), 55 FR 8626 (March 8, 1990).

[2] As of July 8, 1996, the Index was comprised of the stocks of the following 29 issuers: Abbott Laboratories, Amgen, Inc., Apria Healthcare Group, Inc., Baxter International, Inc., Beverly Enterprises, Biogen, Inc., Caremark International, Inc., Chiron Corporation, Columbia/HCA Healthcare Corporation, Emcare Holdings, Inc., Genzyme Corporation, Genesis Health Ventures, Inc., Health Management Associates, Inc., Healthsource, Inc., Healthsouth Corporation, Horizon/CMS Healthcare Corporation, Humana, Inc., Johnson & Johnson, Medpartner/Mullikin, Inc., Neuromedical Systems, Inc., Olsten Corporation, Ornda Healthcorp., Oxford Health Plans, Inc., Phycor, Inc., Quorum Health Group, Inc., Renal Treatment Centers, Inc., Tenet Healthcare Corporation, Total Renal Care Holdings, Inc., and United Healthcare Corporation. According the Exchange, as of July 8, 1996, the market capitalizations of these companies ranged from $222 million to $63.9 billion, and average monthly trading volumes over the six month period from January 1, 1996 to June 30, 1996 ranged from 1.44 million to 58.48 million shares.

Eligibility Standards for Index Components

Components of the Index approved pursuant to this filing shall meet the following criteria: (1) A minimum market value of at least $75 million, except that up to 10% of the component securities in the Index may have a market value of $50 million; (2) average monthly trading volume in the last six months of not less than 1,000,000 shares, except that up to 10% of the component securities in the Index may have an average monthly trading volume of 500,000 shares or more in the last six months; (3) 90% of the Index's numerical Index value and at least 80% of the total number of component securities will meet the then current criteria for standardized option trading set forth in Exchange Rule 915; (4) all component stocks will either be listed on the Amex, the New York Stock Exchange, or traded through the facilities of the National Association of Securities Dealers Automated Quotation System and reported National Market System securities; and (5) if any foreign securities or American Depository Receipts (''ADRs'') represented in the Index cause a particular foreign country's weight in the Index to initially exceed 20% of the Index's numerical Index value, the Exchange will have in place a surveillance sharing agreement with the appropriate regulatory organization in that country.

Index Calculation

The Index will be calculated using an ''equal-dollar weighting'' methodology designed to ensure that each of the component securities is represented in an approximately ''equal'' dollar amount in the Index at the time such Index is established. The Index will initially be set to provide a benchmark value of 100.00 at the close of trading on the day preceding the establishment of the Index.

The multiplier of each component stock in the Index will remain fixed except in the event of certain types of corporate actions such as the payment of a dividend other than an ordinary cash dividend, a stock distribution, stock split, reverse stock split, rights offering, distribution, reorganization, recapitalization, or similar event with respect to the component stocks. The multiplier of each component stock may also be adjusted, if necessary in the event of a merger, consolidation, dissolution or liquidation of an issuer or in certain other events such as the distribution of property by an issuer to shareholders, the expropriation or nationalization of a foreign issuer or the imposition of certain foreign taxes on shareholders of a foreign issuer. If the issuer of a stock included in the Index were to no longer exist, whether by reason of a merger, acquisition or similar type of corporate transaction, a value equal to the stock's final value will be assigned to the stock for the purpose of calculating the Index value. For example, if a company included in the Index were acquired by another company, a value will be assigned to the company's stock equal to the value per share at the time the acquisition occurred. If the issuer of stock included in the Index is in the process of liquidation or subject to a bankruptcy proceeding, insolvency, or other similar adjudication, such security will continue to be included in the Index so long as a market price for such security is available. If a market price is no longer available for an Index stock due to circumstances including but not limited to, liquidation, bankruptcy, insolvency, or any other similar proceeding, then the security will be assigned a value of zero when calculating the Index for so long as no market price exists for that security. If the stock remains in the Index, the multiplier of that security in the portfolio may be adjusted to maintain the component's relative weight in the Index at the level immediately prior to the corporate action. In all cases, the multiplier will be adjusted, if necessary, to ensure Index continuity.

Similar to other stock index values published by the Exchange, the value of the Index will be calculated continuously and disseminated every 15 seconds over the Consolidated Tape Association's Network B.

2. Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Section 6(b)(5) in particular, in that it is 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 facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Amex does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons, for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested person 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, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the Amex.

All submissions should refer to File No. SR–Amex–96–27 and should be submitted by August 14, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[3]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–18715 Filed 7–23–96; 8:45 am]

BILLING CODE 8010–01–M

[3] 17 CFR 200.30–3(a)(12).

[Release No. 34–37448; File No. SR–Amex–96–16]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 to Proposed Rule Change Relating to Specialists' Liquidating Transactions

July 17, 1996.

I. Introduction

On April 30, 1996, the American Stock Exchange, Inc. (''Amex'' or ''Exchange'') submitted to the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Amex Rule 170 to permit a specialist to effect a liquidating transaction on a zero minus tick, in the case of a ''long'' position, or zero plus tick, when covering a ''short'' position, without Floor Official approval. The Amex also proposes to amend this rule to set forth the affirmative action that specialists would be required to take subsequent to affecting various types of liquidating transactions.

Notice of the proposed rule change, together with its terms of substance, was provided by issuance of a Commission release on June 7, 1996, and by publication of this release in the Federal Register on June 14, 1996.[3] No comments were received in response to the Commission release. On July 15, 1996, the Exchange Amendment No. 1 to the Commission.[4] This order approves the proposed rule change on a pilot basis until September 23, 1996.

II. Description of the Proposal

The proposed rule change amends Amex Rule 170 as it pertains to specialists' liquidating transactions. The Commission previously approved the amendments to this rule on a pilot basis.[5]

The Exchange originally proposed to amend Amex Rule 170 in File No. SR–Amex–92–26.[6] The proposed rule change, filed as a one-year pilot program, amended Amex Rule 170 to permit specialists to ''relinquify'' a dealer position by selling ''long'' on a zero minus tick,[7] or by purchasing on a zero plus tick [8] to cover a ''short'' position, without Floor Official approval. The proposed amendments also emphasized the specialist's affirmative role in providing stabilizing dealer participation to the marketplace where reliquification may be required to facilitate the maintenance of a fair and orderly market.

The Commission granted temporary approval of the Amex's proposal on a one-year pilot basis and requested that the Exchange submit a report evaluating the effects of the amendments.[9] The Commission then granted a three-month extension of the pilot on April 21, 1995 to enable the pilot to continue on an uninterrupted basis while the Commission considered the Exchange's request for permanent approval.[10] The Commission subsequently granted an extension of the pilot until July 21, 1996 to enable the Commission to review the Amex's use of the pilot program procedures and to enable the pilot to continue without interruption during the Commission's review.[11] The reports submitted by the Exchange concerning the pilot program noted that the amendments to the Rule appear to be working well in enabling specialists to reliquify appropriately to meet the needs of the market. However, the Exchange is seeking to extend the pilot program until September 23, 1996 so that the Exchange and the Commission can review certain issues associated with the pilot program further.

III. Commission's Findings and Order Granting Accelerated Approval of the Amended Proposed Rule Change

After careful consideration, the Commission concludes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) and Section 11 of the Act.[12] Specifically, the Commission believes the proposal is consistent with the Section 6(b)(5) [13] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest. The Commission also believes the proposal is consistent with Section 11(b) of the Act [14] and Rule 11b–1 [15] thereunder, which allow exchanges to promulgate rules relating to specialists in order to maintain fair and orderly markets.

Under the pilot program, a specialist may liquidate a position by selling stock on a direct minus tick or by purchasing stock on a direct plus tick only if such transactions are reasonably necessary for the maintenance of a fair and orderly market and only if the specialist has obtained the prior approval of a Floor Official. Liquidations on a zero minus or a zero plus tick, which previously required Floor Official approval, can be effected under the pilot procedures without a Floor Official's approval, but continue to be subject to the restriction that they be effected only when reasonably necessary to maintain a fair and orderly market. In addition, the specialist must maintain a fair and orderly market during the liquidation.

After the liquidation, the specialist is required to reenter the market on the opposite side of the market from the liquidating transaction to offset any imbalances between supply and demand. During any period of volatile or unusual market conditions resulting in significant price movement in a specialist's specialty stock, the specialist's re-entry into the market must reflect, at a minimum, his or her usual level of dealer participation in the speciality stock. In addition, during such periods of volatile or unusual price movements, re-entry into the market following a series of transactions must reflect a significant level of dealer participation.

In the 1994 Approval Order, the Commission requested that the Amex submit a report setting forth the criteria developed by the Exchange to determine whether any reliquifications by specialists were necessary and appropriate in connection with fair and orderly markets.[16] The Commission also asked, among other things, that the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 37288 (June 7, 1996), 61 FR 30268.

[4] Amendment No. 1 changed the proposal from a request for permanent approval of this pilot program to an extension of this pilot program until September 23, 1996. *See* letter from Claudia Crowley, Special Counsel, Amex, to Anthony Pecora, Attorney, Division of Market Regulation, SEC, dated July 12, 1996.

[5] *See* Securities Exchange Act Release No. 33957 (Apr. 22, 1994), 59 FR 22188 (''1994 Approval Order'') (approving File No. SR–Amex–92–26); Securities Exchange Act Release No. 35635 (Apr. 21, 1995), 60 FR 20780 (''April 1995 Approval Order'') (approving File No. SR–Amex–95–11); Securities Exchange Act Release No. 36014 (July 21, 1995), 60 FR 38870 (''July 1995 Approval Order'') (approving File No. SR–Amex–95–19).

[6] *See* 1994 Approval Order, *supra* note 5.

[7] A zero minus tick is a price equal to the last sale where the last preceding transaction at a different price was at a higher price.

[8] A zero plus tick is a price equal to the last sale where the last preceding transaction at a different price was at a lower price.

[9] *See* 1994 Approval Order, *supra* note 5.

[10] *See* April 1995 Approval Order, *supra* note 5.

[11] *See* July 1995 Approval Order, *supra* note 5.

[12] 15 U.S.C. 78f(b) and 78k.

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78k(b).

[15] 17 CFR 240.11b–1.

[16] *See* 1994 Approval Order, *supra* note 5.

Exchange provide information regarding the Exchange's monitoring of liquidation transactions effected by specialists on any destabilizing tick. In both of the 1995 approval orders, the Commission requested that the Amex continue to monitor the pilot and update its report where appropriate.[17] In particular, the Commission asked the Amex to report any noncompliance with the Rule and the action the Amex took as a result of such noncompliance.

The Amex submitted its reports concerning the pilot program to the Commission in May 1995 and April 1996. As noted above, the Amex believes the pilot procedures appear to be working well in enabling specialists to reliquify appropriately to meet the needs of the market. After reviewing the data, the Commission agrees with the Exchange that the pilot generally is working well. In particular, the Commission believes the report indicates that specialists generally are entering the aftermarket after effecting liquifying transactions when appropriate.

The Commission believes, however, that certain issues concerning the pilot need to be revisited before permanent approval can be granted. In this regard, the Exchange should continue to emphasize the requirements of Amex Rule 170, including the necessity for Floor Official approval of specialists' purchases and sales on direct plus or minus ticks, and that such transactions can only be effected if reasonably necessary for the maintenance of fair and orderly markets. In addition, where proper procedures are not followed, the Amex should take appropriate disciplinary action.[18]

The Commission finds good cause for approving Amendment No. 1 prior to the thirtieth day after the date of publication of notice of filing thereof. This will permit the pilot program to continue on an uninterrupted basis. In addition, the Exchange proposes to continue using the identical procedures contained in the pilot program. These procedures have been published in the Federal Register on several occasions for the full comment period, [19] and no comments have been received. Furthermore, the Commission approved a similar rule change for the NYSE also without receiving comments on the proposal.[20] For these reasons, the Commission finds that accelerating approval of the proposed rule change is consistent with Section 19(b)(2) of the Act.[21] Any requests to modify this pilot program, to extend its effectiveness, or to seek permanent approval for the pilot program also should include an update on the disciplinary actions taken for violations of these procedures.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–96–16 and should be submitted by August 14, 1996.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[22] that the proposed rule change (SR–Amex–96–16) is approved for a pilot period ending on September 23, 1996.

For the Commission, by the Division, of Market Regulation, pursuant to delegated authority.[23]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–18716 Filed 7–23–96; 8:45 am]

BILLING CODE 8010–01–M

[17] *See* April 1995 Approval Order and July 1995 Approval Order, *supra* note 5.

[18] Failure to obtain the required Floor Official approval when establishing, increasing, or liquidating a position should be enforced by the Exchange through its Minor Rule Violation Fine System unless more serious action is warranted through full disciplinary proceedings. *See* Amex Rule 590.

[19] *See* 1994 Approval Order, *supra* note 5; April 1995 Approval Order, *supra* note 5; July 1995 Approval Order, *supra* note 5; Securities Exchange act Release No. 37288 (June 7, 1996), 61 FR 30268 (publishing notice of File No. SR–Amex–96–16).

[20] *See* Securities Exchange Act Release No. 31797 (Jan. 29, 1993), 58 FR 7277 (approving File No. SR–NYSE–92–20).

[21] 15 U.S.C. 78s(b)(2).

[22] 15 U.S.C. 78s(b)(2).

[23] 17 CFR 200.30–3(a)(12).

[Release No. 34–37444; File No. SR–Amex–96–28]

Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change by American Stock Exchange, Inc. Relating to the Listing and Trading of Indexed Term Notes

July 16, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on July 15, 1996, the American Stock Exchange, Inc. (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission the proposed rule change as described in Items I and II below, which Items have been prepared by the Amex. 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 Amex proposes to approve for listing and trading under Section 107A of the Amex *Company Guide,* Indexed Term Notes based in whole or in part on changes in the value of a portfolio of common stocks representing the ten highest yielding stocks in the Dow Jones Industrial Average (the ''Select Ten'').

The text of the proposed rule change is available at the Office of the Secretary, Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex 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 Amex 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 the Statutory Basis for, the Proposed Rule Change

(1) Purpose

Under Section 107A of the Amex *Company Guide,* the Exchange may approve for listing and trading securities which cannot be readily categorized under the listing criteria for common and preferred stocks, bonds, debentures, or warrants.[1] The Amex now proposes

[1] *See* Securities Exchange Act Release No. 27753 (March 1, 1990).

to list for trading under Section 107A of the *Company Guide,* Indexed Term Notes whose value in whole or in part will be tied to the Select Ten Index. The Select Ten will be determined on two business days prior to the pricing date of the Indexed Term Note.[2]

The Indexed Term Notes will be non-convertible debt securities and will conform to the listing guidelines under Section 107A of the *Company Guide.* Although a specific maturity date will not be established until the time of the offering, the Indexed Term Notes will provide for maturity within approximately ten years from the date of issue. Indexed Term Notes may provide for periodic payments and/or payments at maturity based in whole or in part on changes in the value of the Select Ten Index. At maturity holders of the Indexed Term Notes will receive not less than 90% of the initial issue price. Consistent with other structured products, the Exchange will distribute a circular to its membership, prior to the commencement of trading, providing guidance with regard to member firm compliance responsibilities, including appropriate suitability criteria and/or guidelines.

Eligibility Standards for the Index Components

Components of the Select Ten Index approved pursuant to this filing shall meet the following criteria: (1) A minimum market value of at least $75 million, except that up to 10% of the component securities in the Select Ten Index may have a market value of $50 million; (2) average monthly trading volume in the last six months of not less than 1,000,000 shares, except that up to 10% of the component securities in the Select Ten Index may have an average monthly trading volume of 500,000 shares or more in the last six months; (3) 90% of the Select Ten Index's numerical value and at least 80% of the total number of component securities will meet the then current criteria for standardized option trading set forth in Exchange Rule 915; and (4) all component stocks will either be listed on the Amex, the New York Stock Exchange, or traded through the facilities of the National Association of Securities Dealers Automated Quotation System and reported National Market System securities.

Select Ten Index Calculation

The Select Ten Index will be calculated using an ''equal-dollar weighting'' methodology designed to ensure that each of the component securities is represented in an approximately ''equal'' dollar amount at the time the Index is established. The Index will initially be set to provide a benchmark value of 100.00 at the close of trading on the day preceding the establishment of the Index. The Index will reflect price appreciation and cumulative dividends paid on the Select Ten. The Index will be reconstituted annually to reflect an equal-dollar weighted portfolio of the ten highest yielding stocks in the Dow Jones Industrial Average as of two business days prior to the anniversary of the pricing date.

The multiplier of each component stock in the Index will remain fixed except in the event of certain types of corporate actions such as the payment of a dividend other than an ordinary cash dividend, a stock distribution, stock split, reverse stock split, rights offering, distribution, reorganization, recapitalization, or similar event with respect to the component stocks. The multiplier of each component stock may also be adjusted, if necessary in the event of a merger, consolidation, dissolution or liquidation of an issuer or in certain other events such as the distribution of property by an issuer to shareholders, the expropriation or nationalization of a foreign issuer or the imposition of certain foreign taxes on shareholders of a foreign issuer. If the issuer of a stock included in the Index were to no longer exist, whether by reason of a merger, acquisition or similar type of corporate transaction, a value equal to the stock's final value will be assigned to the stock for the purpose of calculating the Index value. For example, if a company included in the Index were acquired by another company, a value will be assigned to the company's stock equal to the value per share at the time the acquisition occurred. If the issuer of stock included in the Index is the process of liquidation or subject to a bankruptcy proceeding, insolvency, or other similar adjudication, such security will continue to be included in the Index so long as a market price for such security is available. If a market price is no longer available for an Index stock due to circumstances including but not limited to, liquidation, bankruptcy, insolvency, or any other similar proceeding, then the security will be assigned a value of zero when calculating the Index for so long as no market price exists for that security. If the stock remains in the Index, the multiplier of that security in the Index may be adjusted to maintain the component's relative weight in the Index at the level immediately prior to the corporate action. In all cases, the multiplier will be adjusted, if necessary, to ensure Index continuity.

The Exchange will calculate the Select Ten Index and, similar to other stock index values published by the Exchange, the value of the Index will be calculated continuously and disseminated every 15 seconds over the Consolidated Tape Association's Network B.

(2) Basis

The proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) in particular in that it is 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 facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

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

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange 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

[2] The following is a sample list of the component securities in the Select Ten Index as of July 11, 1996: Philip Morris; J.P. Morgan; Texaco; Exxon Corp; Chevron Corp; General Motors; Du Pont; International Paper; Caterpillar Inc; and Eastman Kodak.

arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Amex–96–28 and should be submitted by August 14, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[3]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–18721 Filed 7–23–96; 8:45 am]

BILLING CODE 8010–01–M

[3] 17 CFR 200.30–3(a)(12).

[Release No. 34–37443; File No. SR–CHX–96–17]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to Clearing Support Fees

July 16, 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 July 2, 1996, the Chicago Stock Exchange, Incorporated (''CHX'' 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 Exchange proposes to add an odd-lot dealer CUSIP fee to Section (o) of its Membership Dues and Fees Schedule. The text of the proposed rule change is as follows [new text is italicized]:

Chicago Stock Exchange, Incorporated

Membership Dues and Fees

(o) Clearing Support Fees

(1) Account Fees

First Master Account Fee: $500 per month

Additional Master Account Fee: $300 per month

Sub-Account Fees: $100 per account per month

(2) CUSIP Fees

Specialist CUSIP Fee: $50 per CUSIP per month

Market Maker CUSIP Fee: $10 per CUSIP per month

Odd Lot Dealer CUSIP Fee:[1] $2.50 per CUSIP per month

Floor Broker as Principal: $2 per CUSIP per month

[1] *The Odd Lot Dealer CUSIP Fee does not apply to any issue in which the off-lot dealer is also the specialist for the issue.*

(minimum clearing support fee is $600 per month)

Discounts

The above Specialist CUSIP Fee will be subject to the following discounts:

If between 20 and 200 trades occur in a particular CUSIP in a given month, the Specialist CUSIP Fee for the CUSIP shall be $40 for that month.

If less then 20 trades occur in a particular CUSIP in a given month, the Specialist CUSIP Fee for that CUSIP shall be $20 for that month.

II. Self-Regulatory Organizations' 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 place specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Section A, B, 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 purpose of the proposed rule change is to add a clearing support fee for odd-lot dealers. The new fee will not apply to any issue in which the odd-lot dealer is also the specialist for the issue. This new fee is similar to the clearing support fees imposed on specialists, market makers and floor brokers acting as principal pursuant to SR–CHZ–96–10.[1] This fee relates to the additional services the CHX is providing to odd-lot dealers as a result of the Midwest Clearing Corporation's withdrawal from the clearance and settlement business. The odd-lot dealer clearing support fee is applicable to all odd-lot dealers that have entered into an agency agreement with the CHX pursuant to Article XXI, Rule 13 of the Exchange's Rules.

The amount of this CUSIP fee is based on expected account activity and the expenses that the CHX will incur in servicing accounts for odd-lot dealers. For example, because the CHX expects odd-lot dealers to have less activity per CUSIP than specialists or market markers due to the unusually large number of issues that an odd-lot dealer typically trades, thus resulting in a lesser amount of staff time expended per CUSIP to produce reports and provide the service contemplated by the agency agreement, the odd-lot dealer CUSIP fee is less than the specialist and market maker CUSIP fee.

2. Statutory Basis. The proposed rule change is consistent with Section 6(b)(4) of the Act in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members and issuers and persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange and, therefore, has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act and subparagraph (e) of Rule 19b–4[2] thereunder. At any time within 60 days of the filing of such proposed rule

[1] Securities Exchange Act Release No. 37054 (April 1, 1996), 61 FR 15544 (publishing Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Clearing Support and Other Fees).

[2] 17 CFR 240.19b–4.

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 purpose 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, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CHX–96–17 and should be submitted by August 14, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–18719 Filed 7–23–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37442; File No. SR–CHX–96–18]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to an Extension of Its Pilot Program for Automatic Execution of Limit Orders

July 16, 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 July 2, 1996, the Chicago Stock Exchange, Incorporated (''CHX'' 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 and to grant accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend, until December 31, 1996, its system enhancement relating to the automatic execution of non-marketable limit orders,[1] and extend, until August 31, 1996, the deadline for filing a report to the Commission describing the Exchange's experience with the program. This system enhancement is the subject of a current Commission approval order, which is scheduled to expire on July 31, 1996,[2] The related report was due by May 31, 1996. A slightly modified version of this enhancement was originally approved by the Commission as a one year pilot program.[3] The original one-year pilot program lapsed on April 13, 1994 without the Exchange filing for an extension or a permanent approval request.

The proposed system enhancement (''Auto-Ex'') is a feature of the Exchange's automated execution system (''MAX'') that CHX specialists may voluntarily choose to activate to automatically execute non-marketable limit orders[4] on a specialist's book. Auto-Ex will operate by comparing the size of the CHX-entered limit order against the amount of stock ahead of that order in the primary market when the issue is trading in the primary market at the limit price. The Auto-Ex System will begin comparing CHX-entered limit orders when the limit price equals the bid or offer quoted in the primary market (as the case may be) for the first time.[5] Thereafter, the Auto-Ex system will keep track of all prints in the primary market and will automatically execute the limit order once sufficient size prints in the primary market.[6] As additional limit orders at the same price are received by the specialist, comparisons will be made and entered based upon the shares ahead of those limit orders at the time of receipt, including shares ahead on the CHX. The Auto-Ex feature will not permit a limit order to be filled out of sequence.

The Auto-Ex feature will execute limit orders in accordance with existing CHX rules. Auto-Ex will be available for all dually traded issues; however, specialists will be permitted to choose Auto-Ex on an issue by issue basis.[7] Generally, however, Auto-Ex will be used for issues which, based on experience, have demonstrated reliable and accurate quotes in the primary market. Limit orders not subject to Auto-Ex will be ''flagged'' with a prompt to alert the specialist that a fill may be due. The proposal to establish an Auto-Ex feature applies only to non-marketable limit orders. It is not applicable to marketable limit orders or to market orders.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has

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[1] A limit order is an order to buy or sell a stated amount of a security at a specified price or at a better price.

[2] *See* Securities Exchange Act Release No. 35962 (July 12, 1995) (File No. SR–CHX–95–11).

[3] *See* Securities Exchange Act Release No. 32124 (April 13, 1993), 58 FR 21325 (approving File No. SR–MSE–92–03).

[4] A limit order is called ''marketable'' when the prevailing best offer (bid) is equal to or less (greater) than the limit buy (sell) order price. CHX Rule 37(b)(7) provides for the automatic execution at the best bid or best offer disseminated pursuant to Rule 11Ac1–2 (''BBO'') or better of all limit orders that are marketable when entered into the MAX system provided that such orders are of a certain size and otherwise are eligible for execution under a CHX Rule 37(a).

[5] For example, if the primary market quotation is ¼ bid, ½ offered, 4,000 shares bid and 4,000 shares offered, and a CHX specialist receives a limit order to buy 2,000 shares for ⅛, that limit order will not be compared against the amount of stock ahead of the order in the primary market until such time as the ¼ bid is exhausted and the ⅛ bid becomes the best bid. At that time, the size which is disseminated with the ⅛ bid is the size against which the limit order is compared for Auto-Ex purposes.

[6] For example, assume a CHX specialist receives an agency limit order to buy 2,000 shares of ABC at ½. The primary market quotation is ½ bid, ¾ offered, 5,000 shares bid and 5,000 shares offered, meaning there are 5,000 shares ahead of the CHX order. The Auto-Ex system will automatically execute the entire CHX limit order after 7,000 shares print at ½ in the primary market. However, when more than 5,000 but less than 7,000 shares print at ½ in the primary market, the order will be flagged with a flashing prompt to alert the specialist that the order may be due at least a partial fill. *See* CHX Article XX, Rule 37(a) governing primary market protection of certain limit orders.

[7] The CHX will limit a specialist's ability to activate and then deactivate Auto-Ex regularly by: (1) only permitting a specialist to deactivate Auto-Ex on a certain day each month and (2) requiring that issues remain on Auto-Ex for a minimum of five trading days.

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 purpose of the proposed rule change is to extend the Auto-Ex System for six months, until December 31, 1996, and extend, until August 31, 1996, the deadline for providing the Commission with the related report. The extension of the pilot program is requested in order to provide the Exchange with additional time to prepare the report to the Commission. The extension of the deadline for the report is requested because specialists only began using the Auto-Ex System in April 1996. Without an extension, the Exchange would not have meaningful data for its report to the Commission.

The Auto-Ex System further automates the CHX's trading floor functions in order to improve the CHX's performance in filling limit orders. By providing for automatic execution of limit orders in accordance with existing Exchange rules, the CHX is eliminating the need for the manual operation required of specialists in determining when and to what extent limit orders are due fills based on primary market prints. The manual effort expended by specialists in filling limit orders that are entitled to primary market protection is often time-consuming and can result in errors, particularly when there is heavy trading volume. The present proposal, therefore, directly benefits customers because it results in more timely fills while eliminating errors resulting from manual execution.

The Auto-Ex feature does not change or amend any CHX trading rules, nor does it cause or allow limit orders to be filled under different parameters than under existing rules. Auto-Ex only automates the manner in which limit orders are filled. The CHX will continue to monitor specialist execution of limit orders through the Market Regulation/Surveillance Department. In addition, CHX specialists will continue to be responsible for their books to the same degree as they are now under the manual execution system for limit orders.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. In this regard, Auto-Ex should help to speed execution of non-marketable limit orders on the CHX and may reduce the possibility of missed orders during periods of heavy trading volume.

The proposed rule change is consistent with the requirements of Section 11A(a)(1)(C) of the Act in that the proposal is designed to contribute to the best execution of investors' orders while assuring the economically efficient execution of transactions, which in turn protects the public interest and promotes fair and orderly markets. In this regard, incoming orders subject to Auto-Ex, just as any other CHX order entitled to primary market protection, should receive the best execution available because a print on the primary market at the limit price triggers execution on the CHX. In addition, the Exchange's implementation of Auto-Ex should assure fair competition among exchange markets, which benefits public investors.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should files 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–CHX–96–18 and should be submitted by August 14, 1996.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with the requirements of Section 6(b) of the Act. Specifically, the Commission believes that the proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest. The Commission believes that the proposed rule change to provide for the automatic execution of non-marketable limit orders should result in prompt execution of such orders on the Exchange and reduce errors caused by manual execution of limit orders that are entitled to primary market protection, especially during periods of heavy trading volume.

In the order approving the pilot procedures,[8] the Commission expressed concern about the Exchange specialists' discretion with respect to which stocks will be executed automatically through Auto-Ex, and whether manually-executed orders and Auto-Ex orders would receive differential treatment. Therefore, the Commission asked the Exchange to study the effects of the pilot and address the above-stated concerns, as well as other points specified in the Commission's order.[9] At this time, the Exchange requests that the point be extended beyond its expiration date of July 31, 1996 so that the Exchange may gather meaningful data for its report to the Commission. The Exchange states that the delay in producing the report is due in part to the fact that the specialists only began to use the Auto-Ex System in April 1996. The Commission finds that it would be reasonable to allow the Exchange to have additional time to gather the data requested and produce the report to the Commission. Accordingly, the Commission will extend the deadline for providing the Commission with the report to August 31, 1996. Moreover, the Commission believes it would be appropriate to

[8] *See* Securities Exchange Act Release No. 35962, *supra* note 2.

[9] *Id.*

extend the pilot program until December 31, 1996 so that investors may continue to receive the benefit of automatic execution of non-marketable limit orders from Auto-Ex while the Commission evaluates carefully the information provided by the Exchange and considers whether to approve the pilot program permanently.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of filing thereof. This will permit the pilot program to continue on an uninterrupted basis. In addition, the Exchange proposes to continue using the identical procedures of the pilot program that were published in the Federal Register for the full comment period and were approved by the Commission. Any requests to modify this pilot program, to extend its effectiveness, or to seek permanent approval for the pilot also should be submitted to the Commission by October 15, 1996 as a proposed rule change pursuant to Section 19(b) of the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–CHX–96–18) is hereby approved on a pilot basis until December 31, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–18720 Filed 7–23–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37451; File No. SR–MSTC–96–03]

Self-Regulatory Organizations; Midwest Securities Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Return of Participants Fund Contributions

July 17, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on June 18, 1996, the Midwest Securities Trust Company (''MSTC'') 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 MSTC. On July 2, 1996, MSTC amended the proposed rule change to make a technical correction.[2] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

MSTC proposed to notify those participants whose accounts are closed and who have provided properly executed indemnification agreements of a deferral of the final distribution of their participants fund deposits for sixty days, until August 15, 1996. A notice will be sent to all participants.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, MSTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. MSTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On January 5, 1996, the Commission approved a proposed rule change filed by MSTC, which called for termination of MSTC services as of January 15, 1996.[4] On February 20, 1996, MSTC filed with the Commission a proposed rule change, which was effective upon filing, relating to, among other things, the procedures to be used by MSTC with respect to the liquidation of the MSTC participants fund.[5] An attachment to the proposed rule change set forth a schedule for the return of participant fund deposits. However, such attachment expressly provided that the schedule was subject to the right of MSTC to retain funds if necessary in its view to fund possible contingent liabilities. Because MSTC has not yet completed a wind-down of its operations, contingent liabilities may still exist. Therefore, pending completion of the wind-down, MSTC intends to postpone the final distribution of participant fund contributions for sixty days, until August 15, 1996.

MSTC believes the proposed rule change is consistent with Section 17A(b)(3)(F)[6] of the Act because it will facilitate the prompt and accurate clearance and settlement of securities transactions and will assure the safeguarding of securities and funds which are in MSTC's custody or control or for which MSTC is responsible.

(B) Self-Regulatory Organization's Statement on Burden on Competition

MSTC 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

MSTC has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(i)[7] of the Act and Rule 19b–4(e)(1)[8] promulgated thereunder because the proposal constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of MSTC. At any time within sixty days of the filing of such 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, NW., Washington, DC 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

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[10] 15 U.S.C. § 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] Letter from David T. Rusoff, Foley & Lardner, to Peter Geraghty, Division of Market Regulation, Commission (July 2, 1996).

[3] The Commission has modified the text of the summaries prepared by MSTC.

[4] For a complete description of MSTC's withdrawal from the securities depository business, refer to Securities Exchange Act Release No. 36684 (January 9, 1996), 61 FR 1195 [File No. SR–MSTC–95–10] (order approving proposed rule change).

[5] Securities Exchange Act Release No. 36965 (March 13, 1996), 61 FR 11456 [File No. SR–MSTC–96–02] (notice of filing and immediate effectiveness of proposed rule change).

[6] 15 U.S.C. § 78q–1(b)(3)(F) (1988).

[7] 15 U.S.C. § 78s(b)(3)(A)(i) (1988).

[8] 17 CFR 240.19b–4(e)(1) (1995).

proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of MSTC. All submissions should refer to File No. SR–MSTC–96–03 and should be submitted by August 14, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–18799 Filed 7–23–96; 8:45 am]

BILLING CODE 8010–01–M

[9] 17 CFR 200.30–3(a)(12) (1995).

[Release No. 34–37445; File No. SR–NYSE–95–42]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendments No. 1 and 2 Thereto by the New York Stock Exchange, Inc. Relating to the Establishment of Uniform Listing and Trading Guidelines for Narrow-Based Stock Index Warrants

July 16, 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 December 10, 1995, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NYSE. The NYSE filed Amendments No. 1 (''Amendment No. 1'') and 2 (''Amendment No. 2'' together with Amendment No. 1 ''Amendments'') to the proposed rule change on April 3 and July 12, 1996, respectively.[1] This Order approves the proposed rule change, as amended, on an accelerated basis and also solicits comments on the proposed rule change, as amended, from interested persons.

[1] Letter from James E. Buck, Secretary, NYSE, to Michael Walinskas, SEC, dated April 2, 1996 (Amendment No. 1) and Letter from James E. Buck, Secretary, NYSE, to Ivette Lopez, SEC, dated July 11, 1996 (Amendment No. 2). The Amendments primarily address and clarify position limit related issues.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NYSE proposes to amend Rule 414 (Index and Currency Warrants) and Rule 431 (Margin Requirements) to permit the trading of warrants on an industry index stock group (''industry index stock group'' or ''narrow-based stock index''). Amendments No. 1 and 2 propose to modify Rule 414 and certain of the position limit rules that apply to narrow-based stock index warrants, as discussed below.

The text of the proposed rule change is available at the Office of the Secretary of the NYSE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NYSE 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 NYSE 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

On August 29, 1995, the Commission approved rule changes for the NYSE and several other stock exchanges which established uniform listing and trading guidelines for broad-based stock index, currency, and currency index warrants (''broad-based regulatory framework'').[2] Those standards govern all aspects of the listing and trading of index warrants, including issuer eligibility, customer suitability and account approval procedures, position and exercise limits, reportable positions, automatic exercise, settlement, margin, and trading halts and suspensions.

The purpose of this proposal is to allow for the listing and trading of warrants on narrow-based stock index groups in a similar manner as was recently approved for other U.S. exchanges.[3] With the exceptions of separate higher margin requirements and reduced position limits, the broad-based regulatory framework will fully apply to the listing, trading, and surveillance of narrow-based index warrants. This includes a heightened suitability standard for recommendations in index warrants as well as requiring all purchasers of index warrants to be options approved. The proposed changes from the broad-based regulatory framework are outlined as follows:

(a) Position Limits

The Exchange notes that position limits for broad-based index warrants were set at levels approximately equal to 75 percent of the then applicable corresponding limits applicable to options on the same index. In turn, the Exchange proposes to establish narrow-based index warrant position limits at a level equal to 75 percent of those recently approved for narrow-based index options.[4] As a result, narrow-based position limits would be governed by three tiers, using the same qualifications criteria as used for narrow-based index option position limits:

(i) 4,500,000 warrants if any single stock in the group accounts for 30 percent or more of the index group value.[5]

(ii) 6,750,000 warrants where either: (a) any single stock in the group accounts for 20 percent or more of the group's numerical index value; or (b) any five stocks in the group together account for more than 50 percent of the index group value and no single stock in the group accounts for 30 percent or more of the index group value.[6]

(iii) 9,000,000 warrants if the underlying group does not fall within the criteria set forth in either of the other two tiers.

The NYSE proposes that it make the determinations concerning the relative weight of stocks within an index when a warrant on the index first commences to trade on the Exchange and twice a year thereafter. Furthermore, the Exchange proposes to establish uniform dates on which to make those semi-annual determinations so as to allow it to make all such determinations for all Exchange-listed industry index warrants at the same time.

[2] On August 29, 1995, the Commission approved uniform listing and trading guidelines for stock index, currency and currency index warrants for the NYSE, Pacific Stock Exchange, Philadelphia Stock Exchange, American Stock Exchange, and Chicago Board Options Exchange. *See* Securities Exchange Act Release Nos. 36165, 36166, 36167, 36168, and 36169 (Aug. 29, 1995), respectively.

[3] On March 21, 1996, the Commission approved uniform listing and trading guidelines for narrow-based stock index warrants for the Philadelphia Stock Exchange, American Stock Exchange, and Chicago Board Options Exchange. *See* Securities Exchange Act Release No. 37007 (March 21, 1996).

[4] Currently, depending on the characteristics of the index, position limits for narrow-based index options are either 12,000, 9,000, or 6,000 contracts on the same side of the market.

[5] *See* Amendment No. 2.

[6] *See* Amendment No. 2.

The NYSE further proposes that after a warrant first commences to trade, it will make its subsequent semi-annual determinations on the first of the uniform dates thereafter. If the subsequent semi-annual determinations indicate that an underlying industry index stock group now qualifies for a higher position limit, then the filing would allow the Exchange to increase the limit to the new number immediately. Once a position limit has been established for a particular issuance of warrants, however, it would never decrease as a result of changes in the relative weights of the index's component stocks.[7] The Exchange believes this provision would eliminate the confusion and difficulty that might accompany a forced reduction in position limits during the life of a particular industry index warrant issue.

In addition, Amendment No. 1 clarifies that industry index warrant positions that a person or group of persons acting in concert holds or controls must be aggregated for the purpose of applying the industry index warrant rules. Aggregation applies in two contexts: within a particular issue of industry index warrants and among different issues on the same underlying industry index stock group. Within a particular issue of industry index warrants, the aggregate position is subject to the position limit that applies to that issue. In the case of multiple issues of warrants on the same underlying industry index stock groups, the aggregate position for all such issues is subject to the maximum position limit that applies in respect of any such issue.

(b) Margin Requirements

Margin will be similar to that required for narrow-based index options. Accordingly, all purchases of narrow-based index warrants must be paid in full. Additionally, the minimum margin required for each narrow-based index warrant carried short in a customer's account would be 100% of the current market value of each warrant plus 20% of the current index group value. Narrow-based index warrants would also be subject to the same spread margin treatment recently approved for broad-based index warrants.[8]

Listing Warrants on Approved Indexes

The proposed narrow-based index warrant regulatory framework would also allow the Exchange to list a warrant on a narrow-based stock index without prior Commission approval if the Commission has already approved the underlying stock index for warrant or options trading. Furthermore, the Exchange proposes to incorporate certain generic initial listing and maintenance criteria which, when satisfied, provide for the expedited approval of warrants based on narrow-based indexes. The expedited approval process is nearly identical to that approved for narrow-based index options,[9] except as provided below:

(i) The index must contain a minimum of nine stocks at all times;[10] and

(ii) Allow for the use of closing (''p.m.'') prices in determining the value of an index warrant except that, where 25 percent or more of the value of an index underlying a warrant consists of stocks that trade primarily in the United States, opening prices (''a.m. settlement'') must be used at (1) the warrant's expiration, and (2) on any date in which the warrant's settlement value will be based on prices on either of the two business days preceding expiration.[11]

The basis under the Act for the proposal, as amended, 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 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 NYSE does not believe the proposed rule change imposes 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.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange requests the Commission to find good cause pursuant to Section 19(b)(2) for approving the proposal, as amended, prior to the 30th day after its publication in the Federal Register in view of the Commission's previous approval of substantially identical rule changes submitted by three other SROs.[12] These other proposals were subject to the full notice and comment period and the Exchange notes that no comment letters were submitted. The NYSE also notes that the Commission approved amendments to the three other SRO's narrow-based stock index warrant proposal on an accelerated basis. Accordingly, because the NYSE's proposed regulatory structure for narrow-based stock index warrants mirrors standards already approved by the Commission for other SROs, the NYSE believes no regulatory purpose would be served by delaying the ability of NYSE to list narrow-based stock index warrants.

IV. Findings and Conclusions

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5).[13] Specifically, the Commission finds that the Exchange's proposal to establish uniform listing and trading standards for narrow-based stock index warrants strikes a reasonable balance between the Commission's mandates under Section 6(b)(5) to remove impediments to and perfect the mechanism of a free and open market and a national market system, while protecting investors and the public interest. In addition, the proposed listing standards for warrants are consistent with the Section 6(b)(5) requirements that rules of an exchange be designed to prevent fraudulent and manipulative acts, to promote just and equitable principles of trade, and are not designed to permit unfair discrimination among issuers.

The Exchange's proposed generic listing standards for narrow-based stock index warrants set forth a regulatory framework for the listing of such products. Generally, listing standards serve as a means for an exchange to screen issuers and to provide listed status only to *bona fide* issuances that will have sufficient public float, investor base, and trading interest to ensure that the market has the depth and liquidity necessary to maintain fair and orderly markets. Adequate standards are especially important for warrant issuances given the leveraged and contingent liability they represent.

[7] Subsequently issued warrants on the same industry index stock group would, however, be subject to the position limit applicable at the time of the new issuance. This may result in separate issuances of warrants on the same narrow-based stock index with disparate position limit levels.

[8] *See* NYSE Rule 431.

[9] *See* Securities Exchange Act Release No. 34157 (June 3, 1994).

[10] The generic narrow-based index option standard requires ten stocks initially and nine stocks thereafter.

[11] The generic index option standard requires the use of opening (''a.m.'') price settlement.

[12] *See supra* note 3.

[13] 15 U.S.C. § 78f(b)(5) (1988).

The Commission notes that, with certain exceptions listed below, the Exchange will apply to narrow-based index warrants the same regulatory framework which recently was approved for broad-based index warrants. In approving the broad-based index warrant regulatory framework, the Commission found that the framework provides an adequate regulatory structure for the trading of such warrants, including appropriate trading rules, sales practice requirements, margin requirements, position and exercise limits and surveillance procedures. The Commission also found that the applicable framework is designed to minimize the potential for manipulation, thereby helping to ensure that such index warrants do not have a negative market impact. Finally, the Commission also indicated that the framework adequately addressed the special risks to customers arising from the trading of such warrants.[14]

The Commission believes it is reasonable for the Exchange to apply a nearly identical regulatory structure to narrow-based index warrants as broad-based index warrants, particularly given the substantial similarities that exist between them.[15] Both broad and narrow-based stock index warrants represent a leveraged investment in a portfolio or group of equity securities. However, broad-based index products generally have a large number of component securities and represent a certain overall equities market or a substantial segment thereof. Narrow-based index products, on the other hand, generally are comprised of fewer component securities that often are concentrated in a particular industry group. These differences heighten concerns with leveraged narrow-based index products regarding market impact, manipulation and volatility, dictating that narrow-based indexes be subject to lower position limits and more restrictive margin treatment.[16]

Accordingly, the Exchange has proposed separate margin and position limit treatment for narrow-based index warrants. The proposed margin levels are analogous to those currently in place for narrow-based stock index options. The Commission believes these requirements will provide adequate customer margin levels sufficient to account for the potential volatility of these products. In addition, the Commission believes that it is appropriate to apply options margin treatment given the options-like market risk posed by warrants.[17]

The proposed position limits are also similar to those in place for narrow-based index options.[18] In addition, the Exchange has proposed aggregation requirements to address multiple issuances of warrants on the same narrow-based index.[19] The Commission believes that the position limits and aggregation requirements are reasonable and will serve to minimize potential manipulation and other market impact concerns while not unduly restricting liquidity in warrant issuances.

The Commission believes the Exchange's existing surveillance procedures applicable to broad-based index warrants are adequate to surveil the trading of narrow-based index warrants. The Commission found that the Exchange's broad-based surveillance procedures were adequate to surveil for manipulation and other abuses involving the warrant market and the underlying component securities. Given the functional similarities between narrow and broad-based index warrants, the Commission believes it is reasonable to apply the same surveillance procedures to both.

Similarly, for the same reasons noted in our order approving broad-based index warrants, the Commission believes that heightened customer suitability standards, options account approval requirements, and sales practice procedures which are modelled after index options should be extended to narrow-based index warrants. The Commission notes that, upon approval of this filing, the Exchange may list a warrant upon any narrow-based index that the Commission has previously approved for options or warrant trading. Additionally, in order to expedite SEC review of a particular warrant issuance, the Exchange has proposed employing accelerated listing procedures similar to those adopted for listing options on narrow-based indexes.[20]

The Commission notes that these proposed accelerated listing standards for index warrants differ from the standards applicable to narrow-based index options in that there is a minimum nine stock requirement for index warrants (*i.e.*, an index must initially and at all times thereafter be comprised of at least nine stocks) and that index warrants may, at certain times, utilize a p.m. settlement methodology, as discussed above. The Commission believes the proposed differences are reasonable in the warrant context for several reasons.

With respect to p.m. settlement, index warrants are issuer-based products whose terms are individually set by the issuer, with the number of warrants on a given index being fixed at the time of issuance. Accordingly, it is not certain that there will be a significant number of warrants in indexes with similar components expiring on the same day. This may reduce pressure from liquidation of warrant hedges at settlement. Second, the Commission authorized the same settlement methodology for broad-based index warrants and believes it is reasonable that narrow-based index warrants operate in the same manner. With respect to the nine stock requirement, the Commission does not believe that this difference is such that it will subject narrow-based index warrants to

[14] Pursuant to Section 6(b)(5) of the Act, the Commission is required to find, among other things, that trading in warrants will serve to protect investors and contribute to the maintenance of fair and orderly markets. In this regard, the Commission must predicate approval of any new derivative product upon a finding that the introduction of such derivative instrument is in the public interest. Such a finding would be difficult for a derivative instrument that served no hedging or other economic function, because any benefits that might be derived by market participants likely would be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns. As discussed below, the Commission believes narrow-based index warrants will serve an economic purpose by providing an alternative product that will allow investors to participate in the price movements of the underlying securities in addition to allowing investors holding positions in some or all of such securities to hedge the risks associated with their portfolios.

[15] The regulatory framework for broad-based index warrants is similar to the approach used in regulating index options. Because the same risks exist in trading of narrow-based index options, the Commission believes it is appropriate to utilize the same approach.

[16] This is similar to the approach taken in regulating narrow-based and broad-based index options.

[17] The customer spread margin rules applicable to broad-based stock index and currency warrants were approved subject to a one year pilot program. The Commission notes that narrow-based index warrants will be subject to the same pilot program and, upon expiration of that program, it will determine whether to revise or approve on a permanent basis the proposed spread margin rules.

[18] The Commission notes that position limits for broad-based stock index warrants were set at a level roughly equivalent to 75% of broad-based index options. In the absence of trading experience with U.S. equities market based index warrants, the Commission believes it would be imprudent to establish position limits for positions greater than those currently applicable (on an equivalent basis) to stock index options on the same index.

[19] Because each individual warrant issuance is assigned a separate identification symbol, the Exchange has the ability to monitor the aggregation of separate issuances of warrants on the same underlying index.

[20] Accelerated listing procedures allow the Exchange to permit issuances of warrants on a particular narrow-based index pursuant to a filing submitted to the Commission for effectiveness immediately upon filing under Section 19(b)(3)(A) of the Act. In the event that a proposed index does not qualify for expedited approval under these standards, the Exchange is not precluded from filing a proposed rule change for Commission review pursuant to Section 19(b)(2).

increased manipulation. In fact, narrow-based index options impose the same maintenance requirement of nine stocks. The Commission does not believe that the creation of a nine stock index, as opposed to a ten stock index, will lead to increased manipulation, per se, provided the other listing criteria are satisfied. The Commission notes that this requirement precludes the issuance of index warrants pursuant to the accelerated listing procedures upon any index comprised of less than nine stocks.

The Commission believes that the accelerated listing procedures will provide a sufficient opportunity for it to examine narrow-based index warrant products based on new indexes (which require that a filing be made pursuant to Section 19(b)(3)(A) of the Act). Specifically, the Commission believes that the seven day prefiling requirement gives the Commission staff an opportunity to discuss with the Exchange whether its proposal to list and trade particular narrow-based index warrants properly qualifies for effectiveness upon filing. In addition, the Commission finds that the 30 day delay in the commencement of trading of proposed narrow-based index warrants will provide a meaningful opportunity for public comment prior to the commencement of trading, while also providing the Exchange with the opportunity to inform market participants in advance of the proposed trade date for new index warrants. In accordance with Section 19(b)(3)(C) of the Act, if the Commission determines that the rule change proposal is inconsistent with the requirements of the Act and the rules and regulations thereunder, the 30 day delay would allow the Commission to abrogate the rule change before trading commences, which will minimize disruption on market participants. This authority could be utilized if, for example, it is determined that the proposed narrow-based index warrant does not satisfy the applicable accelerated listing standards.

The Commission believes that the adoption of these proposed uniform listing and trading standards for narrow-based index warrants will provide an appropriate regulatory framework. These standards will also benefit the Exchange by providing it with greater flexibility in structuring narrow-based index warrant issuances and a more expedient process for listing narrow-based index warrants without further Commission review pursuant to Section 19(b) of the Act. As noted above, additional Commission review of specific warrant issuances will generally only be required for warrants overlying any non-approved narrow-based index that has not been previously approved by the Commission for narrow-based index warrant or options trading. If Commission review of a particular warrant issuance is required, the Commission expects that, to the extent that the warrant issuance complies with the uniform criteria adopted herein, its review should generally be limited to issues concerning the newly proposed index. This should help ensure that such additional Commission review could be completed in a prompt manner without causing any unnecessary delay in listing new narrow-based index warrant products.

The Commission finds good cause for approving the proposal, as amended, prior to the thirtieth day after the date of publication of notice thereof in the Federal Register in order to allow the NYSE to begin listing narrow-based stock index warrants without delay. As discussed above, the proposal is nearly identical to those submitted by several other SROs.[21] These other narrow-based stock index warrant proposals were subject to the full notice and comment period and no comment letters were received in response. The Commission notes that the filing, as amended, brings the NYSE's proposal into conformity with those of the other exchanges. Accordingly, the Commission does not believe the filing, as amended, raises any new or unique regulatory issues.

For these reasons, the Commission believes there is good cause, consistent with Section 19(b)(2)[22] of the Act, to approve the Exchange's proposal, as amended, on an accelerated basis.

V. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Person making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by August 14, 1996.

It therefore is ordered, pursuant to Section 19(b)(2) of the Act,[23] that proposed rule change (SR–NYSE–95–42) is approved, as amended.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[24]

Margaret H. McFarland,

Deputy Secretary.

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[21] *See supra* note 3.

[22] 15 U.S.C. § 78s(b)(2) (1988).

[23] 15 U.S.C. § 78s(b)(2) (1988).

[24] 17 CFR § 200.30–3(a)(12) (1994).

[Release No. 34–37450; File No. SR–NYSE–96–11]

Self-Regulatory Organizations; the New York Stock Exchange, Inc.; Order Granting Approval To Proposed Rule Change Relating to Procedures for Public Release of Information by Its Listed Companies

July 17, 1996.

I. Introduction

On May 7, 1996, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its rules governing the procedures followed by its listed companies for disseminating material news or information to the public.

The proposed rule change was published for comment in Securities Exchange Act Release No. 37237 (May 22, 1996), 61 FR 26943 (May 29, 1996). No comments were received on the proposal.

II. Description of the Proposal

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. Section 202.06(B) and Section 202.06(C) of the Exchange's Listed Company Manual currently requires listed companies to disseminate material news to Dow Jones & Company, Inc. (''Dow Jones'') and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Reuters Economic Services (''Reuters''). Listed companies are encouraged, though not required, to promptly distribute news releases to Bloomberg Business News (''Bloomberg''). It is common practice today among many listed companies to disseminate material news to Dow Jones, Reuters and Bloomberg.

The Exchange proposes to amend this rule to 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. According to the NYSE, Bloomberg's news network has dramatically expanded in recent years and reaches a broad base of equity participants and related subscribers.[3]

III. Discussion

After careful consideration of the NYSE's proposal, and based on the belief that Bloomberg is a widely used news service organization within the investing community, the Commission finds that the NYSE's proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission believes the proposal is consistent with Section 6(b)(5)[4] of the Act, which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, and 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.

The Commission believes that it is reasonable for the NYSE to require its listed companies to distribute material news releases to Bloomberg as well as Dow Jones and Reuters as currently required. As previously stated, Bloomberg is a 24-hour, global news service which instantaneously transmits more than 3,000 stories daily to over 140,000 on-line customers from its 63 bureaus around the world; and, its news byline regularly appears in more than 160 flagship newspapers throughout the U.S., Europe and Asia.

The Commission believes that approval of the NYSE's proposal to amend Section 202.06(B) and Section 202.06(C) of its Listed Company Manual to mandate the dissemination of material news to Bloomberg will provide the public with an additional source for obtaining information about NYSE listed companies, thereby improving the public's ability to assess the suitability of these companies for various investment purposes. Expanding the list of required news services to include Bloomberg will also increase the probability of the material news being received by those it potentially may impact, and those most likely to be in need of the information.

Moreover, the addition of Bloomberg should facilitate the widespread dissemination of the information within the market place, thus improving the public's ability to be quickly informed about material changes affecting listed companies. Additionally, the mandatory dissemination of material news to Bloomberg will not necessarily impose any undue burden on listed companies because the proposal is simply to codify what NYSE already has stated is a widespread practice of many NYSE listed companies and in any case, any additional burden is minimal. Based on the above, the Commission believes that the proposed amendment is consistent with Section 6(b)(5)[5] of the Act in that it seeks to promote just and equitable principles of trade, will serve to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public.

IV. Conclusion

For the reasons discussed above, the Commission believes the proposal of the NYSE to amend its rules, contained in Section 202.06(B) and Section 202.06(C) of its Listed Company Manual, which govern the procedures followed by its listed companies for disseminating material news or information to the public is consistent with Section 6(b)(5) of the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[6] that the proposed rule change (SR–NYSE–96–11) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

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[3] Information obtained from Bloomberg's Home Page on the internet (www.bloomberg.com) indicates that Bloomberg, an affiliate of Bloomberg Financial Markets, is a 24-hour, global news service which instantaneously transmits more than 3,000 stories daily to over 140,000 on-line customers from its 63 bureaus around the world. It is a full-service news service available on dedicated computer terminals. According to Bloomberg, it provides live coverage of the world's governments, corporations, industries, and all major financial markets. These markets include: government, corporate, and municipal bonds; equity and preferred stocks; commodities; and currencies. In addition, Bloomberg states its news byline regularly appears in more than 160 flagship newspapers throughout the United States, Europe and Asia.

[4] 15 U.S.C. 78f(b)(5).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(2).

[7] 17 CFR 200.30–3(a)(12).

[Release No. 34–37449; File No. SR–OCC–96–06]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval on a Temporary Basis of a Proposed Rule Change Concerning Equity TIMS

July 17, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on May 31, 1996, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared primarily by OCC. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposed rule change through November 30, 1996.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will extend the order granting temporary approval of OCC's use of its Theoretical Intermarket Margin System (''TIMS'') for calculating clearing margin positions in equity options.[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[3]

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] Equity TIMS is a modified version of OCC'S Non-Equity TIMS, which is OCC'S margin system used to calculate requirements on options for which the underlying asset is anything but an equity security. Securities Exchange Act Release No. 23167 (April 22, 1986), 51 FR 16127 [File No. SR–OCC–85–21] (order approving Non-Equity TIMS).

[3] The Commission has modified the text of the summaries prepared by OCC.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On March 1, 1991, the Commission temporarily approved a proposed rule change that authorized OCC to use TIMS to calculate clearing member margin requirements on equity options.[4] Since its initial temporary approval of Equity TIMS, the Commission has extended the temporary approval four times.[5]

Equity TIMS utilizes options price theory (*i.e.*, an option pricing model) to project the cost of liquidating in the event of a ''worst case'' theoretical change in the price of the underlying securities, each clearing member's short equity option positions and long equity option positions on which OCC is entitled to assert a lien. This projected liquidation cost is then used by Equity TIMS to calculate for each clearing member a margin requirement to cover that cost.

OCC presented a report to Commission staff in April 1995 pursuant to staff inquiries as to whether volatility for a ten-year period should be used to determine equity options margin intervals. OCC's analysis suggests that a ten-year time frame presents problems in adequately assessing the potential future volatility of individual equities. OCC asserts that some equities (*e.g.*, initial public offerings) with traded options experienced high volatility less than ten years ago but now are well established, less volatile securities. However, some equities with traded options that historically have experienced lower volatility have seen volatility increase due to market factors or changes in the business climate.

Accordingly, OCC explored alternatives to using a ten-year period for determining equity options margin intervals. As a result of its research into such alternatives, OCC believes that the use of a four-year stable distribution for the purposes of determining equity margin intervals within Equity TIMS should address the Commission's concerns. Stable distributions essentially seek to fit a probability distribution to a sample of historical data without any implicit assumptions of normalcy. OCC believes that stable distribution parameters will provide it with a greater breadth and quality of information from a given period of historical data and proposes to use a four-year period for purposes of setting equity option margin intervals.

OCC believes the proposed rule change is consistent with the requirements of Section 17A of Act and the rules and regulations promulgated thereunder because Equity TIMS should enhance OCC's ability to safeguard the securities and funds for which it is responsible.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC 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

Written comments were not and are not intended to be solicited with respect to the proposed rule change and none were received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions.[6] Additionally, Section 17A(a)(1) of the Act[7] encourages the use of efficient, effective, and safe procedures for securities clearance and settlement. The Commission continues to believe that OCC'S proposal to utilize Equity TIMS meets the requirements of the Act because OCC's use of Equity TIMS over the past six years has resulted in better assessments of OCC's risk exposure associated with the clearance and settlement of its clearing members' equity option positions and has resulted in calculations of clearing margin that more accurately reflect that risk exposure.

Nevertheless, while the Commission continues to believe that the margin methodology employed by Equity TIMS is basically sound, the Commission staff must fully analyze the efficacy of utilizing the four-year stable distribution intervals for Equity TIMS before determining whether to grant permanent approval. Consequently, the Commission is granting temporary approval for Equity TIMS through November 30, 1996.

OCC has requested that the Commission find good cause for approving the proposal prior to the thirtieth day after the publication of notice of filing of the proposed rule change. The Commission finds such good cause because accelerated approval will allow OCC to continue to use Equity TIMS without interruption while the Commission and OCC further examine Equity TIMS. The Commission notes that during the five previous temporary approval periods, neither OCC nor the Commission has received any adverse comments regarding Equity TIMS from its clearing members, and none are expected with regard to this filing.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., 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 in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filings will also be available for inspection and copying at the principal office of OCC. All submissions should refer to file number SR–OCC–96–06 and should be submitted by August 14, 1996.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR–OCC–96–06) be, and hereby is, approved on an accelerated basis through November 30, 1996.

[4] After the Commission's approval of File No. SR–OCC–89–12 on March 1, 1991, OCC phased out its previous margin system, which was known as the ''production system,'' and since then has used Equity TIMS to calculate its clearing members' margin requirements on equity option positions. For a complete description of Equity TIMS, refer to Securities Exchange Act Release No. 28928 (March 1, 1991), 56 FR 9995 [File No. SR–OCC–89–12] (order approving the use of Equity TIMS to calculate margin on equity options on a temporary basis through May 31, 1992).

[5] Securities Exchange Act Release Nos. 30761 (May 29, 1992), 57 FR 24286 [File No. SR–OCC–92–15] (order extending the approval of Equity TIMS through May 31, 1993); 32388 (May 28, 1993), 58 FR 31989 [File No. SR–OCC–93–06] (order extending the approval of Equity TIMS through May 31, 1994); 34065 (May 13, 1994), 59 FR 26534 [File No. SR–OCC–94–03] (order extending the approval of Equity TIMS through May 31, 1995); and 36003 (July 21, 1995), 60 FR 38880 [File No. SR–OCC–95–07] (order extending the approval of Equity TIMS through May 31, 1996).

[6] 15 U.S.C. § 78q–1(b)(3)(F) (1988).

[7] 15 U.S.C. § 78q–1(a)(1) (1988).

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–18717 Filed 7–23–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37438; File No. SR–OCC–96–05]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change Relating to the Issuance, Clearance, and Settlement of DIVS, OWLS, and RISKS

July 15, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on March 19, 1996, The Options Clearing Corporation (''OCC'') 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 OCC. On June 20, 1996, OCC filed an amendment to the proposed rule change.[2] The Commission is publishing this notice to solicit comments from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to amend certain OCC by-laws and rules and to append new sections to OCC's by-laws and rules to provide for the issuance, clearance, and settlement of new equity derivative products referred to as Dividend Value of Stock (''DIVS'')sm, Options with Limited Stock (''OWLS'')sm, and Residual Interest in Stock (''RISKS'')sm.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change will amend certain OCC by-laws and rules and will append new sections to OCC's by-laws and rules to permit the issuance, clearance, and settlement of new equity derivative products referred to as DIVS, OWLS, and RISKS. DIVS, OWLS, and RISKS are proposed to be listed and traded on the Philadelphia Stock Exchange (''PHLX'').[4]

1. Description of DIVS, OWLS, and RISKS

Each of these three new options-related products will be traded separately on the PHLX equity option floor. It is intended that an investor who owns all three will be in an economic position similar to an investor who owns the underlying stock except that ownership of DIVS, OWLS, and RISKS will not give the holder voting rights. PHLX has indicated that it intends to introduce new series of DIVS, OWLS, and RISKS in a coordinated way so that whenever a series of DIVS on a particular underlying stock is opened for trading a series of OWLS and a series of RISKS with the same termination date also will be open for trading.[5] In addition, OWLS and RISKS in the coordinated series will have the same termination claim, which is a concept similar to the strike price of an option. OWLS and RISKS will be considered European style products in that they cannot be exercised prior to expiration.

Each DIVS given the holder the right to receive and obligates the writer to pay on the termination date dividend equivalents on a per share basis equal to any regular dividends distributed to stockholders by the issuer of the underlying stock. However, certain distributions may be reflected in an adjustment to the unit of trading or to the number of outstanding DIVS rather than in a dividend equivalent payment.

Specifically, each OWLS gives the holder the right to receive and obligates the writer to pay on the termination date either (i) the number of shares of the security underlying the OWLS (*i.e.*, the unit of trading, which usually is 100 shares) if the closing price of the underlying security at expiration of the OWLS is less than or equal to the termination claim or (ii) the number of shares of the underlying security equal in value to the termination claim times the unit of trading if the closing price is greater than the termination claim. In other words, the maximum value that the OWLS holder will receive is fixed at the aggregate amount of the termination claim, but that value always will be paid in stock rather than in cash. Accordingly, if the closing price at expiration is greater than the termination claim, the number of shares received by the holder will be less than the unit of trading for the OWLS, and if the closing price at expiration is less than or equal to the termination claim, the holder will receive the number of shares of the underlying security represented by the unit of trading.[6] Therefore, holding an OWLS functionally resembles a covered call writing transaction (*i.e.*, a purchase of the underlying stock combined with the sale of a European style call option on that stock). However, unlike the writer of a covered call that expires in the money, the OWLS holder will receive stock instead of cash upon settlement.

Each RISKS gives the holder the right to receive a number of shares of the stock underlying the RISKS equal in value to the excess, if any, of the closing price of the underlying security at the termination date over the termination claim of the RISKS times the unit of trading.[7] If the closing price of the underlying security is less than or equal to the termination claim, the RISKS will expire worthless, and the holder will

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[8] 17 CFR 200.30–3(a)(12) (1995).

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] Letter from Michael G. Vitek, OCC, to Jerry W. Carpenter, Assistant Director, Division of Market Regulation, Commission (June 19, 1996).

[3] The Commission has modified the text of the summaries prepared by OCC.

[4] For description of the PHLX proposal to list and trade DIVS, OWLS, and RISKS, refer to Securities Exchange Act Release No. 36127 (August 28, 1995), 60 FR 44533 [File No. SR–PHLX–95–19] (notice of proposed rule change relating to DIVS, OWLS, and RISKS). To the extent that discrepancies exist between the present filing and SR–PHLX–95–19, OCC believes that this fling represents the current intentions of PHLX, and OCC anticipates that PHLX will amend its filing to eliminate any inconsistencies.

[5] The expiration date of a series of DIVS, OWLS, and RISKS may have an expiration date up to 60 months following the issuance date of such series.

[6] For example, if the termination claim for a series of OWLS is $50, the unit of trading is 100 shares, and the closing price for the underlying stock at termination of the OWLS is $80, holders of OWLS would be entitled to receive the number of shares of the underlying stock having an aggregate market value of $100 \times \$50 = \$5000$ per OWLS held. Accordingly, since $\$5000/\$80 = 62.5$ shares, the holder would be entitled to receive 62 whole shares per OWLS held and a cash payment in lieu of any fractional share. However, if the closing price of the stock had been $50 or less (*i.e.*, equal to or less than the termination claim of the OWLS), the OWLS holder would receive 100 shares per OWLS held.

[7] For example, a holder of RISKS in a series corresponding to the series of OWLS referred to in the preceding example would be entitled to receive an aggregate number of shares of stock underlying the RISKS equal in value to: $100 \times (\$80 - \$50) = \$3000$. Since $\$3000/\$80 = 37.5$ shares, a RISKS holder would be entitled to receive 37 shares per RISKS held and a cash payment in lieu of any fractional share.

receive nothing. Accordingly, holding a RISKS functionally resembles holding a call option except that the RISKS holder receives any in-the-money value of the option in kind, (*i.e.*, by receipt of a number of shares of the underlying security equal to the in-the-money value) as differentiated from a call option holder who either will (i) pay an exercise price to purchase the underlying shares and then sell such shares or (ii) enter into a closing transaction to capture the in-the-money value.

Writers of OWLS and RISKS will have obligations corresponding to the rights of holders. With respect to OWLS, some performance, which will ordinarily be delivery of some amount of the underlying stock, will always be due at termination. However, RISKS that expire at-the-money or out-of-the-money will terminate without any performance being required. RISKS that are in-the-money at expiration automatically will require writers to deliver and entitle holders to receive the underlying stock without regard to any notice of exercise. Similarly, no exercise of DIVS will be required in order to entitle the holder to receive and to obligate the writer to pay dividend equivalents during the term of the DIVS. Accordingly, the concepts of exercise and assignment are not used in relation to DIVS, OWLS, and RISKS.

2. Proposed Amendments to OCC's By-Laws

The proposed rule change will make amendments to Article I of OCC's by-laws regarding definitions that will include minor changes and additions to several defined terms in order to indicate how such terms will apply to DIVS, OWLS, and RISKS. In certain cases where DIVS, OWLS, and RISKS are simple to be included with other OCC-issued securities, this has been done by substituting the general term ''cleared security'' for an existing list of products rather than adding three more product names to the list. Definitions of the terms DIVS, OWLS, and RISKS also have been added.

The proposed rule change also will amend Article VI of the by-laws regarding clearance of exchange transactions to make minor changes and additions to several sections in order to make these by-laws applicable to transactions in DIVS, OWLS, and RISKS. Interpretation .01 to Article VI, Section 9 of the by-laws will be amended to make clear that subsections (a) and (b) of Section 9 apply only to stock options.[8] Provisions parallel to those found in Section 9 that will be applicable to DIVS, OWLS, and RISKS appear in new Article XXV of OCC's by-laws.

Section 11 of Article VI regarding adjustments will be amended to provide that the OCC Securities Committee shall have the authority to make adjustments to DIVS, OWLS, and RISKS pursuant to the same procedures utilized for adjustments to other options. Although other provisions of Section 11 may also be applicable to DIVS, OWLS, and RISKS, the precise way in which those provisions will be applied will be set forth in new Article XXV of the by-laws. Article VIII of the by-laws regarding the stock clearing fund also will be amended to include minor additions to several sections to include DIVS, OWLS, and RISKS.

3. Proposed Article XXV of OCC's By-Laws

The introduction to proposed Article XXV makes clear tht OCC's by-laws in Articles I through XI also are applicable to DIVS, OWLS, and RISKS, except where expressly modified or made inapplicable by Article XXV. Following the convention observed in the by-laws relating to other products, the effect of each by-law section in Article XXV on other by-laws will be stated in brackets at the end of each section in Article XXV.

Proposed Article XXV, Section 1 adds certain new definitions relevant to DIVS, OWLS, and RISKS and redefines certain terms defined in Article I of the by-laws to assign different meanings when those terms are used with respect to DIVS, OWLS, and RISKS. With respect to DIVS, the term ''dividend payable date'' has been defined to mean the date on which the dividend equivalent is required to be paid by the writer of a DIVS to OCC and by OCC to the holder of a DIVS. The term ''ex dividend date'' has been defined to mean the ''ex'' date for the corresponding dividend on the underlying security.

As a result of the foregoing definitions, the right of a DIVS holder to receive and the obligation of a DIVS writer to pay a dividend equivalent will be fixed at the close of trading on the business day preceding the ex dividend date. The actual payment may occur days or weeks later to coincide with the payable date for the corresponding dividend on the underlying stock. It is desirable to harmonize these payable dates in order to make hedging and other strategies involving combined positions in DIVS and the underlying stock most efficient. As a result, it is possible that an obligation to pay or right to receive a dividend equivalent that accrued prior to the termination date of a DIVS will remain outstanding after the termination date. OCC simply will continue to carry the dividend equivalent right or obligation in a manner similar to a settlement obligation of an exercised option.

As defined in Article XXV of OCC's by-laws, the ''termination settlement date'' for a particular series of OWLS and RISKS is the date on which performance is to be rendered with respect to the terminated OWLS and, if any settlement is due, the terminated RISKS. OCC Rule 2602 specifies that the settlement date will be the third business day following the termination date.

The term ''closing price'' will be defined to mean the closing price for the underlying security on the primary market on the business day prior to the termination date of OWLS or RISKS. However, the exchange may provide that the closing price be based on an average of prices of the underlying security near the close of business on that day. The exchange must specify that it intends to use an average of prices prior to the opening of trading in any series of OWLS or RISKS.

The proposed definition of ''termination claim'' provides that any reference to the term ''exercise price'' will refer to the termination claim of OWLS or RISKS. As stated earlier, because notice of exercise is not required at the termination of an OWLS or RISKS, the concept of ''exercise'' has no relevance to OWLS or RISKS.

As proposed, Article XXV, Section 2 sets forth the general rights and obligations of holders and writers of DIVS, OWLS, and RISKS. Article XXV, Section 3 sets forth the agreements of a writing clearing member when effecting an opening writing transaction in DIVS, OWLS, or RISKS.

As proposed, Section 4 of Article XXV describes the application of the adjustment rules of Article VI, Section 11 of OCC's by-laws to DIVS, OWLS, and RISKS. In addition, Section 4 provides general and discretionary guidelines as to how the OCC securities committee will ordinarily make adjustments for DIVS, OWLS, and RISKS.

Proposed Section 5 of Article XXV provides that Section 19 of Article VI relating to the shortage of underlying securities is applicable to OWLS and RISKS except that restrictions on exercises, an action that can be taken with respect to put options, cannot be

[8] Section 9(a) relates to the rights and obligations of call option holders and writers. Section 9(b) concerns the rights and obligations of put option holders and writers.

applied to OWLS or RISKS because OWLS and RISKS are not exercisable.

Article XXV, Section 6 sets forth the steps OCC may take in the event the closing price for an underlying security is unavailable. In addition to any other actions OCC may be entitled to take under its by-laws and rules, OCC may suspend settlement obligations for the affected OWLS and RISKS. OCC also will have the authority to fix the closing price for purposes of termination settlement of OWLS and RISKS by means of a panel consisting of exchange representatives and the chairman of OCC. Provisions in paragraph (b) and Interpretation .01 of Article XXV, Section 6, which relates to the finality of the closing price as officially announced by OCC, are similar to provisions applicable to closing index values for index options.

4. Proposed Amendments to Existing Rules

Proposed amendments to existing rules include minor additions to several rules in order to include how those rules will apply to DIVS, OWLS, and RISKS. Many changes are self-explanatory and therefore are not described in this notice. [9]

Proposed amendments to Rule 601 regarding margins sets forth that DIVS, OWLS, and RISKS will be margined in the same manner as equity options and will utilize the OCC Theoretical Intermarket Margining System (''TIMS''). [10]

Proposed changes to Rule 1001, which relates to clearing fund contributions, provide that positions in DIVS, OWLS, and RISKS will be included in the formula to determine clearing members' proportionate contributions to the stock clearing fund. This is consistent with DIVS, OWLS, and RISKS also being included with stock options for purposes of margin calculations and clearing member qualifications.

Rules 1104 and 1106 regarding the liquidation of an account of a clearing member upon suspension of that clearing member are being amended to include reference to positions in DIVS, OWLS, and RISKS. Rule 1106(b)(2) will be amended to contain a reference to specific or escrow deposits with respect to DIVS, OWLS, and RISKS. No provisions for such deposits are included in the present filing; therefore, these references will have no application until such time as OCC provides for escrow deposits with respect to DIVS, OWLS, and RISKS.[11]

5. Proposed Chapter XXVI of the Rules

The introduction to proposed Chapter XXVI makes it clear that the rules in Chapters I through VII and IX through XII also are applicable to DIVS, OWLS, and RISKS except where expressly modified or made inapplicable by Chapter XXVI. The effect on other rules by each section in Chapter XXVI is stated in brackets at the end of each section in Chapter XXVI.

Proposed Rule 2601 of Chapter XXVI sets forth the rights and obligations of holders and writers of DIVS with respect to the payment of dividend equivalents. Under the proposed rule, the holder of a DIVS is entitled to the equivalent of the regular dividend payments that a shareholder of the underlying security with a comparable position (*i.e.*, one hundred shares) would receive. The writer is obligated to pay or deliver the dividend equivalent of an ordinary dividend or a non-cash dividend distribution to the holder of the DIVS. Certain distributions may result in an adjustment of the DIVS in lieu of a dividend equivalent while other distributions may give rise to only a dividend equivalent or both a dividend equivalent and an adjustment. Proposed Rule 2601 specifies that on the dividend payable date, OCC will notify each clearing member having a position in DIVS of the net sum it is required to pay or entitled to receive.

Proposed Rule 2602 provides that the termination settlement date for a particular series of OWLS and RISKS will be the third business day following the termination date. Rule 2603 sets forth the termination settlement procedures for OWLS and RISKS. The number of shares of the underlying stock that are deliverable upon termination of OWLS is determined under paragraph (a) of Rule 2603. The number of shares, if any, deliverable upon termination of RISKS is determined under paragraph (b) of Rule 2603. The procedures applicable to both OWLS and RISKS for delivery of shares and payment of cash settlements in lieu of fractional shares are set forth in paragraphs (c) and (d), respectively, of Rule 2603.

Rule 2603(c) sets forth the procedures for the delivery of stock in settlement of OWLS and RISKS. Settlement for OWLS and RISKS will be effected in the same way that stock is delivered in the settlement of exercised stock options which ordinarily occurs through stock clearing corporations. Rule 2603(d) provides that cash in lieu of fractional shares will be paid through OCC's regular cash settlement system. In the event the OWLS and RISKS cannot be settled through regular-way settlement, they will be settled on a broker-to-broker basis as governed by Rule 902.

OCC believes the proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder because the rule proposal should facilitate the prompt and accurate clearance and settlement of transactions in DIVS, OWLS, and RISKS. OCC also believes the proposed change is consistent with the safeguarding of funds and securities in OCC's custody or control or for which OCC is responsible because OCC will apply to DIVS, OWLS, and RISKS a system of safeguards which is substantially the same as that which OCC currently uses for options and other OCC-issued products.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC 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

Comments were not and are not intended to be solicited by OCC with respect to the proposed rule change, and none were received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which OCC consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

[9] The text of the specific changes being made to OCC's rules is set forth in *Exhibit A* to OCC's proposed rule change which is available through OCC or the Commission's Public Reference Room.

[10] Equity TIMS is used to calculate clearing margin for participants' positions in equity options. For a complete description of equity TIMS, refer to Securities Exchange Act Release No. 36003 (July 21, 1995), 60 FR 38880 [File No. SR–OCC–95–07] (order approving use of equity TIMS on a temporary basis).

[11] Prior to providing for specific or escrow deposits with respect to DIVS, OWLS, or RISKS, OCC will be required to file a proposed rule change with the Commission under Section 19(b) of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., 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 in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filings will also be available for inspection and copying at the principal office of OCC. All submissions should refer to the file number SR–OCC–96–05 and should be submitted by August 14, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–18722 Filed 7–23–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37452; International Series Release No. 1006; File No. SR–PSE–96–15]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Pacific Stock Exchange, Inc. Relating to Investment Company Units

July 17, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on June 3, 1996, the Pacific Stock Exchange Incorporated (''PSE'' 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. On July 2, the PSE filed Amendment No. 1 to its proposal.[2] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to establish listing standards for Investment Company Units (''Units''), and to trade Units known as ''CountryBaskets'' (''CBs'') pursuant to unlisted trading privileges (''UTP'').

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

The Exchange proposes to adopt new rules relating to listing standards for Units. Units represent an interest in a registered investment company (''Investment Company'' or ''Fund'') that could be organized as a unit investment trust (''UIT''), an open-end management investment company, or a similar entity. Under the proposed rules, the Investment Company would be required either to: (i) Hold securities comprising or otherwise based on or representing an interest in an index or portfolio of securities, or (ii) hold securities in another registered investment company. The Investment Company would then issue Units in a specified aggregate number in return for a deposit either of: (i) Shares of securities comprising or otherwise based on the relevant index or portfolio, or (ii) shares of a registered investment company. In addition to or instead of the ''in-kind'' deposit, the Investment Company might require a cash deposit. Thus, Units could represent an interest in series of an open-end management investment company investing in a portfolio of securities (''Fund-only structure''). Alternatively, Units could represent an interest in UITs that have as their assets shares of an open-end investment company holding a portfolio of securities (''Fund/UIT structure''). Unit holders would receive periodic cash payments corresponding to the regular cash dividends or distributions declared with respect to the securities held by the Investment Company (after subtracting applicable expenses and charges.)

The Exchange also proposes to trade, pursuant to UTP, Units known as ''CountryBaskets'' or ''CBs.'' These securities were approved recently for listing on the New York Stock Exchange, Inc. (''NYSE'').[3] The nine series of CBs are based on the following Financial Times/Standard & Poor's Actuaries World (''FT/S&P'') Indices: Australia; France; Germany; Hong Kong; Italy; Japan; South Africa; United Kingdom; and the United States. The Exchange notes that pursuant to Rule 12f–5 under the Act,[4] prior to trading a particular class or type of security pursuant to UTP, the Exchange must have listing standards comparable to those of the primary exchange on which the security is listed. Hence, the PSE's proposed listing standards for Units are similar to the listing standards for Units adopted by the NYSE.[5]

1. Creation and Redemption of the Securities

Consistent with the proposed listing standards, Units, including CBs, will be distributed in transactions with the Fund (''Creation Transactions''). As noted above, the PSE proposal sets forth listing standards applicable both to a Fund-only structure and a Fund/UIT structure. The nine CB series the PSE proposes to trade rely on the Fund-only structure. To effect a Creation Transaction using the Fund-only structure, a person buys Fund shares from the Fund at their net asset value (''NAV'') next computed. Sales occur in ''Creation United'' size aggregations in exchange for a deposit (''Deposit'') of a basket of securities reflecting the securities underlying the Fund (''Index Securities'') and a specified amount of cash sufficient to equal the NAV of Fund shares.[6] Creation Unit size

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[1] 17 CFR 200.30–3(a)(12) (1995).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Amendment No. 1 clarifies that the PSE seeks to trade CountryBaskets pursuant to unlisted trading privileges. Letter from Michael D. Pierson, Senior Attorney, Regulatory Policy, PSE, to Francois Mazur, Attorney, Division of Market Regulation, Commission, dated July 1, 1996 (''Amendment No. 1'').

[3] *See* Exchange Act Release No. 36923 (March 5, 1996), 61 FR 10410.

[4] 17 CFR 240.12f–5.

[5] Amendment No. 1, *supra* note 2.

[6] *Id.* If the alternative Fund/UIT structure were used, a person would effect a Creation Transaction by buying a Fund share (or fractional share) in exchange for the Deposit. Each UIT would invest solely in shares of a specified series of the Fund, and would offer one ''redeemable unit of beneficial interest'' (a ''Redeemable Unit'') in exchange for each Fund share or fractional share. The Redeemable Unit would be the functional

Continued

holdings then can be disaggregated into tradeable Units and sold separately or in lots on the Exchange.

Units could be recombined into ''Redeemable Units,'' equivalent in size to Creation Units and redeemed at NAV, generally for the Index Securities represented by the Redeemable Unit, plus a cash payment. An individual Unit will not be redeemable. For the Australia, France, Germany, Hong Kong, Italy, South Africa, United Kingdom, Germany, Hong Kong, Italy, South Africa, United Kingdom, and United States CountryBasket series, there are 100,000 CBs per Creation Unit. For the Japan series, there are 250,000 CBs per Creation Unit. With the exception of the Japan series, a Creation Unit size aggregation of Fund shares represents securities with approximately $2 to $5 million in market value. A Creation Unit size aggregation of Fund shares for the Japan series has an approximate value of $9.5 million.[7]

There may be an initial distribution period of Fund shares lasting from one to a few weeks during which the principal underwriter or distributor (''Distributor'') directly or through soliciting dealers will accept subscriptions to purchase Fund shares.[8] Thereafter, Fund shares could be purchased throughout the life of the product. Therefore, the offering will be continuous.

2. Exchange Trading of Units

Units, including CBs, are deemed equity securities subject to PSE rules applicable to the trading of equity securities. Before commencing trading in CBs, the Exchange will require that there be at least 300,000 tradeable Units outstanding, representing at least three Creation Units for each series, except for the Japan series, for which 500,000 tradeable Units, representing two Creation Units, will be required to be outstanding prior to commencing trading. The Exchange will consider the suspension of trading and the delisting of a series of Units, including CBs, if:

- After the first year of trading, there are fewer than 50 record or beneficial holders of the Units for 30 or more consecutive trading days;
- The value of the underlying index or portfolio of securities is no longer calculated or available; or
- There occurs another event that makes further dealings in the Units on the Exchange inadvisable.

Dealing in Units on the Exchange will be conducted pursuant to the Exchange's general agency-auction trading rules.[9] The Exchange's general dealings and settlements rulers will apply.[10] Other Exchange equity rules and procedures, such as the Exchange's equity margin rules, also will apply.[11] Unless the prospectus for a specific Investment Company states otherwise, the Units trading on the Exchange will have one vote per share; however, as with other securities issued by registered investment companies, there will not be a ''pass-through'' of the voting rights on the actual index securities held directly by a fund or indirectly by a trust.

While equity securities traded on the Exchange must be certificated, the Exchange proposes that Units trade either in certificated form or solely through the use of a global certificate. Permitting the use of global certificates would be consistent with expediting the processing of transactions in Units and would minimize the costs of engaging in transactions in these securities.

3. Specialists

Any Creation Transactions in which the specialist engages will have to be effected through the Distributor, and not directly with the issuer. The specialist only will be able to purchase and redeem Units on the same terms and conditions as any other investor, and only at NAV.

4. Disclosure

With respect to investor disclosure, the Exchange notes that, pursuant to the requirements of the Securities Act of 1933 (''1933 Act''), all investors in Units, including CountryBaskets, will receive a prospectus. Because the Units will be in continuous distribution, the prospectus delivery requirements of the 1933 Act will apply to all investors in Units, including those engaging in secondary market purchases on the PSE in CBs. The prospectus and all marketing material will refer to Units by using the term ''investment company.'' The term ''mutual fund'' will not be used at any time. The term ''open-end investment company'' will be used in the prospectus only to the extent required by Item 4 of Investment Company Act Form N–1A. In addition, the cover page of the prospectus will include a distinct paragraph stating that CBs will not be individually redeemable.

Upon the listing of any class of Units, including CBs, the Exchange also will issue a circular to its membership explaining the unique characteristics and risks of this type of security. That circular, among other things, will inform member organizations of their responsibilities under Exchange Rule 9.1(a) (''know your customer rule'') with respect to transactions in such Units. The circular also will inform member organizations of their responsibility to deliver a prospectus to investors.

5. Trading Halts

Trading of Units would be halted, along with the trading of all other listed stocks, in the event the ''circuit breaker'' thresholds were reached.[12] In addition, the Exchange will consider halting the trading in any series of Units if necessary to maintain a fair and orderly market in that series of Units. For example, the Exchange would consider halting trading in a series of Units if trading has been halted or suspended in the primary market for stocks representing a significant percentage (such as 20 percent) of the value of the underlying stock index or portfolio.

The Exchange believes that its proposal is consistent with Section 6(b) of the Act, in general, and Section 6(b)(5), in particular, in that it will facilitate transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

equivalent of the Creation Unit in the Fund-only structure.

The owner of a Redeemable unit could separate that unit into a specific number of identical fractional non-redeemable sub-units that would constitute the Units traded on the Exchange. These tradeable Units could be recombined into Redeemable Units and then redeemed, at NAV, for the appropriate number of Fund shares. In turn, the Fund shares could be redeemed for the Index Securities and cash. The tradeable Units would not be redeemable other than in Creation Unit aggregations.

[7] *Id.* The large size of round lots in Japan, and the requirement that all purchases in that market be in round lots, requires that a Creation Unit be structured so that the Index Securities consist of round lots of each of the Index securities, including the lowest-weighted securities, resulting in the large size of the Creation Unit. Otherwise, effective arbitrage between the Japan CountryBasket and the Index Securities might be impracticable. *Id.*

[8] If the alternate dual Fund/UIT structure were used, orders also would be accepted to exchange Fund shares for Redeemable Units and to separate such Units into tradeable Units.

[9] *See* PSE Rule 5 (Equities).

[10] *Id.*

[11] *See* Rules 2.16(a) *et seq.*

[12] The Exchange's ''circuit breaker'' policies were approved in Exchange Act Release No. 26268 (December 16, 1988), 53 FR 51942.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the 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 submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to File No. SR–PSE–96–15 and should be submitted by August 14, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–18714 Filed 7–23–96; 8:45 am]

BILLING CODE 8010–01–M

[13] 17 CFR 200.30–3(a)(12).

[Release No. 34–37453; File No. SR–PHLX–96–16]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Listing Standards

July 18, 1996.

On May 20, 1996, the Philadelphia Stock Exchange, Inc. (''PHLX'' or ''Exchange'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to revise a drafting error that occurred in PHLX Rule 804(2) pertaining to listing criteria.[3]

The proposed rule change was published for comment in Securities Exchange Act Release No. 37279 (June 5, 1996), 61 FR 29782 (June 12, 1996). No comments were received on the proposal.

Currently, PHLX Rules 803 through 805 describe a two-tier structure for listing common stock, preferred stock, bonds and debentures, various types of warrants, contingent value rights, and other securities.[4] For Tier I securities, two alternative minimum listing standards are described. PHLX Rule 803 sets forth the first alternative (''Alternative 1''), while PHLX Rule 804 sets forth the second alternative (''Alternative 2''), which is geared toward mid-sized and research and development companies. Both rules are based substantially upon the Memorandum of Understanding (''MOU'') on the uniform model marketplace exemption that had been approved by the National Association of Securities Dealers, Inc. (''NASD'') and the North American Securities Administrators Association, Inc. (''NASAA'').[5]

The current PHLX Rule 804(2) sets forth a general requirement that the public float for issuers is 1,000,000 shares, with an additional shareholder requirement that the issuer have at least 800 public shareholders if the issuer has between 500,000 and 1,000,000 shares publicly held, or at least 400 public shareholders if the issuer has either over (i) 1,000,000 shares publicly held, or (ii) over 500,000 shares publicly held and average daily trading volume in excess of 2,000 shares per day for a six-month period preceding the date of application.

The Exchange proposes to amend this rule to provide that issuers seeking to list pursuant to Rule 804 must show that there are at least 1,000,000 shares publicly held and at least 400 public shareholders in the security. The Exchange states that the current Rule 804 incorrectly incorporated some of the language from the public float/public shareholder requirements in Alternative 1 for Tier I securities set forth in Rule 803.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).[6] In particular, the Commission believes the proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between issuers.

The Commission believes that the proposal is consistent with the purposes of the Act in that the amended Rule 804(2) will reflect the original intent of the Exchange and the MOU. In addition, the amendment to the rule is not a substantive change. Rule 804(2) sets forth a requirement that the public float for Tier I issuers under Alternative 2 must be at least 1,000,000 shares.[7] The holder requirement in current Rule 804(2) states that an issuer listing under Alternative 2 must have either (1) a minimum of 800 public shareholders if the issuer has between 500,000 and 1,000,000 shares, or (2) a minimum of 400 public shareholders if the issuer has either (i) over 1,000,000 shares publicly held or (ii) over 500,000 shares publicly held and average daily volume in excess of 2,000 shares per day for a six-month period preceding the date of application. Because the minimum public float requirement for companies listing under this alternative is 1,000,000 shares, an issuer can never be eligible to have less public float by meeting the higher 800 public shareholder requirement or the trading

[1] 15 U.S.C. § 78s(b)(1) (1996).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 34235 (June 17, 1994), 59 FR 32736 (June 24, 1994) (File No. SR–PHLX–93–31) (order approving proposed rule change establishing new listing and maintenance standards).

[4] *Id.*

[5] *See* Securities Act Release No. 6810 (Dec. 6, 1988) (publicizing the release of the MOU).

[6] 15 U.S.C. § 78f(b).

[7] As originally drafted, Rule 804(2) states that the public float of an issuer must be ''1,000,000 shares.'' The Exchange clarified the public float requirement by stating in amended Rule 804(2) that the public float must be ''at least 1,000,000 shares.''

volume test noted above. Accordingly, the changes in PHLX Rule 804(2) will eliminate any confusion about the minimum holder and public float requirements and will, as originally intended, make clear that the minimum listing requirement under this alternative is at least 1,000,000 shares publicly held with at least 400 public shareholders.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (SR–PHLX–96–16) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–18798 Filed 7–23–96; 8:45 am]

BILLING CODE 8010–01–M

[8] 15 U.S.C. § 78s(b)(2) (1996).

[9] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2861]

Indiana; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on July 3, 1996, I find that Crawford, Dearborn, Franklin, Harrison, Lawrence, Martin, Orange, Vanderburg, Warrick, and Washington Counties in the State of Indiana constitute a disaster area due to damages caused by severe storms and flooding which occurred April 28 through May 25, 1996. Applications for loans for physical damages may be filed until the close of business on August 31, 1996, and for loans for economic injury until the close of business on March 3, 1997 at the address listed below:

U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308

or other locally announced locations. 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 above location: Clark, Daviess, Decatur, Dubois, Fayette, Floyd, Gibson, Greene, Jackson, Monroe, Ohio, Perry, Pike, Posey, Ripley, Rush, Scott, Spencer, and Union Counties in Indiana; Butler and Hamilton Counties in Ohio; and Boone, Bullitt, Daviess, Hardin, Henderson, Jefferson, and Meade Counties in Kentucky.

Interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	7.250
Homeowners without credit available elsewhere	3.625
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.125
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 286106. For economic injury the numbers are 891800 for Indiana, 891900 for Ohio, and 892000 for Kentucky.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 11, 1996.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 96–18752 Filed 7–23–96; 8:45 am]

BILLING CODE 8025–01–P

[Declaration of Disaster Loan Area #2872]

Kentucky (And Contiguous Counties in Ohio); Declaration of Disaster Loan Area

Kenton County and the contiguous counties of Boone, Campbell, Grant, and Pendleton in the State of Kentucky, and Hamilton County in the State of Ohio constitute a disaster area as a result of damages caused by severe storms and flooding which occurred June 30 through July 1, 1996. Applications for loans for physical damage may be filed until the close of business on Sept. 12, 1996 and for economic injury until the close of business on April 14, 1997 at the address listed below: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

or other locally announced locations.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	7.625
Homeowners without credit available elsewhere	3.875
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.125
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The numbers assigned to this disaster for physical damage are 287206 for Kentucky and 287306 for Ohio.

For economic injury the numbers are 895600 for Kentucky and 895700 for Ohio.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 12, 1996.

Philip Lader,

Administrator.

[FR Doc. 96–18751 Filed 7–23–96; 8:45 am]

BILLING CODE 8025–01–P

[Declaration of Disaster Loan Area #2874]

U.S. Territory of the Virgin Islands; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on July 11, 1996, I find that the Islands of St. Croix, St. John, and St. Tomas in the U.S. Virgin Islands constitute a disaster area due to damages caused by Hurricane Bertha which occurred on July 8 and 9, 1996. Applications for loans for physical damages may be filed until the close of business on September 9, 1996, and for loans for economic injury until the close of business on April 11, 1997 at the address listed below: U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd. South, 3rd Fl. Niagara Falls, NY 14303.

or other locally announced locations.

Interest rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	7.625
Homeowners Without Credit Available Elsewhere	3.875
Businesses With Credit Available Elsewhere	8.000
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000
Others (Including Non-Profit Organizations) With Credit Available Elsewhere	7.125
For Economic Injury:	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 287408 and for economic injury the number is 895800.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Date: July 16, 1996.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 96–18750 Filed 7–23–96; 8:45 am]

BILLING CODE 8025–01–P

Revocation of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration by the Final Order of the United States District Court for the Central District of California, dated December 12, 1995, the United States Small Business Administration hereby revokes the license of Los Angeles Capital Corporation, a California corporation, to function as a small business investment company under the Small Business Investment Company License No. 09/09–5323 issued to Los Angeles Capital Corporation on August 30, 1983 and said license is hereby declared null and void as of April 14, 1996.

Dated: July 17, 1996.

United States Small Business Administration.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 96–18792 Filed 7–23–96; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 96–034]

Agency Information Collection Activities Under OMB Review

AGENCY: Coast Guard, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act, the Coast Guard announces seven Information Collection Requests (ICR) coming up for renewal. These ICRs include: 1. Defect/Noncompliance Report and Campaign Update Report; 2. Private Aids to Navigation Application and Application for Class 1 Private Aids to Navigation on Artificial Islands and Fixed Structures; 3. Rules for Carrying Hazardous Liquids; 4. Course Approvals for Merchant Marine Training Schools; 5. Plan Approval and Records for Existing Tank Vessels of 20,000 to 40,000 Deadweight Tons Carrying Oil in Bulk; 6. International Oil Pollution Prevention Certificates; and 7. Barges Carrying Bulk Hazardous Materials. Before submitting the renewal packages to the Office of Management and Budget (OMB), the Coast Guard is soliciting comments on specific aspects of the collections as described below.

DATES: Comments must be received on or before September 23, 1996.

ADDRESSES: Comments may be mailed to Commandant (G–SII–2), U.S. Coast Guard Headquarters, Room 6106 (Attn: Barbara Davis), 2100 2nd St. SW., Washington, DC 20593–0001, or may be hand delivered to the same address between 8:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–2326. The comments will become part of this docket and will be available for inspection and copying by appointment at the above address.

FOR FURTHER INFORMATION CONTACT: Barbara Davis, U.S. Coast Guard, Office of Information Management, telephone (202) 267–2326.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to submit written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, identify this Notice, the specific ICR to which each comment applies, and give reasons for each comment. The Coast Guard requests that all comments and attachments be submitted in an unbound format no larger than 8½″ by 11″, suitable for copying and electronic filing. If that is not practical, a second copy of any bound material is requested. Persons desiring acknowledgement that their comments have been received should enclose a stamped, self-addressed post card or envelope.

Interested persons can receive copies of the complete ICR by contacting: Ms. Davis where indicated under **ADDRESSES.**

Information Collection Request

1. *Title:* Defect/Noncompliance Report and Campaign Update Report.

OMB No. 2115–0035

SUMMARY: The collection of information requires manufacturers of boats and associated equipment to provide information to the Coast Guard when their products contain a defect or fail to comply with applicable safety standards and regulations.

Need: Under Title 46 U.S.C. Chapter 43, the Coast Guard has the authority to monitor defect notification and recall campaigns being conducted by manufacturers of boats and associated equipment.

Respondents: Manufacturers of boats and associated equipment.

Frequency: As needed.

Burden Estimate: The estimated burden is 495 hours annually.

2. *Title:* Private Aids to Navigation Application and Application for Class 1 Private Aids to Navigation on Artificial Islands and Fixed Structures.

OMB No. 2115–0038.

Summary: The Collection of Information requires respondents to provide to the Coast Guard on two applications (CG–2554 and CG–4143), vital information about private aids to navigation.

Need: 33 CFR Parts 66 and 67 authorize the Coast Guard to collect and process the information furnished from the private aids applications to ensure that private aids to navigation appropriately mark the associated hazard or waterway.

Respondents: Owners of Private Aids to Navigation.

Frequency: On occasion.

Burden: The estimated burden is 3,200 hours annually.

3. *Title:* Rules for Carrying Hazardous Liquids.

OMB No. 2115–9978.

Summary: The collection of information requires that U.S. and foreign vessels which carry hazardous cargo submit to the Coast Guard technical information about the cargo.

Need: Title 33 U.S.C. 1903 authorizes the recordkeeping and reporting requirements to ensure the safe transport by vessel of hazardous materials.

Respondent: Owners and operators of chemical tankers.

Frequency: On occasion.

Burden Estimate: The estimated burden is 7,544 hours annually.

4. *Title:* Course Approvals for Merchant Marine Training Schools.

OMB No. 2115–0111.

Summary: The collection of information requires the approval of course materials and the inspection of training facilities.

Need: Title 46 U.S.C. 7315, authorizes the Coast Guard to review course materials from approved training schools and to inspect training facilities to ensure they meet the minimum standards.

Respondent: Merchant Marine Training Schools.

Frequency: Every 5 years.

Burden Estimate: The estimated burden is 3,460 hours annually.

5. *Title:* Plan approval and Records for Existing Tank Vessels of 20,000 to 40,000 Deadweight Tons Carrying Oil in Bulk.

OMB No. 2115–0520.

5. *Summary:* The Collection of Information requires owners of U.S. vessels to submit documents such as plans, calculations, specifications and manuals to the Coast Guard for its review and that foreign vessel owners may also submit these documents in order to obtain Coast Guard certification that their vessels comply with the standards.

Need: 46 U.S.C. 3703 provides the Coast Guard with general authority to regulate the design, construction, alteration, repair, maintenance, operation and equipping of vessels carrying oil in bulk.

Respondents: U.S. and foreign tank vessel owners.

Frequency: On occasion.

Burden: The estimated burden is 22 hours annually.

6. Title: International Oil Pollution Prevention (IOPP) Certificates.

OMB No. 2115–0526.

Summary: The Collection of Information requires U.S. and foreign oil tankers of 150 gross tons and above and other ships of 400 gross tons and above (that are party to MARPOL 73/78), to be surveyed during inspection or reinspection and after a satisfactory survey, be issued an IOPP Certificate by the Coast Guard, to be maintained on board the ship.

Need: Title 33 U.S.C. 1901–1911 gives the Coast Guard the authority to ensure that all ships engaging in international voyages comply with the International Oil Pollution Prevention Certificate requirements.

Respondents: Ship owners/operators engaging in international voyages.

Frequency: For renewal of IOPP Certificate (4–5 yrs).

Burden: The estimated burden is 125 hours annually.

7. Title: Barges Carrying Bulk Hazardous Material.

OMB No. 2115–0541.

Summary: The Collection of Information requires tank barges to submit an application for inspection, new tank vessels over 300 feet in length must have loading information approved by the Coast Guard and new or modified barges stability calculations must be approved by the Coast Guard.

Need: Under 46 U.S.C. 3703, the Coast Guard was delegated the authority to implement regulations to ensure the safe transport of bulk hazardous materials on tank barges.

Respondents: Barge Operators.

Frequency: On occasion.

Burden: The estimated burden is 12,099 hours annually.

Dated: July 15, 1996.

D. A. Potter,

Director of Command, Control, Communications and Computers.

[FR Doc. 96–18810 Filed 7–23–96; 8:45 am]

BILLING CODE 4910–14–M

[CGD 96–035]

National Boating Safety Advisory Council; Vacancies

AGENCY: Coast Guard, DOT.

ACTION: Request for applications.

SUMMARY: The Coast Guard is seeking applications for appointment to membership on the National Boating Safety Advisory Council (NBSAC). The Council is a 21 member Federal advisory committee that advises the Coast Guard on matters related to recreational boating safety.

DATES: Applications must be received on or before September 23, 1996.

ADDRESSES: Application forms may be obtained by writing Commandant (G–OPB–1), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–001; by calling: (202) 267–0950; or by faxing (202) 267–4285. Application forms must be submitted to the same address.

FOR FURTHER INFORMATION CONTACT: Mr. A.J. Marmo, Executive Director of NBSAC, telephone (202) 267–0950, fax (202) 267–4285.

SUPPLEMENTARY INFORMATION: The National Boating Safety Advisory Council (NBSAC) was established by the Federal Boat Safety Act of 1971. It is a Federal advisory committee constitued under under 5 U.S.C. App. 2. NBSAC provides advice to the Coast Guard regarding regulations and other major boating safety matters. Members for the Council are drawn equally from the following sectors of the boating community: State officials responsible for State boating safety programs; recreational boat and associated equipment manfacuturers; and national recreational boating organizations and the general public. Members are appointed by the Secretary of Transportation.

The Council normally meets twice each year at a location selected by the Coast Guard. When attending meetings of the Council, members are provided travel expenses and per diem.

The Coast Guard will consider applications for the following seven positions that expire or become vacant in December 1996: two representatives of State Officials responsible for State boating safety programs; two representatives of recreational boat and associated equipment manufacturers; and three representatives of national recreational boating organizations and from the general public. Applicants are considered for membership on the basis of their expertise, knowledge, and experience in recreational boating safety. Each member serves for a term of three years unless filling an unexpired term. Some members may serve consecutive terms.

In support of the policy of the Department of Transportation on ethnic and gender diversity, the Coast Guard encourages applications from qualified women and members of minority groups.

Applicants may be required to complete an Executive Branch Confidential Financial Disclosure Report (SF 450).

Dated: July 17, 1996.

J.A. Creech,

Captain, U.S. Coast Guard, Director, Operations Policy.

[FR Doc. 96–18809 Filed 7–23–96; 8:45 am]

BILLING CODE 4910–14–M

Federal Aviation Administration

Notice of Intent To Rule on Appropriations To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Akron-Canton Regional Airport, Akron, Ohio

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Akron-Canton Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before August 23, 1996.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Frederick J. Krum, Director of Aviation, of the Akron-Canton Regional Airport Authority Board at the following address: Akron-Canton Regional

Airport, 5400 Lauby Road, N.W., Box #9, North Canton, Ohio 44720–1598.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Akron-Canton Regional Airport Authority Board under § 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Lawrence C. King, Program Manager, Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111 (313–487–7293). The application may be reviewed in persons at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Akron-Canton Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On July 5, 1996, the FAA determined that the application to impose and use the revenue from a PFC submitted by Akron-Canton Regional Airport Authority Board was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than October 19, 1996.

The following is a brief overview of the application.

PFC Application No.: 96–02–C–00–CAK.

Level of the proposed PFC: $3.00.

Proposed charge effective date: November 1, 1996.

Proposed charge expiration date: October 1, 1999.

Total estimated PFC revenue: $1,764,490.00.

Brief description of proposed projects: Land Acquisition-Kelby, Land Acquisition-Cueto, Land Acquisition-Dailey, Land Acquisition-Central Allied, Land Acquisition-Wilken, Runway 19 Approach Clearing and Grubbing, Heavy Duty Runway Broom, Positive Access Control System, Perimeter Security Fence and Gates, Design of Airfield Improvements, Airfield Signage Upgrade Installation, Runway 1–19 High Intensity Runway Lights, Access Taxiway Overlay to Southwest GA Area, South Apron Rehabilitation, Ground/Run-Up Noise Study, FAR Part 150 Noise Study/Master Plan Update, High Speed Rotary Snow Blower, Runway 1–19 Environmental Assessment, Taxiway ''C'' Overlay/Runway 5–23 Joint Rehabilitation, Airfield Drainage Study/Design, Snow Removal Plow Truck, Snow Removal Tractor, Passenger Lift, Runway Surface Condition Sensors, Extended Runway Safety Area Grading Runway 14, Stormwater Management, Snow Removal Equipment/Maintenance Storage Facility Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/Commercial Operators filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Akron-Canton Regional Airport Authority Board.

Issued in Des Plaines, Illinois, on July 16, 1996.

Benito DeLeon,

Manager, Planning/Programming Branch, Airports Division, Great Lakes Region.

[FR Doc. 96–18827 Filed 7–23–96; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Delta County Airport, Escanaba, Michigan

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Delta County Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before August 23, 1996.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address:

Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, MI 48111.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Harvey Setter, Airport Manager, of the Delta County Airport and Parks Commission, at the following address: Delta County Airport, 3300 Airport Road, Escanaba, MI 49829.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Delta County Airport and Parks Commission under Section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Jon B. Gilbert, Program Manager, Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111 (313–487–7281). The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Delta County Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On June 26, 1996, the FAA determined that the application to impose and use the revenue from a PFC submitted by Delta County Airport and Parks Commission was substantially complete within the requirements of Section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than September 17, 1996.

The following is a brief overview of the application.

PFC Application No.: 96–04–C–00–ESC.

Level of the proposed PFC: $3.00.

Proposed charge effective date: December 1, 1997.

Proposed charge expiration date: March 31, 1998.

Total estimated PFC revenue: $15,870.00.

Brief description of proposed project(s): Relocate airport entrance road and security fence.

Class or classes of air carriers which the public agency has requested not be required to collect PFC's: Air taxis and charters.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice, and other documents germane to the application in person at the Delta County Airport and Parks Commission.

Issued in Des Plaines, Illinois, on July 16, 1996.

Benito DeLeon,

Manager, Planning/Programming Branch, Airports Division, Great Lakes Region.

[FR Doc. 96–18828 Filed 7–23–96; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at El Paso International Airport, El Paso, Texas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at El Paso International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before August 23, 1996.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate copies to the FAA at the following address: Mr. Ben Guttery, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–610D, Fort Worth, Texas 76193–0610.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to William B. Rank, II, Director of Aviation, El Paso International at the following address: William B. Ranking, II, Director of Aviation, City of El Paso, Two Civic Center Plaza, El Paso, Texas 79901.

Air carriers and foreign air carriers may submit copies of the written comments previously provided to the Airport under Section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Ben Guttery, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–610D, Fort Worth, Texas 76193–0610, (817) 222–5614.

The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at El Paso International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On July 3, 1996, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Airport was substantially complete within the requirements of Section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than October 30, 1996.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: January 1, 1997.

Proposed charge expiration date: May 31, 2004.

Total estimated PFC revenue: $40,271,000.00.

PFC application number: 96–01–C–00–ELP.

Brief description of proposed project(s):

Projects To Impose and Use PFC's

Terminal Renovation Project, Reconstruct Runway 4–22 (Center 75 Feet), Terminal Ramp Reconstruction, and Airfield Pavement Evaluation Study.

Project To Impose PFC's

Construct Runway 4–22 Extension.

Proposed class or classes of air carriers to be exempted from collecting PFC's: Air Taxi/Commercial operators.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–610D, 2601 Meacham Blvd., Fort Worth, Texas 76137–4298.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at El Paso International Airport.

Issued in Fort Worth, Texas on July 3, 1996.

Naomi L. Saunders,

Manager, Airports Division.

[FR Doc. 96–18825 Filed 7–23–96; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Tulsa International Airport, Tulsa, Oklahoma

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Tulsa International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before August 23 1996.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate copies to the FAA at the following address: Mr. Ben Guttery, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–610D, Fort Worth, Texas 76193–0610.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Brent A. Kitchen, Director of Tulsa International Airport at the following address: Brent A. Kitchen, Airports Director, Tulsa International Airport, PO Box 581838, Tulsa, OK 74158–1838.

Air carriers and foreign air carriers may submit copies of the written comments previously provided to the Airport under Section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Ben Guttery, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–610D, Fort Worth, Texas 76193–0610, (817) 222–5614.

The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Tulsa International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On July 5, 1996, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Airport was substantially complete within the requirements of Section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than October 31, 1996.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: December 1, 1996.

Proposed charge expiration date: July 31, 1999.

Total estimated PFC revenue: $12,206,000.00.

PFC application number: 96–03C–00–TUL.

Brief description of proposed project(s).

Projects To Impose and Use PFC's

Stormwater drainage, sewer, and public access/perimeter roadway improvements;

Taxiway Juliet rehabilitation and airfield SMGCS lighting; and

Terminal building HVAC, sewer, and electrical service improvements.

Proposed class or classes of air carriers to be exempt from collecting PFC's:

None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–610D, 2601 Meacham Blvd., Fort Worth, Texas 76137–4298.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at Tulsa International Airport.

Issued in Fort Worth, Texas on July 5, 1996.

Naomi L. Saunders,

Manager, Airports Division.

[FR Doc. 96–18826 Filed 7–23–96; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

Environmental Impact Statement; St. Johns County, Florida

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for a proposed highway project in St Johns County, Florida concerning the Bridge of Lions.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Bartlett, Supervisory Transportation Engineer, Federal Highway Administration, 227 N. Bronough Street, Room 2015, Tallahassee, Florida 32301–2015, Telephone; (904) 942–9598.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Florida Department of Transportation and the United States Coast Guard will prepare an EIS for a proposal to rehabilitate or replace the Bridge of Lions crosses the Matanzas River (Atlantic Intracoastal Waterway) and connects the City of St Augustine with Anastasia Island. The structure exhibits severe deterioration and does not meet current load capacity standards. The proposed project is considered necessary to maintain this important river crossing. The existing Bridge of Lions is listed on the National Register of Historic Places and the western bridge abutment is adjacent to the St Augustine Historic District, a National Historic Landmark. The existing bridge does not meet the current U.S. Coast Guard Guide Clearances for marine navigation along the Intracoastal Waterway.

Alternatives under consideration include: (1) taking no action; (2) rehabilitating the existing bridge; (3) replacing the existing bridge.

Coordination and informal scoping with appropriate Federal, State, and local agencies and private citizens who have expressed interest in this proposal has been undertaken and will continue. A series of public meetings have been held and additional meetings are planned for the future in St Johns County. In addition, a public hearing will be held. Public notice will be given of the time and place of the meetings and hearing. The Draft EIS will be made available for public and agency review and comment.

To ensure that the full range of issues related to the proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: July 3, 1996.

Robert M. Callan,

Acting Division Administrator, Tallahassee, Florida.

[FR Doc. 96–18250 Filed 7–23–96; 8:45 am]

BILLING CODE 4910–22–M

National Highway Traffic Safety Administration

[Docket No. 96–079; Notice 1]

Notice of Receipt of Petition for Decision That Nonconforming 1994 Volvo 960 Sedan and Wagon Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1994 Volvo 960 Sedan and Wagon passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1994 Volvo 960 sedans and wagons that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is August 23, 1996.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9:30 am to 4 pm.]

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i)(I) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all

applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the Federal Register of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the Federal Register.

J.K. Motors of Kingsville, Maryland (''J.K.'') (Registered Importer 90–006) has petitioned NHTSA to decide whether 1994 Volvo 960 sedans and wagons are eligible for importation into the United States. The vehicles which J.K. believes are substantially similar are 1994 Volvo 960 sedans and wagons that were manufactured for importation into, and sale in, the United States and certified by their manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 1994 Volvo 960 sedans and wagons to their U.S. certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

J.K. submitted information with its petition intended to demonstrate that non-U.S. certified 1994 Volvo 960 sedans and wagons, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 1994 Volvo 960 sedans and wagons are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence . . .*, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 107 *Reflecting Surfaces*, 109 *New Pneumatic Tires*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 211 *Wheel Nuts, Wheel Discs and Hubcaps*, 212 *Windshield Retention*, 214 *Side Impact Protection*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, 301 *Fuel System Integrity*, and 302 *Flammability of Interior Materials*.

Additionally, the petitioner states that non-U.S. certified 1994 Volvo 960 sedans and wagons comply with the Bumper Standard found in 49 CFR Part 581.

Petitioner also contends that these vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays*: (a) substitution of a lens marked ''Brake'' for a lens with an ECE symbol on the brake failure indicator lamp; (b) replacement of the speedometer with one calibrated in miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment*: (a) installation of U.S.-model headlamps and front sidemarkers; (b) installation of U.S.-model taillamp assemblies which incorporate rear sidemarkers; (c) installation of a high mounted stop lamp.

Standard No. 110 *Tire Selection and Rims*: installation of a tire information placard.

Standard No. 111 *Rearview Mirror*: replacement of the passenger side rearview mirror with a U.S.-model component.

Standard No. 114 *Theft Protection*: installation of a warning buzzer microswitch and a warning buzzer in the steering lock assembly.

Standard No. 115 *Vehicle Identification Number*: installation of a VIN plate that can be read from outside the left windshield pillar, and a VIN reference label on the edge of the door or latch post nearest the driver.

Standard No. 118 *Power Window Systems*: installation of a relay in the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 208 *Occupant Crash Protection*: (a) Installation of a seat belt warning buzzer; (b) installation of driver's and passenger's side knee bolsters to augment the vehicles' air bag based passive restraint system. The petitioner states that the vehicles are equipped with manual lap and shoulder belts in the front and rear outboard seating positions, and with a manual lap belt in the center seating positions.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the Federal Register pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141 (a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: July 18, 1996.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 96–18811 Filed 7–23–96; 8:45 am]

BILLING CODE 4910–59–P

[Docket No. 96–076; Notice 1]

Notice of Receipt of Petition for Decision That Nonconforming 1994 BMW R1100RS Motorcycles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1994 BMW R1100RS motorcycles are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that a 1994 BMW R1100RS that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) It is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is August 23, 1996.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9:30 a.m. to 4 p.m.]

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle

Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i)(I) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. § 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the Federal Register of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the Federal Register.

Champagne Imports, Inc. of Lansdale, Pennsylvania (''Champagne'') (Registered Importer 90–009) has petitioned NHTSA to decide whether 1994 BMW R1100RS motorcycles are eligible for importation into the United States. The vehicle which Champagne believes is substantially similar is the version of the 1994 BMW R1100RS that was manufactured for importation into, and sale in, the United States and certified by its manufacturer, Bayerische Motoren Werke, A.G., as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared the non- U.S. certified 1994 BMW R1100RS to its U.S. certified counterpart, and found the two vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Champagne submitted information with its petition intended to demonstrate that the non-U.S. certified 1994 BMW R1100RS, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as its U.S. certified counterpart, or is capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that the non-U.S. certified 1994 BMW R1100RS is identical to its U.S. certified counterpart with respect to compliance with Standards Nos. 106 *Brake Hoses,* 111 *Rearview Mirrors,* 115 *Vehicle Identification Number,* 116 *Brake Fluid,* 119 *New Pneumatic Tires for Vehicles other than Passenger Cars,* 120 *Tire Selection and Rims for Vehicles other than Passenger Cars,* and *122 Motorcycle Brake Systems.*

Petitioner also contends that the vehicle is capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* installation of U.S-model headlamp assemblies.

Standard No. 123 *Motorcycle Controls and Displays:* installation of a U.S. model speedometer calibrated in miles per hour.

Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, S.W., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the Federal Register pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: July 18, 1996.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 96–18813 Filed 7–23–96; 8:45 am]

BILLING CODE 4910–59–P

Research and Special Programs Administration

[Preemption Determination Nos. PD–8(R), PD–9(R), PD–10(R), and PD–11(R); Docket Nos. PDA–9(R), PDA–7(R), PDA–10(R), and PDA–11(R), respectively]

California and Los Angeles County Requirements Applicable to On-Site Handling and Transportation of Hazardous Materials; Decision on Petition for Reconsideration

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of Deferral of Decision on Petitions for Reconsideration of Administrative Determination of Preemption.

SUMMARY: RSPA is deferring action on a decision with respect to the petitions for reconsideration of PD–8, PD–9, PD–10 and PD–11 until the agency can complete a rulemaking, RSPA Docket HM–223, which focuses on numerous issues that are raised in the petitions for reconsideration. Specifically, both the petitions for reconsideration and RSPA Docket HM–223 raise issues regarding the on-site handling and transportation of hazardous materials and whether certain transportation and unloading activities are regulated under the HMR. RSPA is deferring action on the petitions for reconsideration in order to avoid prejudging matters that are more appropriately handled through notice-and-comment procedures.

FOR FURTHER INFORMATION CONTACT: Nancy E. Machado, Office of the Chief Counsel, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001, telephone 202–366–4400.

SUPPLEMENTARY INFORMATION: On February 15, 1995, RSPA published its determinations in PD–8(R), PD–9(R), PD–10(R), and PD–11(R) (Docket Nos. PDA–9(R), PDA–7(R), PDA–10(R), and PDA–11(R), respectively) (60 FR 8774). RSPA did not preempt the two California statutory provisions or 34 of the 40 Los Angeles County regulations at issue. The State and local requirements related to permits; fees; on-site hazard communication; the definition, classification, transportation, storage, handling and unloading of hazardous materials at consignee facilities; and container design and construction. RSPA did, however, preempt six Los Angeles County regulations. RSPA found that those regulations restricted tank car unloading and imposed fees, which were not used for hazardous materials transportation

purposes, on consignee unloading activities.

Within the 20-day time period provided in 49 CFR 107.211(a), HASA, Inc., The Society of the Plastics Industry, Inc.; National Propane Gas Association; Pioneer Chlor Alkali Company, Inc.; National Tank Truck Carriers, Inc.; and Chlorine Institute, Inc. and Chemical Manufacturers' Association (Petitioners) filed petitions for reconsideration of RSPA's determinations. The petitioners raised numerous issues regarding the on-site handling and transportation of hazardous materials, and questioned whether certain transportation and unloading activities are regulated under the HMR.

RSPA currently is engaged in a rulemaking, RSPA Docket HM–223, which directly addresses the issues raised by the petitioners. In recent years, RSPA has issued a number of interpretations, inconsistency rulings and preemption determinations in response to public requests for clarification regarding the meaning of the term ''transportation in commerce'' and whether particular activities fall under that term and, thus, are subject to the HMR. Although these documents are publicly available, the regulated industry, Federal agencies, States, local governments, and Indian tribes have not been consistently aware of their existence and availability. Furthermore, some of the interpretations and decisions in these documents need to be revised in light of changes in DOT's, and other Federal agencies', statutory authority. In Docket HM–223, RSPA is proposing to consolidate, clarify, and revise, as necessary, these interpretations, rulings and decisions, and make them part of the HMR.

Based on the above, RSPA will defer issuing a decision with respect to the petitions for reconsideration until the rulemaking is completed. RSPA is taking this action in order to avoid prejudging issues which are more appropriately handled through the notice-and-comment process under the Administrative Procedure Act, 5 U.S.C. 553. An Advance Notice of Proposed Rulemaking; Notice of Public Meeting, under RSPA Docket HM–223 will be published in the Federal Register at a later date.

Issued in Washington, DC on July 18, 1996.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 96–18821 Filed 7–23–96; 8:45 am]

BILLING CODE 4910–60–P

Surface Transportation Board [1]

[STB Finance Docket No. 32968 (Sub-No. 1)]

CAGY Industries, Inc.—Acquisition of Control Exemption—Luxapalila Valley Railroad, Inc.

AGENCY: Surface Transportation Board.

ACTION: Petition for exemption.

SUMMARY: Acting under 49 U.S.C. 10502(a), the Board exempts from regulation under 49 U.S.C. 11323–25 the resumption of control of Luxapalila Valley Railroad, Inc., by CAGY Industries, Inc. This matter is related to a notice of exemption in STB Finance Docket No. 32968, published in the Federal Register on June 5, 1996, at 61 FR 28638.

DATES: This exemption will be effective on August 23, 1996. Petitions to stay must be filed by August 5, 1996. Petitions to reopen must be filed by August 13, 1996.

ADDRESSES: Send pleadings referring to Finance Docket No. 32968 (Sub-No. 1) to: (1) Office of the Secretary, Case Control Branch, Surface Transportation Board, 1201 Constitution Avenue, N.W., Washington, D.C. 20423; and (2) petitioner's representative: Patricia E. Kolesar, Esq., STB Finance Docket 32968 (Sub-No. 1) Slover & Loftus, 1224 Seventeenth Street, N.W., Washington, D.C. 20036.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 927–5660. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's full decision in STB Finance Docket No. 32968 (Sub-No. 1). To purchase a copy of the full decision, write to, call, or pick up in person from DC News & Data, Inc., Room 2229, 1201 Constitution Avenue, N.W., Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services at (202) 927–5721.]

Decided: July 11, 1996.

By the Board, Chairman Morgan, Vice Chairman Simmons, and Commissioner Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 96–18793 Filed 7–23–96; 8:45 am]

BILLING CODE 4915–00–P

[1] The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803, which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission and transferred certain functions to the Surface Transportation Board (Board). This notice relates to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 10502 and 11323–25.

DEPARTMENT OF THE TREASURY

Submission To OMB for Review; Comment Request

July 15, 1996.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–1409.

Form Number: IRS Form 8842.

Type of Review: Extension.

Title: Election To Use Different Annualization Periods for Corporate Estimated Tax.

Description: Form 8842 is a form used by corporations (including S corporations), tax-exempt organizations subject to the unrelated business income tax, and private foundations to annually elect the use of an annualization period in section 6655(e)(2)(C) (i) or (ii) for purposes of figuring the corporation's estimated tax payments under the annualized income installment method.

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 2,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—1 hr., 55 min.

Learning about the law or the form—6 min.

Preparing and sending the form to the IRS—8 min.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 4,280.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive

Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports, Management Officer.

[FR Doc. 96–18731 Filed 7–23–96; 8:45 am]

BILLING CODE 4830–01–P

Submission To OMB for Review; Comment Request

July 15, 1996.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB Reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–1407.

Form Number: IRS Form 8848.

Type of Review: Extension.

Title: Consent To Extend the Time To Assess the Branch Profits Tax Under Regulations Sections 1.884–2T (a) and (c).

Description: Form 8848 will be used by foreign corporations that have (a) completely terminated all of their U.S. trade or business within the meaning of Regulations section 1.884–2T(a) during the tax year or (b) transferred their U.S. assets to domestic corporation in a transaction described in section 381(a), if the foreign corporation was engaged in a U.S. trade or business at that time.

Respondents: Business or other for-profit.

Estimated Number of Respondents/ Recordkeepers: 5,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—4 hr., 4 min.

Learning about the law or the form—47 min.

Preparing and sending the form to the IRS—54 min.

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 28,800 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224

OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports, Management Officer.

[FR Doc. 96–18732 Filed 7–23–96; 8:45 am]

BILLING CODE 4830–01–P

Submission To OMB for Review; Comment Request

July 15, 1996.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB Reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–1073.

Form Number: IRS Form 8801.

Type of Review: Extension.

Title: Credit For Prior Year Minimum Tax—Individuals, Estates and Trusts.

Description: Form 8801 is used by individuals, estates, and trusts to compute the minimum tax credit, if any, available from a tax year beginning after 1986 to be used in the current year or to be carried forward for use in a future year.

Respondents: Individual or households.

Estimated Number of Respondents/ Recordkeepers: 38,744.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—1 hr., 33 min.

Learning about the law or the form—1 hr., 13 min.

Perparing the form—1 hr., 0 min.

Copying, assembling, and sending the form to the IRS—17 min.

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 157,301 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224

OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports, Management Officer.

[FR Doc. 96–18733 Filed 7–23–96; 8:45 am]

BILLING CODE 4830–01–M

Submission To OMB for Review; Comment Request

July 16, 1996.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB Reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–1110.

Form Number: IRS Form 940–EZ.

Type of Review: Extension.

Title: Employer's Annual Federal Unemployment (FUTA) Tax Return.

Description: Form 940–EZ is a simplified form that most employers with uncomplicated tax situations (e.g., only pay unemployment contributions to one state and paying them on time) can use to pay their FUTA tax. Most small businesses and household employers use the form.

Respondents: Business or other for-profit, Individuals or households, Farms.

Estimated Number of Respondents/ Recordkeepers: 4,089,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—6 hr., 23 min.

Learning about the law or the form—7 min.

Preparing and sending the form to the IRS—34 min.

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 27,618,153 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224

OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports, Management Officer.

[FR Doc. 96–18734 Filed 7–23–96; 8:45 am]

BILLING CODE 4830–01–M

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project CO–45–91

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, 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)). Currently, the IRS is soliciting comments concerning an existing final regulation, CO–45–91 (TD 8529), Limitations on Corporate Net Operating Loss Carryforwards. (§ 1.382–9).

DATES: Written comments should be received on or before September 23, 1996, to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Limitations on Corporate Net Operating Loss Carryforwards.

OMB Number: 1545–1275. *Regulation Project Number:* CO–45–91 Final.

Abstract: Sections 1.382–9(d)(2)(iii) and (d)(4)(iv) of the regulation allow a loss corporation to rely on a statement by beneficial owners of indebtedness in determining whether the loss corporation qualifies for the benefits of Internal Revenue Code section 382(l)(5). Regulation section 1.382–9(d)(6)(ii) requires a loss corporation to file an election if it wants to apply the regulation retroactively, or revoke a Code section 382(l)(6) election.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of OMB approval.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 650.

Estimated Time Per Respondent: The estimated annual time per respondent with respect to the §§ 1.382–9(d)(2)(iii) and (d)(4)(iv) statements is 15 minutes. The estimated annual time per respondent with respect to the § 1.382–9(d)(6)(ii) election is 1 hour.

Estimated Total Annual Burden Hours: 200.

The following paragraph applies to all of the collections of information covered by this notice:

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 OMB control number. Books or records relating to a 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.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the 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 collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (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; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 15, 1996

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 96–18724 Filed 7–23–96; 8:45 am]

BILLING CODE 4830–01–P

Proposed Collection; Comment Request for Regulation Project INTL–941–86

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, 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)). Currently, the IRS is soliciting comments concerning an existing notice of proposed rulemaking, INTL–941–86, and temporary regulation, INTL–655–87 (TD 8178), Passive Foreign Investment Companies. (§§ 1.1291–10T, 1.1294–1T, 1.1297–3T).

DATES: Written comments should be received on or before September 23, 1996, to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Passive Foreign Investment Companies.

OMB Number: 1545–1028.

Regulation Project Number: INTL–941–86 Notice of proposed rulemaking; INTL–655–87 Temporary.

Abstract: These regulations specify how the United States persons who are shareholders of passive foreign investment companies (PFICs) make elections with respect to their PFIC stock.

Current Actions: There is no change to these existing regulations.

Type of Review: Extension of OMB approval.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 275,000.

Estimated Time Per Respondent: 45 minutes.

Estimated Total Annual Burden Hours: 206,250.

The following paragraph applies to all of the collections of information covered by this notice:

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 OMB control number. Books or records relating to a 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.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All

comments will become a matter of public record. Comments are invited on: (a) whether the 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 collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (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; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 16, 1996.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 96–18725 Filed 7–23–96; 8:45 am]

BILLING CODE 4830–01–P

federal register

Wednesday
July 24, 1996

Part II

Department of Education

Office of the Secretary

Easy Access for Students and Institutions for Special Government Employees: Certification; Notice

DEPARTMENT OF EDUCATION

Office of the Secretary

Notice of Certification

SUMMARY: The Secretary of Education certifies that the national interest requires that special government employees, whose non-Federal employer is an institution of postsecondary education, retained by the Department to work on ''Project EASI'' (Easy Access for Students and Institutions), be permitted to act as agent or attorney, and receive compensation for such services, for their employer-institution in matters pending before the Department which arise under a Program Participation Agreement required by Title IV of the Higher Education Act of 1965, as amended, (HEA) in certain circumstances.

FOR FURTHER INFORMATION CONTACT: Susan A. Winchell, Attorney, Ethics Counsel Staff, Office of General Counsel, U.S. Department of Education, 600 Independence Avenue, S.W., Washington, D.C. 20202–2152. Telephone: 202/401–8309.

SUPPLEMENTARY INFORMATION: Section 205 of Title 18 generally prohibits Federal employees from acting as an agent or attorney for any non-Federal person or organization before any employee of the Executive or Judicial branch in a matter in which the United States is a party or has a direct and substantial interest. Section 203 of Title 18 prohibits employees from receiving compensation for such services. These broad prohibitions are modified somewhat for those who serve as ''special government employees,'' as that term is defined in 18 U.S.C. Section 202(a), i.e., employees who are appointed for not more than 130 days in a 365-day appointment period.

A special Government employee who works for no more than 60 days during his or her 365-day appointment period may not act as an agent or attorney for any non-Federal person or organization, or receive compensation in connection with providing that service, with respect to matters involving specific parties in which he or she has participated personally and substantially as a Government employee. If a special government employee exceeds 60 working days during his or her appointment year, he or she also may not act as an agent or attorney for non-Federal persons and organizations, or receive compensation for those services, in any specific party matters pending before their employing agency, even though the employee did not participate in the matter as a Government employee. (18 U.S.C. 205(c) and 203(c)).

Sections 203 and 205 permit the head of an agency to waive the restrictions on special government employees acting as an agent or attorney, and receiving compensation for those services, for non-Federal persons and organizations in the performance of work under a grant or contract when he or she certifies in writing that to do so is required by the national interest. (18 U.S.C. 205(f) and 203(e)).

''Project EASI'' is an integrated delivery system for all participants in the student financial aid system, including students, lenders, and schools. It is essential for the Department to have high quality input from all participants in order for Project EASI to be effective. All of the special Government employees hired to work on Project EASI are student financial aid officials at institutions participating in student financial assistance programs under title IV of the HEA. Because of the nature of this project, the participation of student financial aid officials is vital.

The special Government employees working on Project EASI frequently act as agents for their employer-institutions on matters arising under a Program Participation agreement required for each institution participating in student financial assistance programs under Section 487 of the HEA. The Secretary expects that some of these special government employees will work for more than 60 days during the course of a 365-day appointment period.

The Secretary has determined that if the special Government employees working on Project EASI are prohibited from acting as agents for their employer-institutions, or receiving compensation for those services, with respect to matters arising under a Program Participation Agreement that are pending before the Department, it will not be possible for the Department to obtain the services of qualified consultants to work on Project EASI. Therefore, the Secretary certifies that the national interest requires that Special government employees working on Project EASI, who are employed by institutions of postsecondary education, be permitted to act as agents for their employer-institutions, and receive compensation for those services, in matters arising under a Program Participation Agreement that are pending before the Department. This certification does not cover Department matters on which the special Government employee has participated personally and substantially on behalf of the Department, even if it is a matter arising under the Program Participation Agreement. No such matter should arise because special Government employees must disqualify themselves from participating in Department matters involving their own institutions.

(Catalog of Federal Domestic Assistance Number: Not Applicable)

Dated: July 18, 1996.

Richard W. Riley,

Secretary of Education.

[FR Doc. 96–18760 Filed 7–23–96; 8:45 am]

BILLING CODE 4000–01–M

federal register

Wednesday
July 24, 1996

Part III

Department of Education

Indian Education Formula Grants to Local Educational Agencies; Notice

DEPARTMENT OF EDUCATION

[CFDA 84.060A]

Office of Elementary and Secondary Education; Indian Education Formula Grants to Local Educational Agencies Notice Inviting Applications for New Awards for Fiscal Year (FY) 1996

Purpose: Provides grants to support local educational agencies in their efforts to reform elementary and secondary school programs that serve Indian students in order to ensure that those programs are based on challenging State content standards and State student performance standards used for all students, and are designed to assist Indian students to meet those standards.

Eligible Applicants: Local educational agencies (LEAs) and certain schools funded by the Bureau of Indian Affairs, and Indian tribes under certain conditions.

Deadline for Transmittal of Applications: August 30, 1996. Applications not meeting the deadline will not be considered for funding in the initial allocation of awards. Applications not meeting the deadline *may* be considered for funding if the Secretary determines, under section 9117(d), Part A of Title IX of the 1994 amendments of the Elementary and Secondary Act of 1965 (the Act), as amended, that funds are available and that reallocation of those funds to those applicants would best assist in advancing the purposes of the program. However, the amount and date of an individual award, if any, made under section 9117(d) of the Act may not be the same to which the applicant would have been entitled if the application had been submitted on time.

Deadline for Intergovernmental Review: September 30, 1996.

Applications Available: July 29, 1996.

Available Funds: The appropriation for this program for fiscal year 1996 is $50,000,000, which should be sufficient to fund all eligible applicants.

Estimated Range of Awards: $3,000 to $1,110,000.

Estimated Average Size of Awards: 40,000.

Estimated Number of Awards: 1,270.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 75, 77, 79, 80, 81, 82, 85, and 86.

For Applications or Information Contact: Cathie Martin, Office of Indian Education, U.S. Department of Education, 600 Independence Avenue, S.W., Portals Building-Room 4300, Washington, D.C. 20202–6335. Telephone: (202) 260–1683. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, D.C. 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

Program Authority: 20 U.S.C. 7811.

Dated: July 18, 1996.

Gerald N. Tirozzi,

Assistant Secretary Office of Elementary and Secondary Education.

[FR Doc. 96–18759 Filed 7–23–96; 8:45 am]

BILLING CODE 4000–01–M

federal register

Wednesday
July 24, 1996

Part IV

Department of Agriculture

Cooperative State Research, Education, and Extension Service

Request for Proposals: Community Food Projects Program; Notice

DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service

Request Proposals (RFP): Community Food Projects Program

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

ACTION: Announcement of availability of grant funds and request for proposals for the Community Food Projects Program.

SUMMARY: The Federal Agriculture Improvement and Reform Act of 1996 established new authority for a program of Federal grants to support the development of community food projects designed to meet the food needs of low-income people; increase the self-reliance of communities in providing for their own food needs; and promote comprehensive responses to local food, farm, and nutrition issues.

This notice sets out the objectives for these projects, the eligibility for criteria for projects and applicants, and the application procedures. The legislation also allows technical assistance under the program. Therefore, the applicants may request technical assistance as a part of their proposal request in order to subcontract to consultants or other groups to provide assistance for technical voids of the applying organization.

This notice contains the set of instructions needed to apply for a Community Food Project grant. To obtain application forms, please contact Proposal Services, Grants Management Branch; Office of Extramural Programs; USDA/CSREES at (202) 401–5048. When calling Proposal Services please indicate that you are requesting forms for the Community Food Projects Program.

APPLICATIONS MUST BE RECEIVED ON OR BEFORE AUGUST 23, 1996. Proposals received after August 23, 1996, will not be considered for funding.

FOR FURTHER INFORMATION CONTACT: Dr. Elizabeth Tuckermanty, Cooperative State Research, Education, and Extension Service, U.S. Department of Agriculture, Stop 2225, Washington, DC 20250–2225; telephone (202) 720–5997; Internet:etuckermanty@reeusda.gov: or Dr. Mark Bailey, Cooperative State Research, Education, and Extension Service, U.S. Department of Agriculture, Stop 2241, Washington, DC 20250–2241; telephone: (202) 401–1898; Internet:mbailey@reeusda.gov.

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Part I—General Information

A. Legislative Authority

Section 25 of the Food Stamp Act of 1977, as amended by Section 401(h) of the Federal Agricultural Improvement and Reform Act of 1996 (Pub. L. No. 104–127) (7 U.S.C. 2034) authorized a new program of Federal grants to support the development of community food projects. These grants are intended to help eligible private nonprofit entities that need a one-time infusion of Federal assistance to establish and carry out multi-purpose community food projects.

B. Definitions

For the purpose of awarding grants under this program, the following definitions are applicable:

(1) ''Administrator'' means the Administrator of the Cooperative State Research, Education, and Extension Service (CSREES) and any other officer or employee of the Department of Agriculture to whom the authority involved may be delegated.

(2) ''Authorized departmental officer'' means the Secretary or any employee of the Department who has the authority to issue or modify grant instruments on behalf of the Secretary.

(3) ''Authorized organizational representative'' means the president or chief executive officer of the applicant organization or the official, designated by the president or chief executive officer of the applicant organization, who has the authority to commit the resources of the organization.

(4) ''Budget period'' means the interval of time (usually 12 months) into which the project period is divided for budgetary and reporting purposes.

(5) ''Cash contributions'' means the applicant's cash outlay, including the outlay of money contributed to the applicant by non-Federal third parties.

(6) ''Community food project'' is a project that requires a one-time infusion of Federal assistance to become self-sustaining and is designed to: (i) meet the food needs of low-income people; (ii) increase the self-reliance of communities in providing for their own food needs; and (iii) promote comprehensive responses to local food, farm, and nutrition issues.

(7) ''Department'' or ''USDA'' means the United State Department of Agriculture.

(8) ''Grant'' means the award by the Secretary of funds to a private, non-profit entity to assist in meeting the costs of conducting, for the benefit of the public, an identified project which is intended and designed to accomplish the purpose of the program as identified in these guidelines.

(9) ''Grantee'' means the organization designated in the grant award document as the responsible legal entity to which a grant is awarded.

(10) ''Matching'' means that portion of project costs not borne by the Federal Government, including the value of in-kind contributions.

(11) ''Peer review panel'' means a group of experts qualified by training and experience in particular fields to give expert advice on the merit of grant applications in such fields, who evaluate eligible proposals submitted to this program in their personal area(s) of expertise.

(12) ''Private non-profit entity'' means any corporation, trust, association, cooperative or other organization which (1) is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest; (2) is not organized primarily for profit; and (3) uses its net proceeds to maintain, improve and/or expand its operations.

(13) ''Project director'' means the single individual designated by the grantee in the grant application and approved by the secretary who is responsible for the direction and management of the project.

(14) ''Prior approval'' means written approval evidencing prior consent by an authorized departmental officer as defined in (2) above.

(15) ''Project'' means the particular activity within the scope of the program supported by a grant award.

(16) ''Project period'' means the period, as stated in the award document and modifications thereto, if any, during which Federal sponsorship begins and ends.

(17) ''Secretary'' means the Secretary of Agriculture and any other officer or employee of the Department of Agriculture to whom the authority involved may be delegated.

(18) ''The Third party in-kind contributions'' means non-cash contributions of property or services provided by non-Federal third parties, including real property, equipment, supplies and other expendable property, directly benefiting and specifically identifiable to a funded project or program.

C. Eligibility

Proposals may be submitted by private, nonprofit entities. Because the projects must promote comprehensive responses to local food, farm, and nutrition issues, applicants are encouraged to seek and create partnerships among public, private nonprofit, and private for-profit entities, applicants are encouraged to seek and create partnerships among public, private nonprofit, and private for-profit entities. However, no more than ⅓ of an award may be subawarded to a for-profit organization or firm.

To be eligible for a grant, a private nonprofit applicant must meet three mandatory requirements:

(1) have experience in the area of:

(a) community food work, particularly concerning small and medium-sized farms, including the provision of food to people in low-income communities and the development of new markets in low-income communities for agricultural producers; or

(b) job training and business development activities for food-related activities in low-income communities;

(2) demonstrate competency to implement a project, provide fiscal accountability and oversight, collect data, and prepare reports and other appropriate documentation; and

(3) demonstrate a willingness to share information with researchers, practitioners, and other interested parties.

Matching Funds. Successful applicants must provide matching funds, either in cash or in kind, amounting to at least 50 percent of the total cost of the project during the term of the grant award as provided by section 25(e) of the Food Stamp Act of 1977.

In addition to the mandatory requirements above, applicants are encouraged to address how projects will be designed to:

(1) develop linkages between two or more sectors of the food system;

(2) support the development of entrepreneurial projects;

(3) develop innovative linkages between the for-profit and non-profit food sectors; or

(4) encourage long-term planning activities and multi-system, interagency approaches.

Part II—Program Description

A. Purpose of the Program

Proposals are invited for competitive grant awards under the Community Food Projects Program for fiscal year 1996. The purpose of this grant program is to support the development of community food projects. Such projects must require a one-time infusion of Federal assistance to become self-sustaining and be designed to: (1) meet the food needs of low-income people; (2) increase the self-reliance of communities in providing for their own food needs; and (3) promote comprehensive responses to local food, farm, and nutrition issues. This program is administered by the Cooperative State Research, Education, and Extension Service (CSREES) of the U.S. Department of Agriculture (USDA).

B. Available Funds and Award Limitations

The total amount of funds available in fiscal year 1996 for support of this program which is approximately $1,000,000.

Because the projects funded by this grant authority will be community-based and funded substantially by non-federal sources, it is expected that no one grant should command a significant portion of the total funds available for support of this program which is approximately $1,000,000.

Because the projects funded by this grant authority will be community-based and funded substantially by non-federal sources, it is expected that no one grant should command a significant portion of the total funds available. Applicants should request a budget commensurate with the project proposed. However, due to the effort required to properly evaluate proposals, USDA strongly urges that requests for support do not fall below $10,000. Awards will be made based on the merit of proposed projects with budgets that do not exceed $200,000. Awards will be made based on the merit of the proposed project with budgets considered only after the merits of the project have been determined. USDA reserves the right to negotiate final budgets with successful applicants. It is intended that the awardee non-profit organization will perform the substantive portion of the project. No more than one-third of the award, as determined by budget expenditures, may be subawarded to for-profit organizations. For purposes of obtaining additional knowledge that is not currently within the applicant organization, funds for technical assistance may be included in the All Other Direct Costs section of the proposed budget. (See budget instructions included with the budget form.)

Applicants may request one, two, or three years of funding, but in all cases, USDA funding may not exceed three years for any one project. Applicants may submit only one proposal for the same project objectives.

Based on this guidance, USDA has concluded that no single grant shall exceed $250,000 in any single year or more than $500,000 over the life of the project.

A community food project may be supported by only a single grant under this program. If an applicant is interested in receiving a multi-year award, this must be proposed when the application is first submitted. For example, an applicant may want funding for a planning phase in the first year of the project and funding for an implementation phase in the subsequent year(s). The total funds required for all phases of the project must be specified in the initial proposal.

C. Matching Funds Requirement

The Federal share of the cost of establishing or carrying out a community food project that receives assistance under this program may not exceed 50 percent of the cost of the project during the term of the grant. Grantees may provide for the non-Federal share through a payment in cash or in kind, fairly evaluated, including facilities, equipment, or services. A grantee may provide for the non-Federal share of the funding through State government, local government, or private sources.

D. Scope of the Program

Community food projects are intended to take a comprehensive approach to developing long-term solutions that help to ensure food security in communities by linking the food sector to community development, economic opportunity, and environmental enhancement.

Comprehensive solutions may include elements such as: (1) improved access to high quality, affordable food among low-income households; (2) support for local food systems, from urban gardening to local farms that provide high quality fresh foods, ideally with minimal adverse environmental impact; (3) expanded economic opportunities for community residents through local business or other economic development, improved employment opportunities, job training, youth apprenticeship, school-to-work transition, and the like. Any solution proposed must tie into community food needs.

Project goals should integrate multiple objectives into their design. The project should seek to address impacts beyond a specific goal such as increasing food produced or available for a specific group. Goals and objectives should integrate economic, social and environmental impacts such as job training, employment opportunities, small business expansion, neighborhood revitalization, open space development, transportation assistance or other community enhancements. All goals and objectives should be directed at arriving at these three outcomes; (1) Low-income people's food needs are met; (2) increased self-reliance of communities in providing for their food needs; and (3) Responses are comprehensive addressing local food, farm, nutrition, environmental and economic issues.

Community food projects are intended to go beyond the models offered by emergency and Federal food assistance programs by creating the opportunity for all community members to gain better access to affordable food. Ideally these projects will seek solutions over the longer term rather than focusing on short-term food relief. They will seek comprehensive solutions to problems across all levels of the food system from farmer to consumer.

Applicants should be aware of several USDA policy themes and initiatives that have the potential to strengthen the impact and success of some community food projects. These include food recovery and gleaning excess food; connecting the urban consumer with the rural producer; aiding citizens in leaving public assistance and achieving self-sufficiency; and utilizing micro enterprise and/or assets development projects related to community food needs. Relevant ongoing initiatives include the following:

(1) Farmers Markets. The Federal-State Market Improvement Program (FSMIP) administered by the Agricultural Marketing Service (AMS) provides $1.2 million in matching grants to state governments for marketing projects that carry out the purposes of the Agriculture Marketing Act of 1946 (7 U.S.C. 1621–1627). AMS also provides technical assistance to farmers' and alternative markets through its Wholesale and Alternative Markets Branch.

(2) EZ/EC Presidential Initiative. The President and Vice President, along with the Secretaries of Agriculture and the Department of Housing and Urban Development have designated Empowerment Zones, Enterprise Communities, and Champion Communities in both urban and rural areas. These have been targeted for services by Federal departments, including USDA. These are economically disadvantaged areas and are likely to face community food needs.

(3) AmeriCorps. The AmeriCorps national service program is a potential source of members interested in working on community food projects.

(4) Food recovery—Gleaning workbook.

The community, not the individual per se, is the unit of analysis and medium for action. Many solutions to food access problems may come from beyond a community's own boundaries, since most food also comes from outside. In that context, wherever possible community food projects should support food systems based on regional agriculture and strategies that improve the availability of high-quality locally-produced foods to low-income areas.

Community food projects are intended to bring together stakeholders from the distinct parts of the food system. Solutions to hunger, and access to food, should reflect a process that involves partnership building among the public, private nonprofit and private for-profit sectors. Together, these parties can address issues such as the capacity of the community to produce food and support local growers; the need for, and location of grocery stores that market affordable, high-quality food; transportation constraints; economic opportunities for residents to increase income thereby increasing access to high-quality nutritious food; community developments issues; the environment; and so on.

Community food projects should not be designed to merely support individual food pantries, farmers' markets, community gardens or other established projects. Rather, the community food projects should build on these experiences and encourage innovative long-term efforts. A successful project should be able to endure and outlive the one-time infusion of government and matching funds. Community food projects should be designed to become self-supporting (or have a sustainable funding source) and expand or prove to be a replicable model.

The primary objectives of the community food projects are to increase the food self-reliance of communities; promote comprehensive responses to local food, farm and nutrition issues; develop innovative linkages between the for-profit and nonprofit food sectors, and encourage long-term planning activities and multi-system inter-agency approaches. The following are some examples of these objectives in practice:

* Developing a working link between a food bank and area farmers to market fresh produce to a community through community-supported agriculture. Community members provide the financial support while the project develops links to institutions such as restaurants, food pantries, schools or other institutions. The process increases community awareness and commitment to local agriculture, while providing farmers a local market and consumers, and to expand the supply of and access to quality food.

* Implementing a comprehensive strategic plan for a lower-income neighborhood to increase residents' access to quality, affordable food through farmers' markets, community gardens, supermarkets, and other food programs related to access, such as transportation assistance, business development and neighborhood improvement. As with other sector planning, the community participates in identifying its food-related priorities, and works with institutions through a collaborative interagency process to meet its objectives.

* Developing a system of community farm stands sponsored by neighborhood organizations and managed by youth that sell locally-grown produce in low-income communities. The project provides skills training and/or jobs, and aims to become self-supporting within a reasonable time. It increases participants' understanding of the food system, including food production and distribution, expands interest in good nutrition, and provides entrepreneurial training opportunities for young people.

* A local food policy council may develop an implement a plan that creates several new food ventures, including a new supermarket in a low-income neighborhood. The council serves as the planning and coordinating entity that brings together local farms, for-profit food operators such as restaurants, processors, and retailers

with low-income neighborhood development organizations and job training groups, emergency food providers, city hall and other community services entities.

Part III—Preparation of a Proposal

A. Program Application Materials

Program application materials will be made available to eligible entities upon request. These materials include information about the purpose of the program, how the program will be conducted, and the required contents of a proposal, as well as the forms needed to prepare and submit grant applications under the program.

B. Content of a Proposal

To obtain application forms, please contract Proposal Services, Grants Management Branch; Office of Extramural Programs; USDA/CSREES at (202) 401–5048. When calling Proposal Services please indicate that you are requesting forms for the Community Food Projects Program.

1. Cover Page: Complete the ''Application for Funding'' Form in its Entirety

a. Note that providing a Social Security Number is voluntary, but is an integral part of the CSREES information system and will assist in the processing of the proposal.

b. One copy of the ''Application for Funding'' form must contain the pen-and-ink signatures of the project director(s) and authorized organizational representative for the applicant organization.

c. Note that by signing the ''Application for Funding'' form the applicant is providing the required certifications set forth in 7 CFR Part 3017, as amended, regarding Debarment and Suspension and Drug-Free Workplace, and 7 CFR Part 3018, regarding Lobbying. The certification forms are included in this application package for informational purposes only. It is not necessary to submit the forms to USDA.

2. Table of Contents

For ease in locating information, each proposal must contain a detailed table of contents just after the proposal cover page. The Table of Contents should include page numbers for each component of the proposal. Pagination should begin immediately following the Table of Contents.

3. Project Summary

The proposal must contain a project summary of 250 words or less on a separate page. This page must include the title of the project and the names of the primary project director(s) and the applicant organization, followed by the summary. The summary should be self-contained, and should described the overall goals and relevance of the project. The summary should also contain a listing of all organizations involved in the project. The Project Summary should immediately follow the Table of Contents.

4. Project Narrative

The Project Narrative for a community food project must be prepared on only one side of the page using standard size (8½″ × 11″; 21.6 cm × 27.9 cm) white paper, one inch margins, typed or word processed using no type smaller than 10 point font regardless of whether it is single or double spaced. The project narrative shall not exceed 10 pages. The community food project narrative must repeat and answer each of the following 10 questions:

a. What is the community to be served by the proposed project?

Describe the local food economy or food system, demographics, income, geographic characteristics of the area to be served and any other pertinent information.

b. What organizations will be involved in carrying out the proposed project and which segments of the local food economy or system do they link?

Include a description of the relevant experience of the organizations that will be involved and any project history. Letters acknowledging the support of these organizations should be provided in the appendix to the proposal.

c. What are the goals or purposes to be achieved by the proposed community food project?

d. How will the goals be achieved?

Provide a description of the approach by which the goals will be accomplished.

e. What are the major milestones that will indicate progress toward achieving the project goals?

Provide a time line for accomplishing major project objectives.

f. The legislation outlines three major outcomes of the Community Food Projects: (1) meet the food needs of low-income people, (2) increase the self-reliance of communities in providing for their own food needs; and (3) promote comprehensive responses to local food, farm and nutrition issues. What measures will be used to assess project progress on the above three outcomes? How will you assess performance on the outcomes?

For example, an applicant may propose to develop a farmers' market in a low-income urban area, selling produce grown by farmers in the surrounding area, and employing staff from both the urban and rural communities. The goals may be to increase access to fresh produce by community residents, (addresses outcome 1) increase employment and the income of farmers (addresses outcome 2). Possible outcome measures are the change in the consumption of produce by customers, the number of jobs created by the market, and the change in income experienced by the farmers supplying the market.

g. What are the plans for achieving self-sustainability?

Describe why a one-time infusion of Federal funds will be sufficient for the proposed project.

h. Additional information: Provide any additional information which supports the need for and usefulness of the project.

5. Key Personnel

Idenfiy the primary project director and the co-project manager(s) and other key personnel required for this project. An organizational chart should be provided if available. What is their relevant experience? Include vitae that provide adequate information so that proposal reviewers can make an informed judgment as to their capabilities and experience.

6. Budget

A. Budget Form: Prepare the budget form in accordance with instructions provided with the form. A budget form is required for each year of requested support. In addition, a summary budget is required detailing the requested total support for the overall project period. The budget form may be reproduced as needed by applicants. Funds may be requested under any of the categories listed on the form, provided that the item or service for which support is requested is allowable under the authorizing legislation, the applicable Federal cost principles, and these program guidelines, and can be justified as necessary for the successful conduct of the proposed project.

B. Matching Funds

(1) Proposals must include written verification of commitments of matching support (including both cash and in-kind contributions) from third parties. Written verification means:

(a) For any third party cash contributions, a separate pledge agreement for each donation, signed by the authorized organizational representatives of the donor organization and the applicant organization, which must include: (1)

the name, address, and telephone number of the donor; (2) the name of the applicant organization; (3) the title of the project for which the donation is made; (4) the dollar amount of the cash donation; and (5) a statement that the donor will pay the cash contribution during the grant period; and

(b) For any third party in-kind contributions, a separate pledge agreement for each contribution, signed by the authorized organizational representatives of the donor organization and the applicant organization, which must include: (1) the name, address, and telephone number of the donor; (2) the name of the applicant organization; (3) the title of the project for which the donation is made; (4) a good faith estimate of the current fair market value of the in-kind contribution; and (5) a statement that the donor will make the contribution during the grant period.

(2) The sources and amount of all matching support from outside the applicant institution should be summarized on a separate page and placed in the proposal immediately following the budget form. All pledge agreements must be placed in the proposal immediately following the summary of matching support.

(3) Applicants should refer to OMB Circulars A–110, ''Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals and Other Non-profit Organizations,'' and A–122, ''Cost Principles for Non-Profit Organizations,'' for further guidance and other requirements relating to matching and allowable costs.

7. Current and Pending Support

All proposals must list any other current public or private support (including in-house support) to which key personnel identified in the proposal have committed portions of their time, whether or not salary support for person(s) involved is included in the budget. Analogous information must be provided for any pending proposals that are being considered by, or that will be submitted in the near future to, other possible sponsors, including other USDA programs or agencies. Concurrent submission of identical or similar proposals to the possible sponsors will not prejudice proposal review or evaluation by the Administrator for this purpose. However, a proposal that duplicates or overlaps substantially with a proposal already reviewed and funded (or that will be funded) by another organization or agency will not be funded under this program. The application material includes Form CSREES–663 which is suitable for listing current and pending support.

8. Compliance with the National Environmental Policy Act

As outlined in 7 CFR Part 3407 (the Cooperative State Research, Education, and Extension Service regulations implementing NEPA), the environmental data for any proposed project is to be provided to CSREES so that CSREES may determine whether any further action is needed. In some cases, however, the preparation of environmental data may not be required. Certain categories of actions are excluded from the requirements of NEPA.

In order for CSREES to determine whether any further action is needed with respect to NEPA, pertinent information regarding the possible environmental impacts of a particular project is necessary; therefore, Form CSREES–1234, ''NEPA Exclusions Form,'' must be included in the proposal indicating whether the applicant is of the opinion that the project falls within a categorical exclusion and the reasons therefor. If it is the applicant's opinion that the proposed project falls within the categorical exclusions, the specific exclusion must be identified. Form CSREES–1234 and supporting documentation should be placed after the Form CSREES–661, ''Application for Funding,'' in the proposal.

Even though a project may fall within the categorical exclusions, CSREES may determine that an Environmental Assessment or an Environmental Impact Statement is necessary for an activity, if substantial controversy on environmental grounds exists or if other extraordinary conditions or circumstances are present which may cause such activity to have a significant environmental effect.

9. Organizational Management Information

Specific management information relating to an applicant shall be submitted on a one-time basis prior to the award of a grant under this program if such information has not been provided previously under this or another program for which the sponsoring agency is responsible. Copies of forms recommended for use in fulfilling the requirements contained in this section will be provided by USDA once a grant has been recommended for funding.

Part IV—Submission of a Proposal

A. What to Submit

An original and 14 copies must be submitted. Each copy of each proposal must be stapled in the upper lefthand corner. (DO NOT BIND) All copies of the proposal must be submitted in one package.

B. Where and When to Submit

Proposals must be received by close of business on August 23, 1996. Proposals sent by First Class mail must be sent to the following address: Proposal Services, Grants Management Branch, Office of Extramural Programs, USDA/CSREES, Stop 2245, Washington, DC 20250–2245, Telephone: (202) 401–5048.

Note: Hand-delivered proposals or those delivered by overnight express service should be brought to the following address: Proposal Services, Grants Management Branch; Office of Extramural Programs; USDA/CSREES; Room 303, Aerospace Center; 901 D Street, S.W.; Washington, DC 20024. The telephone number is (202) 401–5048.

C. Acknowledgment of Proposals

The receipt of all proposals will be acknowledged in writing and this acknowledgment will contain an identifying proposal number. Once your proposal has been assigned an identification number, please cite that number in future correspondence.

Part V—Selection Process and Evaluation Criteria

A. Selection Process

Given the short period in which USDA has to process project proposals, proposals must be received on or before August 23, 1996. Applicants are highly encouraged to convey their completed proposals via over-night mail or delivery services to ensure timely receipt by the USDA. Proposals will be ranked relative to all those received, and ranking will be based primarily on technical merit, and potential for sustainment. Those proposals recommended for an award will be conveyed to the Administrator (or his designee) for final approval.

Since the award process must be completed by September 30, 1996, applicants should submit fully developed proposals that meet all the requirements set forth in this RFP, and have fully developed budgets as well. However, USDA does retain the right to conduct discussions with applicants to resolve technical and/or budget issues as deemed necessary by USDA.

Each proposal will be evaluated in a two-part process. First, each proposal

will be screened to ensure it meets the requirements as set forth in this RFP. Proposals that meet these requirements will be technically evaluated by a review panel. Each proposal will be judged on its own merits. Proposals not meeting the requirements as set forth in this RFP will be returned without review.

A panel of individual experts will evaluate the proposed projects. The individual panel members will be selected from among those recognized as specialists who are uniquely qualified by training and experience in their respective fields to render expert advice on the merit of proposals being reviewed. It is anticipated that these experts will be drawn from a number of areas, among them government, universities, and entities involved in community food organizations or institutions, and rural development. The individual views of the panel members will be used to determine which proposal should be recommended to the Administrator (or his designee) for final funding decisions.

There is no commitment by USDA to fund any particular proposal or to make a specific number of awards. USDA also may elect to fund several or none of the proposed approaches to the same topic area. Care will be taken to avoid actual and potential conflicts of interest among reviewers. Evaluations will be confidential to USDA staff members, peer reviewers, and the proposed principal project director(s), to the extent permitted by law.

The members of the review panel will take into consideration evaluation criteria that includes, but is not limited to the following: the amount of available funding; geographic distribution of applications; and balance and diversity among different approaches to community food needs; the quality of proposed internal project evaluations; and quantitative outcome measures and other considerations pertinent to assuring that the total mix of funded projects best serves the public purpose.

B. Community Food Projects Technical Evaluation Criteria

1. Applicability and Merit. The primary evaluation criteria will be based upon the merit of the proposed project in regard to its ability to meet the food needs of low-income people in the proposed community; increase the self-reliance of the proposed community for providing for its own food needs; and promote comprehensive responses to local food, farm, and nutrition issues.

(Refer to Questions a. through e. in Part III, item B.4.) This area will comprise approximately 30 percent of the weight during evaluation.

2. Capacity to become self-sustaining. Applications will be evaluated based on an assessment of the project's ability for continuing to term and becoming self-sufficient once Federal funding ends. (Refer to Questions f. and j. in Part III, item B.4.). Approximately 20 percent of the evaluation weight will be applied to this area.

3. Organizational and staff qualifications and experience. Awards are provided to the non-profit organization. However, the working history of the organization and the experience of the principal project director will be key evaluation criteria. Experience in the area of community food work, particularly if that work also involved small or medium-size farms; provision of food to people in low-income communities; the development of new markets for agricultural goods in low-income communities, particularly as a means to enhance income for agricultural procedures; job training or business development for food-related activities in low-income communities; competency to implement the proposed project; ability to provide the appropriate financial/fiscal oversight; and the ability to collect data, prepare reports, and perform other necessary administrative functions. Approximately 20 percent of the evaluation will be based on this area.

4. Additional evaluation criteria. This area will comprise approximately 30 percent of the total evaluation. These criteria will be considered relative to the extent the proposed work contributes to:

a. developing linkages between two or more sectors of the food system;

b. supporting the development of entrepreneurial projects;

c. developing innovative linkages between the for-profit and nonprofit food sectors;

d. encouraging long-term planning activities and multi-system, interagency approaches; and

e. incorporating linkages to one or more ongoing USDA themes or initiatives (such as, but not limited to, those described in the background section).

Part VI—Supplementary Information

A. Access to Peer Review Information

After final decisions have been announced, CSREES will, upon request, inform the project director of the reasons for its decision on a proposal. Verbatim copies of summary reviews, not including the identity of the reviewers, will be made available to respective project directors upon specific request.

B. Grant Awards

1. General: Within the limit of funds available for such purpose, the awarding official of CSREES shall make grants to those responsible, eligible applicants whose proposals are judged most meritorious in the announced program areas under the evaluation criteria and procedures set forth in this request for proposals. The date specified by the Administrator as the effective date of the grant shall be no later than September 30 of the Federal fiscal year in which the project is approved for support and funds are appropriated for such purpose, unless otherwise permitted by law. It should be noted that the project need not be initiated on the grant effective date, but as soon thereafter as practicable so that project goals may be attained within the funded project period. All funds granted by CSREES under this request for proposals shall be expended solely for the purpose for which the funds are granted in accordance with the approved application and budget, the regulations, the terms and conditions of the award, the applicable Federal cost principles, and the Department's assistance regulations (part 3015, part 3016, and part 3019 of 7 CFR).

2. Organizational Management Information: Specific management information relating to an applicant shall be submitted on a one-time basis prior to the award of a grant identified under this part if such information has not been provided previously under this or another program for which the sponsoring agency is responsible. Copies of forms recommended for use in fulfilling the requirements contained in this section will be provided by the sponsoring agency as part of the preaward process.

3. Grant Award Document and Notice of Grant Award: The grant award document shall include at a minimum the following:

a. Legal name and address of performing organization or institution to whom the Administrator has awarded a grant under the terms of this request for proposals;

b. Title of Project;

c. Name(s) and address(es) of project director(s) chosen to direct and control approved activities;

d. Identifying grant number assigned by the Department;

e. Project period, specifying the amount of time the Department intends to support the project without requiring recompetition for funds;

f. Total amount of Department financial assistance approved by the Administrator during the project period;

g. Legal authority(ies) under which the grant is awarded;

h. Approved budget plan for categorizing allocable project funds to accomplish the stated purpose of the grant award; and

i. Other information or provisions deemed necessary by CSREES to carry out their respective granting activities or to accomplish the purpose of a particular grant.

4. Notice of Grant Award. The notice of grant award, in the form of a letter, will be prepared and will provide pertinent instructions or information to the grantee that is not included in the grant award document.

5. CSREES will award standard grants to carry out this program. A standard grant is a funding mechanism whereby CSREES agrees to support a specified level of effort for a predetermined time period without additional support at a future date.

C. Use of Funds; Changes

1. Delegation of Fiscal Responsibility: The grantee may not in whole or in part delegate or transfer to another person, institution, or organization the responsibility for use or expenditure of grant funds.

2. Changes in Project Plans:

a. The permissible changes by the grantee, project director(s), or other key project personnel in the approved research project grant shall be limited to changes in methodology, techniques, or other aspects of the project to expedite achievement of the project's approved goals. If the grantee and/or the project director(s) are uncertain as to whether a change complies with this provision, the question must be referred to the CSREES Authorized Departmental Officer for a final determination.

b. Changes in approved goals, or objectives, shall be requested by the grantee and approved in writing by the CSREES Authorized Departmental Officer prior to effecting such changes. In no event shall requests for such changes be approved which are outside the scope of the original approved project.

c. Changes in approved project leadership or the replacement or reassignment of other key project personnel shall be requested by the grantee and approved in writing by the awarding official of CSREES prior to effecting such changes.

d. Transfers of actual performance of the substantive programmatic work in whole or in part and provisions for payment of funds, whether or not Federal funds are involved, shall be requested by the grantee and approved in writing by the Department prior to effecting such transfers.

e. Changes in Project Period: The project period may be extended by CSREES without additional financial support, for such additional period(s) as the Authorized Departmental Officer determines may be necessary to complete or fulfill the purposes of an approved project. Any extension of time shall be conditioned upon prior request by the grantee and approval in writing by the Authorized Departmental Officer, unless prescribed otherwise in the terms and conditions of a grant.

f. Changes in Approved Budget: Changes in an approved budget must be requested by the grantee and approved in writing by the authorized departmental officer prior to instituting such changes if the revision will:

(1) Involve transfers of amounts budgeted for indirect costs to absorb an increase in direct costs;

(2) Involve transfers of amounts budgeted for direct costs to accommodate changes in indirect cost rates negotiated during a budget period and not approved when a grant was awarded; or

(3) Involve transfers or expenditures of amounts requiring prior approval as set forth in the applicable Federal cost principles, Departmental regulations, or in the grant award.

D. Other Federal Statues and Regulations that Apply

Several other Federal statutes and regulations apply to grant proposals considered for review and to project grants awarded under this program. These include but are not limited to:

7 CFR Part 1, subpart A—USDA implementation of the Freedom of Information Act.

7 CFR Part 3—USDA implementation of OMB Circular No. A–129 regarding debt collection.

7 CFR Part 15, subpart A—USDA implementation of Title VI of the Civil Rights Act of 1964, as amended.

7 CFR Part 3015—USDA Uniform Federal Assistance Regulations, implementing OMB directives (i.e., Circular Nos. A–21, and A–122) and incorporating provisions of 31 U.S.C. 6301–6308 (formerly the Federal Grant and Cooperative Agreement Act of 1977, Pub. L. 95–224), as well as general policy requirements applicable to recipients of Departmental financial assistance.

7 CFR Part 3016—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

7 CFR Part 3017, as amended—USDA implementation of Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants), as amended.

7 CFR Part 3018—USDA implementation of New Restrictions on Lobbying. Imposes new prohibitions and requirements for disclosure and certification related to lobbying on recipients of Federal contracts, grants, cooperative agreement, and loans.

7 CFR Part 3019—USDA implementation of OMB Circular A–110, Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations.

7 CFR Part 3051—USDA implementation of OMB Circular No. A–133 regarding audits of institutions of higher education and other nonprofit institutions.

7 CFR Part 3407—CSREES procedures to implement the National Environmental Policy Act;

29 U.S.C. 794, section 504—Rehabilitation Act of 1973, and CFR Part 15B (USDA implementation of statue), prohibiting discrimination based upon physical or mental handicap in Federally assisted programs.

35 U.S.C. 200 *et seq.*—Bayh-Dole Act, controlling allocation of rights to inventions made by employees of small business firms and domestic nonprofit organizations, including universities, in Federally assisted programs (implementing regulations are contained are contained in 37 CFR Part 401).

E. Confidential Aspects of Proposals and Awards

When a proposal results in a grant, it becomes a part of the record of the Agency's transactions, available to the public upon specific request. Information that the Secretary determines to be of a privileged nature will be held in confidence to the extent permitted by law. Therefore, any information that the applicant wishes to have considered as privileged should be clearly marked as such and sent in a separate statement, two copies of which should accompany the proposal. The original copy of a proposal that does not result in a grant will be retained by the Agency for a period of one year. Other copies will be destroyed. Such a proposal will be released only with the consent of the applicant or to the extent required by law. A proposal may be withdrawn at any time prior to the final action thereon.

F. Evaluation of Program

Section 25(h) of the Food Stamp Act of 1997, as amended, requires USDA to provide for an evaluation of the success of community food projects supported under this authority. All grantees shall be expected to assist the USDA by providing relevant information on their respective projects. Applicants are also encouraged to plan for their own internal self-assessments and evaluations to measure the effectiveness of each project.

Done at Washington, D.C., this 18th day of July 1996.

Colien Hefferan,

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

[FR Doc. 96–18808 Filed 7–19–96; 3:26 pm]

BILLING CODE 3410–22–M

federal register

Wednesday
July 24, 1996

Part V

Department of Education

34 CFR Part 646

Student Support Services Program; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 646

RIN 1840–AC24

Student Support Services Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the Student Support Services Program in order to further implement statutory changes made to the Student Support Services Programs authorizing statutes, Sections 402A and 402D of the Higher Education Act of 1965, as amended (HEA), by the Higher Education Amendments of 1992, and to clarify and simplify certain requirements governing the program. In general, the selection criteria, prior experience criteria, and grantee accountability provisions are affected by these changes.

EFFECTIVE DATE: These regulations take effect August 23, 1996.

FOR FURTHER INFORMATION CONTACT: Virginia A. Mason, Division of Student Services, U.S. Department of Education, 600 Independence Avenue, S.W., The Portals Building, Suite 600D, Washington, D.C. 20202–5249. Telephone: (202) 708–4804 or by Internet to TRIO@ed.gov. 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: The Student Support Services Program provides grants to institutions of higher education for projects offering support services to low-income, first generation, or disabled college students. These support services should increase their retention and graduation rates, facilitate their transfer from two-year to four-year colleges, and foster an institutional climate supportive of the success of low-income and first generation college students and students with disabilities. On December 13, 1995, the Secretary published a notice of proposed rulemaking (NPRM) for the Student Support Services Program in the Federal Register (60 FR 64108–113).

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, 107 persons submitted comments on the proposed regulations. The following is an analysis of the comments and the changes in the regulations since publication of the NPRM. Substantive issues are discussed under the section of the regulations to which they pertain. Technical and other minor changes made to the language of the regulations and suggested changes the Secretary is not legally authorized to make generally are not addressed.

What is the Student Support Services Program? (§ 646.1)

Comments: Many commenters objected to the stated purpose in § 646.1(a) of the proposed regulations because of the phrase ''facilitate their entrance into graduate and professional programs.'' Some commenters suggested that the phrase exceeds the scope of the authorizing legislation. Other commenters stated that the language would put the program at cross purposes with the Ronald E. McNair Postbaccalaureate Achievement Program and create an overwhelming burden on grantees to track students through graduate study. Several commenters recommended deleting ''graduate and professional'' and stating only the language from the statute.

Discussion: The Secretary has reviewed section 402D of the HEA, which authorizes the Student Support Services Program, and agrees with the commenters' suggestion that the section restate the statutory purpose of the program.

Change: This section of the regulations has been revised to mirror the statutory purpose of the program, namely to increase retention and graduation rates, and as appropriate, increase the transfer rates of eligible students from two-year to four-year institutions.

What Activities and Services May a Project Provide? (§ 646.4)

Comment: One commenter stated that the Secretary omitted test administration, in particular as it relates to students with disabilities, from the list of allowable activities and services.

Discussion: The only change made in the list of activities in the current version of this provision, § 646.10, is the inclusion of the mentoring programs as contained in § 402D of the HEA.

Change: None.

Comment: Several commenters suggested that § 646.4(i) be amended to permit the involvement of individuals other than faculty members and upper class students in mentoring programs. Commenters suggested that these other individuals include institutional and TRIO alumni, institutional administrators, graduate students and undergraduate upper-class students, individuals from the community, business and industry, and other persons as appropriate.

Discussion: § 646.4(i) reflects the statutory requirements concerning individuals involved in mentoring programs. The Secretary believes that neither the statute nor the regulations exclude other qualified and appropriate individuals from serving as mentors in Student Support Services projects. Furthermore, § 646.4(k) allows any other activity designed to meet the purposes of the Student Support Services program.

Change: None.

How Long is a Project Period? (§ 646.5)

Comment: Several commenters requested clarification of the five-year project period and the Department's administration of five-year grant cycles.

Discussion: This provision reflects the statutory requirements concerning the length of project periods. The Secretary believes that it is inappropriate to discuss subsequent funding cycles in the regulations. Information on how the Department will administer the four and five-year grants will be provided to successful applicants when awards are made.

Change: None.

What Definitions Apply? (§ 646.7(c))

Comments: Several commenters objected to the definition of cohort rate, which would require projects to compare the performance of project participants by cohort groups with other groups of students. The commenters stated that this evaluation measure is inappropriate since it would be difficult to find a valid comparison group with similar academic needs as Student Support Service project participants. Further, the process of maintaining data and tracking students in the comparison group would place unwarranted burden on already limited project resources and reduce resources for direct services to the eligible population.

Discussion: The term cohort rate was defined in the NPRM to apply to § 646.21(a)(3) where comparison information was requested on retention, graduation, grade point averages and transfer rates. The term was intended to apply to § 646.21(g)(2) and (3) where evaluation requirements included comparisons with student cohorts not served by the project. The Secretary believes the use of cohort groups and the calculation of cohort rates as a means to establish the need for the project and measure the benefits of the project are appropriate and valid methods. Thus, tracking and reporting of participants by cohorts standardizes the procedures for assessing progress across all projects and lends greater validity to the data obtained.

Changes: The Secretary concurs that the proposed definition did not clearly state the intention of introducing a standard approach for reporting outcome data. In addition, the Secretary has revised the evaluation criteria in section 646.21(g). Thus, the proposed definition of cohort rate is no longer applicable to these regulations and thus has been deleted. Nonetheless, the Secretary maintains that the cohort methodology is important in order to standardize the reporting of student performance outcomes. Therefore, the annual performance report for the program was designed to track students' academic progress by cohorts. The report will yield data that the Secretary can use, for example, in conjunction with the baseline data on eligible students as requested in section 646.21(a)(3). These data can provide comparative assessments without the additional institutional burden of tracking non-project participants.

Comment: Several commenters suggested that the definition of the term participant does not allow grantees to include eligible individuals who are not served on a continual basis or received services for less than one grading period. One commenter also noted that the definition was particularly restrictive for projects in open enrollment institutions where the student body is very transient, often seeking services after the beginning of the grading period, stopping out for one or more grading periods, or transferring to another institution after one grading period. Commenters believed that expanding the definition to include all participants served would be the only means for giving an accurate account of services rendered by projects. Many commenters suggested the use of the terms active participant and auxiliary participant to distinguish the level of participation in the project.

Discussion: The Secretary agrees that the proposed definition of the term participant may be too restrictive in establishing the minimum length of participation. However, the Secretary does not agree with the suggestion that there be two classifications of participants. Although projects may occasionally serve eligible students on a short term basis, these students should not be counted as project participants since the intervention received would not be sufficient to impact the student's chances for academic success at the grantee institution. Thus, the Secretary believes it is necessary to establish a definition for project participant that will support decisions regarding approved student service levels for funded projects and that will provide parameters for assessing the impact of the project on the postsecondary success of its participants.

Change: The Secretary has revised the definition of participant to allow each grantee to define in the application the extent of services an individual must receive in order to be counted as a project participant.

What Selection Criteria Does the Secretary Use to Evaluate an Application? (§ 646.21)

Comment: Several commenters stated that the criterion in § 646.21(a)(3) inappropriately defines need for the project in terms of the institution's need and not the need of the students. Further, by prescribing the comparison group as the total enrollment at the institution, commenters felt this favored institutions with smaller percentages of eligible students. Commenters suggested that the comparison group data used to state the need include national data on eligible students and/or information on student success at comparable institutions of higher education as a way to reduce bias for institutions with smaller percentages of eligible students.

Several commenters also stated that the language on graduate and professional school enrollment in § 646.21(a)(3)(iii) exceeds the legislative purpose of the Student Support Services program and overlaps the purpose of the TRIO McNair program.

Discussion: The Secretary agrees that the criterion in § 646.21(a)(3) could be interpreted to refer to an institution's needs and not the needs of the students. Therefore, this criterion has been restated. While some commenters have suggested using national data on eligible students and/or information from comparable institutions to create the cohort-like group for comparative purposes with project outcome data, the Secretary will not prescribe the type of comparison data that institutions should use to establish the need for the program. Instead, the Secretary encourages applicants to use meaningful comparison data that is related to the purposes of the program and to the proposed project outcomes. The Secretary further encourages applicants to define in the application the characteristics of the comparison group and identify baseline data on eligible students. These baseline data along with performance measures obtained from the annual performance report would serve as points of reference from which institutions could gauge participants' progress.

Change: The language of this section has been revised to expand the types of comparison data that may be used to establish need for the project. However, the Secretary has not changed the indicators to be used for comparisons.

Comment: Several commenters suggested that the term academic need be deleted from § 646.21(c)(2) because the provision highlights project participants with academic need and ignores other eligible project participants, i.e. low-income individuals, first generation college students, and individuals with disabilities. Some commenters suggested rewording this provision to correspond with a similar provision concerning selection of project participants in the Upward Bound Program regulations. Other commenters suggested that ''retain'' be deleted from § 646.21(c)(2) because retention would be addressed under § 646.21(c)(4) in the plan to provide services that address the goals and objectives of a project. One commenter believed that § 646.21(c)(2) may preclude projects from giving priority for admission to students whose ethnicity has been historically underrepresented at the project's host institution.

Discussion: The Secretary disagrees with the commenters because under § 402D(c)(4) of the HEA all project participants must have academic need. The Secretary also disagrees that the provision under § 646.21(c)(2) duplicates the provision of § 646.21(c)(4). Moreover, the Secretary wishes to emphasize the importance of retention in an applicant's plan of operation. The Secretary, however, has deleted the words ''and ensure their participation without regard to race, color, national origin or gender'' in § 646.21(c)(2) because grantees are otherwise required to follow these requirements. The Secretary notes that section 427 of the General Education Provisions Act (GEPA) requires all applicants in their applications to specify strategies for overcoming barriers based on gender, race, color, national origin, disability, and age, in order to ensure the full participation of eligible individuals in the project.

Change: The words ''and ensure their participation without regard to race, color, national origin, or gender'' have been deleted from this criterion.

Comment: Many commenters stated that the language in § 646.21(d)(3) is biased against public institutions in states that do not provide sufficient funding for need-based scholarships; thus, most colleges and universities are packaging loans for students to help meet need. Others contended that to comply with this criterion an institution would have to develop special packaging for Student Support Services

participants and this would be unfair to other low-income students at the institution. Additionally, commenters stated that to commit institutional resources to special groups would be contrary to many state and federal statutes.

Discussion: The Secretary believes that given the assurance ''to offer sufficient financial assistance to meet the student's full financial need,'' all grantee institutions should be committed to reducing the participants' dependence on loans. The Secretary believes that this criterion will encourage applicants to develop a plan to minimize loans to reduce the financial burden of participants after completion of their postsecondary education. Moreover, the criterion recognizes the limits on an institution's ability to provide grants to project participants through the use of the phrase ''to the extent possible.''

Change: None.

Comment: One commenter stated that to require an applicant to assure the full cooperation and support of functional components as stated in § 646.21(d)(4) is unrealistic. The commenter suggested that to identify ways to develop and maintain the cooperation of these offices is a more reasonable expectation.

Discussion: The Secretary disagrees with the commenter because to be a successful project requires the participation of these components of the institution. Additionally, the Secretary has determined that this provision should also include the components of the institution that collect and analyze data.

Change: The language has been revised to include the component of the institution that collects and analyzes data.

Comment: Many commenters suggested that in § 646.21(g)(3) the Secretary has underestimated the burden of collecting and maintaining cohort data on students not participating in the program and has not adequately considered the use of existing evaluation methods. Additionally, commenters believed that the resources and time required to establish a valid cohort group for non-project participants would place more burden on already limited resources and dilute the quality of services provided to students. Further, commenters stated that the complexity and feasibility of collecting data for student cohorts not served by the project would be difficult and would not necessarily factor in the academic need and disability criteria for eligible project participants. Several commenters encouraged the Secretary to use the baseline data required in the Need section of the application to determine the overall effectiveness of the Student Support Services project.

Discussion: The Secretary believes that information on project outcomes and therefore student performance is critical for indicating where needs are, whether the project is moving in the right direction, and what must be accomplished. By knowing how well students who receive services perform, the Department can gauge the extent to which the Student Support Services program is both reaching its intended beneficiaries and having a positive impact. To accomplish this, the NPRM required both the use of baseline data on each of the programmatic outcomes and the comparison of subsequent results on student cohorts not served by the project.

In a departure from the NPRM, the Secretary will not prescribe how the project will assess the benefits of a Student Support Services project on the target students and will not require projects to use a comparison group to assess student outcomes. This, however, does not preclude a project from proposing a comparison group or from using baseline data provided in response to the Need criteria (§ 646.21(a)) against which student progress can be assessed. Projects can also satisfy evaluation requirements by stating how student progress related to the purposes of the program (§ 646.1) and the prior experience criteria (§ 646.22) will be addressed. Additionally, the Secretary requests that each applicant demonstrate how the evaluation results will be used to improve program operations and activities.

Applicants will be awarded points for the proposed evaluation plan (§ 646.21(g)) based on the quality and appropriateness of the plan presented in the application. The Department of Education will also use information from the annual performance report in conjunction with the project objectives and evaluation strategies proposed in the application to evaluate a grantee's progress and award prior experience points.

Change: Section 646.21(g) has been revised to require an evaluation plan that is appropriate to the project, measures project success against appropriate baseline data, and uses the results to make programmatic improvements.

How Does the Secretary Evaluate Prior Experience? (§ 646.22)

Comment: One commenter stated that the new criteria for prior experience in § 646.22 should not be used to award prior experience points for the fiscal year 1997 competition because the current criteria have been the basis for the project design and implementation.

Many commenters believed that the omission of process objectives from the prior experience criteria allows grantees to disregard administrative requirements when reporting on the prior experience criteria and to focus on successful project results only. This, they noted would limit the Secretary's control over the quality of services. Other commenters noted that the part of § 646.22(b)(4), that states, ''enrolled in graduate or professional schools,'' does not give credit to project participants who successfully pursue careers without benefit of a postbaccalaureate degree, and gives an unfair advantage to grantees serving students enrolled in programs that may lead to entrance into graduate or professional school. Further, some commenters believed that the Secretary expanded the purpose of the program and is at cross purposes with the McNair program by giving ''graduate or professional school enrollment'' weight in the prior experience criteria.

These commenters suggested that this criterion be deleted. Many commenters suggested that the Secretary give equal consideration to all measures of postsecondary achievement.

Discussion: The Secretary will not use the prior experience criteria in these final regulations to assess grantees for performance during the 1993–1997 funding cycle. The prior experience assessment for the upcoming competition will be conducted using the prior experience criteria listed in § 642.22(c) of the current program regulations. The Secretary believes that the process objectives and administrative requirements of a grantee should be evaluated on a yearly basis using interim reports and on-site monitoring to determine the extent to which the grantees are making progress toward meeting the goals and objectives of the program.

The Secretary also agrees that success at the postsecondary level does not necessarily mean receiving a postbaccalaureate degree, and thus agrees that graduate and professional school enrollment rates should not be a criterion under prior experience.

Change: The Secretary has revised § 646.22 to combine criteria (3) and (4) into a single criterion that addresses the successful completion of postsecondary education programs that result in graduation and/or transfer from a two-year to a four-year institution. Language is added to give prior experience points for meeting the administrative requirements of the program. The

criterion that addressed graduate and professional school enrollment has been deleted.

What are Allowable Costs? (§ 646.30)

Comment: One commenter stated that lodging and meals should be included as an allowable cost when necessary for approved educational and cultural activities sponsored by the project.

Discussion: The Secretary believes that the approved activities in § 646.30(d) will allow projects to pay the cost of lodging and meal when appropriate.

Change: None.

Comment: Several commenters stated that the rate of four percent of the total project salaries as described in § 646.30(g) for professional development travel for project staff is discriminatory to programs located in remote areas. Further, they claimed this rate would place a hardship on staff from newly awarded projects with minimal budgets and the highest need for travel funds. A few commenters suggested an increase to 6.5 percent.

Discussion: The Secretary believes that professional development travel for staff may be required to properly implement a project. Most projects in the past have spent less than four percent for travel. However, the Secretary can permit a project to spend more than the four percent for travel in unusual circumstances.

Change: None

What Other Requirements Must a Grantee Meet? (§ 646.32)

Comment: Several commenters stated that § 646.32(a)(3) will prohibit participants from legitimately receiving services needed from more than one TRIO project and hinder the coordination of the programs. One commenter suggested changing the language to state ''who is receiving the same services,'' to allow participation when services are not duplicated.

Discussion: The Secretary agrees with the commenters and accepts the suggested language.

Change: This section has been revised to include the language of the commenter which adds the phrase ''the same'' between the words ''receiving'' and ''services''. This revision will prohibit grantees from providing the same services to participants served by more than one TRIO project.

Further, the Secretary has decided to revise § 646.32(b)(4) to insert the words ''by cohort'' between the words ''participant'' and ''for the duration''. The change is needed to reflect the Secretary's belief that the academic progress of project participants should be tracked by cohort groups to provide valid measures of project successes.

Other changes: Although no comments were received on the following, the Secretary has reviewed the regulations since publication of the NPRM and has made the following changes:

Changes: The Secretary has assigned weights to subcriteria under need, objectives, and evaluation plan; revised § 646.21(c)(3) to include a plan to monitor participant's academic progress; and included evaluation costs as an allowable cost in § 646.30(h).

Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number assigned to the collection of information in these final regulations is displayed at the end of the affected section of the regulations.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 646

Colleges and universities, Disadvantaged students, Educational programs, Discretionary grants, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Number 84.042 Student Support Services Program.)

Dated: June 27, 1996.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

The Secretary amends chapter VI of title 34 of the Code of Federal Regulations by revising Part 646 to read as follows:

PART 646—STUDENT SUPPORT SERVICES PROGRAM

Subpart A—General

Sec.
646.1 What is the Student Support Services Program?
646.2 Who is eligible to receive a grant?
646.3 Who is eligible to participate in a Student Support Services project?
646.4 What activities and services may a project provide?
646.5 How long is a project period?
646.6 What regulations apply?
646.7 What definitions apply?

Subpart B—How Does One Apply for an Award?

646.10 How many applications for a Student Support Services award may an eligible applicant submit?
646.11 What assurances must an applicant include in an application?

Subpart C—How Does the Secretary Make a Grant?

646.20 How does the Secretary decide which new grants to make?
646.21 What selection criteria does the Secretary use to evaluate an application?
646.22 How does the Secretary evaluate prior experience?
646.23 How does the Secretary set the amount of a grant?

Subpart D—What Conditions Must Be Met by a Grantee?

646.30 What are allowable costs?
646.31 What are unallowable costs?
646.32 What other requirements must a grantee meet?

Authority: 20 U.S.C. 1070a–11 and 1070a–14, unless otherwise noted.

Subpart A—General

§ 646.1 What is the Student Support Services Program?

The Student Support Services Program provides grants for projects designed to—

(a) Increase the retention and graduation rates of eligible students;

(b) Increase the transfer rate of eligible students from two-year to four-year institutions; and

(c) Foster an institutional climate supportive of the success of low-income and first generation college students and individuals with disabilities through services such as those described in § 646.4.

(Authority: 20 U.S.C. 1070a–11 and 1070a–14)

§ 646.2 Who is eligible to receive a grant?

An institution of higher education or a combination of institutions of higher education is eligible to receive a grant to carry out a Student Support Services project.

(Authority: 20 U.S.C. 1070a–14)

§ 646.3 Who is eligible to participate in a Student Support Services project?

A student is eligible to participate in a Student Support Services project if the student meets all of the following requirements:

(a) Is a citizen or national of the United States or meets the residency requirements for Federal student financial assistance.

(b) Is enrolled at the grantee institution or accepted for enrollment in the next academic term at that institution.

(c) Has a need for academic support, as determined by the grantee, in order to pursue successfully a postsecondary educational program.

(d) Is—

(1) A low-income individual;

(2) A first generation college student; or

(3) An individual with disabilities.

(Authority: 20 U.S.C. 1070a–14)

§ 646.4 What activities and services may a project provide?

A Student Support Services project may provide services such as:

(a) Instruction in reading, writing, study skills, mathematics, and other subjects necessary for success beyond secondary school.

(b) Personal counseling.

(c) Academic advice and assistance in course selection.

(d) Tutorial services and counseling and peer counseling.

(e) Exposure to cultural events and academic programs not usually available to disadvantaged students.

(f) Activities designed to acquaint students participating in the project with the range of career options available.

(g) Activities designed to secure admission and financial assistance for enrollment in graduate and professional programs.

(h) Activities designed to assist students currently enrolled in two-year institutions in securing admission and financial assistance for enrollment in a four-year program of postsecondary education.

(i) Mentoring programs involving faculty or upper class students, or any combination of faculty members and upper class students.

(j) Programs and activities as described in paragraphs (a) through (i) of this section that are specifically designed for students of limited English proficiency.

(k) Other activities designed to meet the purposes of the Student Support Services Program stated in § 646.1.

(Authority: 20 U.S.C. 1070a–14)

§ 646.5 How long is a project period?

(a) Except as provided in paragraph (b) of this section, a project period under the Student Support Services Program is four years.

(b) The Secretary approves a project period of five years for applicants that score in the highest ten percent of all applicants approved for new grants under the criteria in § 646.21.

(Authority: 20 U.S.C. 1070a–11)

§ 646.6 What regulations apply?

The following regulations apply to the Student Support Services Program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 82, 85 and 86.

(b) The regulations in this part 646.

(Authority: 20 U.S.C. 1070a–11 and 1070a–14)

§ 646.7 What definitions apply?

(a) *Definitions in the Act.* The following terms used in this part are defined in sections 402(A)(g), 481, or 1201(a) of the Higher Education Act (HEA) of 1965, as amended:

First generation college student
Institution of higher education
Low-income individual

(b) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
Budget
Budget Period
Department
EDGAR
Equipment
Facilities
Fiscal year
Grant
Grant Period
Grantee
Project
Project period
Public
Secretary
Supplies

(c) *Other definitions.* The following definitions also apply to this part:

Academic need with reference to a student means a student whom the grantee determines needs one or more of the services stated under § 646.4 to succeed in a postsecondary educational program.

Combination of institutions of higher education means two or more institutions of higher education that have entered into a cooperative agreement for the purpose of carrying out a common objective, or an entity designated or created by a group of institutions of higher education for the purpose of carrying out a common objective on their behalf.

Different Campus means an institutional site that is geographically apart from and independent of the main campus of the institution. The Secretary considers a location of an institution to be independent of the main campus if the location—

(1) Is permanent in nature;

(2) Offers courses in educational programs leading to a degree, certificate, or other recognized educational credential;

(3) Has its own faculty and administrative or supervisory organization; and

(4) Has its own budgetary and hiring authority.

Different population of participants means a group of—

(1) Low-income, first-generation college students; or

(2) Disabled students.

Individual with disabilities means a person who has a diagnosed physical or mental impairment that substantially limits that person's ability to participate in the educational experiences and opportunities offered by the grantee institution.

Limited English proficiency with reference to an individual, means a person whose native language is other than English and who has sufficient difficulty speaking, reading, writing, or understanding the English language to deny that individual the opportunity to learn successfully in classrooms in which English is the language of instruction.

Participant means an individual who—

(1) Is determined to be eligible to participate in the project under § 646.3; and

(2) Receives project services that the grantee has determined to be sufficient to increase the individual's chances for success in a postsecondary educational program.

Sufficient financial assistance means the amount of financial aid offered a Student Support Services student, inclusive of Federal, State, local, private, and institutional aid which, together with parent or student contributions, is equal to the cost of

attendance as determined by a financial aid officer at the institution.

(Authority: 20 U.S.C. 1070a–11 and 1070a–14)

Subpart B—How Does One Apply for an Award?

§ 646.10 How many applications for a Student Support Services award may an eligible applicant submit?

The Secretary accepts more than one application from an eligible applicant so long as each additional application describes a project that serves a different campus, or a different population of participants who cannot readily be served by a single project.

(Authority: 20 U.S.C. 1070a–11 and 1070a–14)

§ 646.11 What assurances must an applicant include in an application?

An applicant shall assure in its application that—

(a) At least two-thirds of the students it will serve in its Student Support Services project will be—

(1) Low-income individuals who are first generation college students; or

(2) Individuals with disabilities;

(b) The remaining students it will serve will be low-income individuals, first generation college students, or individuals with disabilities;

(c) Not less than one-third of the individuals with disabilities will be low— income individuals; and

(d) Each student participating in the project will be offered sufficient financial assistance to meet that student's full financial need.

(Approved by the Office of Management and Budget under control number 1840–0017)

(Authority: 20 U.S.C. 1070a–14)

Subpart C—How Does the Secretary Make a Grant?

§ 646.20 How does the Secretary decide which new grants to make?

(a) The Secretary evaluates an application for a new grant as follows:

(1)(i) The Secretary evaluates the application on the basis of the selection criteria in § 646.21.

(ii) The maximum score for all the criteria in § 646.21 is 100 points. The maximum score for each criterion is indicated in parentheses with the criterion.

(2)(i) If an application for a new grant proposes to continue to serve substantially the same population or campus that the applicant is serving under an expiring grant, the Secretary evaluates the applicant's prior experience in delivering services under the expiring grant on the basis of the criteria in § 646.22.

(ii) The maximum score for all the criteria in § 646.22 is 15 points. The maximum score for each criterion is indicated in parentheses with the criterion.

(b) The Secretary makes new grants in rank order on the basis of the applications' total scores under paragraphs (a)(1) and (a)(2) of this section.

(c) If the total scores of two or more applications are the same and there is insufficient money available to fully fund them both after funding the higher-ranked applications, the Secretary chooses among the tied applications so as to serve geographic areas that have been underserved by the Student Support Services Program.

(d) The Secretary does not make grants to applicants that carried out a Federal TRIO program project that involved the fraudulent use of funds.

(Authority: 20 U.S.C. 1070a–11 and 1070a–14)

§ 646.21 What selection criteria does the Secretary use to evaluate an application?

The Secretary uses the following criteria to evaluate an application for a new grant:

(a) *Need for the project* (24 points). The Secretary evaluates the need for a Student Support Services project proposed at the applicant institution on the basis of the extent to which the application contains clear evidence of—

(1) (8 points) A high number or percentage, or both, of students enrolled or accepted for enrollment at the applicant institution who meet the eligibility requirements of § 646.3;

(2) (8 points) The academic and other problems that eligible students encounter at the applicant institution; and

(3) (8 points) The differences between eligible Student Support Services students compared to an appropriate group, based on the following indicators:

(i) Retention and graduation rates.

(ii) Grade point averages.

(iii) Graduate and professional school enrollment rates (four-year colleges only).

(iv) Transfer rates from two-year to four-year institutions (two-year colleges only).

(b) *Objectives* (8 points). The Secretary evaluates the quality of the applicant's proposed project objectives on the basis of the extent to which they—

(1) (2 points) Include performance, process and outcome objectives relating to each of the purposes of the Student Support Services Program stated in § 646.1;

(2) (2 points) Address the identified needs of the proposed participants;

(3) (2 points) Are clearly described, specific, and measurable; and

(4) (2 points) Are ambitious but attainable within each budget period and the project period given the project budget and other resources.

(c) *Plan of operation* (30 points). The Secretary evaluates the quality of the applicant's plan of operation on the basis of the following:

(1) (3 points) The plan to inform the institutional community (students, faculty, and staff) of the goals, objectives, and services of the project and the eligibility requirements for participation in the project.

(2) (3 points) The plan to identify, select, and retain project participants with academic need.

(3) (4 points) The plan for assessing each individual participant's need for specific services and monitoring his or her academic progress at the institution to ensure satisfactory academic progress.

(4) (10 points) The plan to provide services that address the goals and objectives of the project.

(5) (10 points) The applicant's plan to ensure proper and efficient administration of the project, including the organizational placement of the project; the time commitment of key project staff; the specific plans for financial management, student records management, and personnel management; and, where appropriate, its plan for coordination with other programs for disadvantaged students.

(d) *Institutional commitment* (16 points). The Secretary evaluates the institutional commitment to the proposed project on the basis of the extent to which the applicant has—

(1) (6 points) Committed facilities, equipment, supplies, personnel, and other resources to supplement the grant and enhance project services;

(2) (6 points) Established administrative and academic policies that enhance participants' retention at the institution and improve their chances of graduating from the institution;

(3) (2 points) Demonstrated a commitment to minimize the dependence on student loans in developing financial aid packages for project participants by committing institutional resources to the extent possible; and

(4) (2 points) Assured the full cooperation and support of the Admissions, Student Aid, Registrar and data collection and analysis components of the institution.

(e) *Quality of personnel* (9 points). To determine the quality of personnel the applicant plans to use, the Secretary looks for information that shows—

(1) (3 points) The qualifications required of the project director, including formal education and training in fields related to the objectives of the project, and experience in designing, managing, or implementing Student Support Services or similar projects;

(2) (3 points) The qualifications required of other personnel to be used in the project, including formal education, training, and work experience in fields related to the objectives of the project; and

(3) (3 points) The quality of the applicant's plan for employing personnel who have succeeded in overcoming barriers similar to those confronting the project's target population.

(f) *Budget* (5 points). The Secretary evaluates the extent to which the project budget is reasonable, cost-effective, and adequate to support the project.

(g) *Evaluation plan* (8 points). The Secretary evaluates the quality of the evaluation plan for the project on the basis of the extent to which—

(1) The applicant's methods for evaluation—

(i) (2 points) Are appropriate to the project and include both quantitative and qualitative evaluation measures; and

(ii) (2 points) Examine in specific and measurable ways, using appropriate baseline data, the success of the project in improving academic achievement, retention and graduation of project participants; and

(2) (4 points) The applicant intends to use the results of an evaluation to make programmatic changes based upon the results of project evaluation.

(Approved by the Office of Management and Budget under control number 1840–0017)

(Authority: 20 U.S.C. 1070a–14)

§ 646.22 How does the Secretary evaluate prior experience?

(a) In the case of an application described in § 646.20(a)(2)(i), the Secretary reviews information relating to an applicant's performance under its expiring Student Support Services project. This information may come from performance reports, site visit reports, project evaluation reports, and any other verifiable information submitted by the applicant.

(b) The Secretary evaluates the applicant's prior experience in achieving the goals of the Student Support Services Program on the basis of the following criteria:

(1) (4 points) The extent to which project participants persisted toward completion of the academic programs in which they were enrolled.

(2) (4 points) The extent to which project participants met academic performance levels required to stay in good academic standing at the grantee institution.

(3) (4 points) (i) For four-year institutions, the extent to which project participants graduated; and

(ii) For two-year institutions, the extent to which project participants either graduated or transferred to four-year institutions.

(4) (3 points) The extent to which the applicant has met the administrative requirements—including recordkeeping, reporting, and financial accountability—under the terms of the previously funded award.

(Approved by the Office of Management & Budget under control number 1840–0017)

(Authority: 20 U.S.C. 1070a–11 and 1070a–14)

§ 646.23 How does the Secretary set the amount of a grant?

(a) The Secretary sets the amount of a grant on the basis of—

(1) 34 CFR 75.232 and 75.233, for new grants; and

(2) 34 CFR 75.253, for the second and subsequent years of a project period.

(b) If the circumstances described in section 402A(b)(3) of the HEA exist, the Secretary uses the available funds to set the amount of the grant at the lesser of—

(1) $170,000; or

(2) The amount requested by the applicant.

(Authority: 20 U.S.C. 1070a–11)

Subpart D— What Conditions Must Be Met by a Grantee?

§ 646.30 What are allowable costs?

The cost principles that apply to the Student Support Services Program are in 34 CFR part 74, subpart Q. Allowable costs include the following if they are reasonably related to the objectives of the project:

(a) Cost of remedial and special classes if—

(1) These classes are not otherwise available at the grantee institution;

(2) Are limited to eligible project participants; and

(3) Project participants are not charged tuition for classes paid for by the project.

(b) Courses in English language instruction for students of limited English proficiency if these classes are limited to eligible project participants and not otherwise available at the grantee institution.

(c) In-service training of project staff.

(d) Activities of an academic or cultural nature, such as field trips, special lectures, and symposiums, that have as their purpose the improvement of the participants' academic progress and personal development.

(e) Transportation of participants and staff to and from approved educational and cultural activities sponsored by the project.

(f) Purchase of computer hardware, computer software, or other equipment to be used for student development, student records and project administration if the applicant demonstrates to the Secretary's satisfaction that the equipment is required to meet the objectives of the project more economically or efficiently.

(g) Professional development travel for staff if directly related to the project's overall purpose and activities, except that these costs may not exceed four percent of total project salaries. The Secretary may adjust this percentage if the applicant demonstrates to the Secretary's satisfaction that a higher percentage is necessary and reasonable.

(h) Project evaluation that is directly related to assessing the project's impact on student achievement and improving the delivery of services.

(Authority: 20 U.S.C. 1070a–14)

§ 646.31 What are unallowable costs?

Costs that may not be charged against a grant under the Student Support Services Program include, but are not limited to, the following:

(a) Costs involved in recruiting students for enrollment at the institution.

(b) Tuition, fees, stipends, and other forms of direct financial support for staff or participants.

(c) Research not directly related to the evaluation or improvement of the project.

(d) Construction, renovation, or remodeling of any facilities.

(Authority: 20 U.S.C. 1070a–14)

§ 646.32 What other requirements must a grantee meet?

(a) *Eligibility of participants.* (1) A grantee shall determine the eligibility of each participant in the project when the individual is selected to participate. The grantee does not have to revalidate a participant's eligibility after the participant's initial selection.

(2) A grantee shall determine the low-income status of an individual on the basis of the documentation described in section 402A(e) of the Higher Education Act.

(3) A grantee may not serve any individual who is receiving the same

services from another Federal TRIO program.

(b) *Recordkeeping.* A grantee shall maintain participant records that show—

(1) The basis for the grantee's determination that each participant is eligible to participate in the project under § 646.3;

(2) The grantee's basis for determining the academic need for each participant;

(3) The services that are provided to each participant; and

(4) The performance and progress of each participant by cohort for the duration of the participant's attendance at the grantee institution.

(c) *Project director.* (1) A grantee shall employ a full-time project director unless paragraph (c)(3) of this section applies.

(2) The grantee shall give the project director sufficient authority to administer the project effectively.

(3) The Secretary waives the requirement in paragraph (c)(1) of this section if the applicant demonstrates that the requirement will hinder coordination—

(i) Among the Federal TRIO programs; or

(ii) Between the programs funded under sections 404A through 410 of the Higher Education Act and similar programs funded through other sources.

(d) *Project coordination.* (1) The Secretary encourages grantees to coordinate project services with other programs for disadvantaged students operated by the grantee institution provided the Student Support Services grant funds are not used to support activities reasonably available to the general student population.

(2) To the extent practical, the grantee may share staff with programs serving similar populations provided the grantee maintains appropriate records of staff time and effort and does not commingle grant funds.

(3) Costs for special classes and events that would benefit Student Support Services students and participants in other programs for disadvantaged students must be proportionately divided among the benefiting projects.

(Approved by the Office of Management and Budget under control number 1840–0017)

(Authority: 20 U.S.C. 1070a–11 and 1070a)

[FR Doc. 96–18588 Filed 7–23–96; 8:45 am]

BILLING CODE 4000–01–P

federal register

Wednesday
July 24, 1996

Part VI

Department of Commerce

International Trade Administration

Countervailing Duties: Certain Pasta From Italy and Turkey; Notices

DEPARTMENT OF COMMERCE

International Trade Administration

[C–475–819]

Notice of Countervailing Duty Order and Amended Final Affirmative Countervailing Duty Determination: Certain Pasta (''Pasta'') From Italy

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

EFFECTIVE DATE: July 24, 1996.

FOR FURTHER INFORMATION CONTACT: Todd Hansen, Jennifer Yeske, Vincent Kane, or Cynthia Thirumalai, Import Administration, U.S. Department of Commerce, Room 3099, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–1276, 482–0189, 482–2815, or 482–4087, respectively.

Case History

On June 14, 1996, the Department of Commerce (the ''Department'') published its final determination in the countervailing duty investigation of pasta from Italy (61 FR 30288). We disclosed our calculations for the final determination to counsel for respondents and petitioners pursuant to their requests on June 5 through 28, 1996. None of the responding or petitioning parties alleged ministerial errors on the part of the Department.

Upon further review of the calculations of countervailable subsidy rates, we discovered that ministerial errors were made in calculating the countervailable subsidy rate for Delverde, S.r.l. (''Delverde'') and Tamma Industrie Alimentari di Capitanata (''Tamma''), and the countervailable subsidy rate for Industria Alimentare Colavita, S.p.A. (''Indalco''). The ministerial errors also affect the all-others rate.

On July 17, 1996, the U.S. International Trade Commission (''ITC'') notified us of its final determination that an industry in the United States suffered material injury as a result of subsidized imports of pasta from Italy.

Applicable Statute and Regulations

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.

Scope of Order

The merchandise covered by this order is certain non-egg dry pasta in packages of five pounds (or 2.27 kilograms) or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastases, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by this scope is typically sold in the retail market, in fiberboard or cardboard cartons or polyethylene or polypropylene bags, of varying dimensions.

Excluded from the scope of this order are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non-egg dry pasta containing up to two percent egg white. Also excluded are imports of organic pasta from Italy that are accompanied by the appropriate certificate issued by the Associazione Marchigiana Agricultura Biologica (AMAB) or by Bioagricoop scrl.

On July 9, 1996, after the date of our final countervailing duty determination, Euro-USA Trading Co., Inc., of Pawcatuck, CT, submitted materials to the Department supporting its request for an exclusion for pasta certified to be ''organic pasta.'' Among the documents submitted are a decree from the Italian Ministry of Agriculture and Forestry authorizing Bioagricoop scrl to certify foodstuffs as organic for the implementation of EEC Regulation 2029/91. Also submitted is a letter (with an accompanying translation into English) from the Director of Controls of Processing and Marketing Firms at Bioargricoop stating that the organization will take responsibility for its organic pasta certificates and will supply and necessary documentation to U.S. authorities. On this basis, imports of organic pasta from Italy that are accompanied by the appropriate certificate issued by Bioagricoop scrl are excluded from the scope of this order.

The merchandise covered by this order is currently classifiable under items 1902.19.20 of the *Harmonized Tariff Schedule of the United States (''HTSUS'')*. Although the *HTSUS* subheadings are provided for convenience and customs purposes, our written description of the scope of this order is dispositive.

Ministerial Errors in Final Results of Investigation

We discovered ministerial errors in our calculations after the publication of our final determination for the countervailing duty investigation. The ministerial errors resulted from an error in the application of the 0.5 percent test in the case of Delverde and Tamma, and the use of an inappropriate sales denominator in the case of Indalco, for calculations concerning certain industrial development grants and loans received pursuant to Law 64/86 and predecessor laws. The corrected countervailable subsidy rate for industrial development grants received is 2.21 percent *ad valorem* for Delverde and Tamma and 0.46 percent *ad valorem* for Indalco. The corrected countervailable subsidy rate for industrial development loans for Indalco is 0.07 percent *ad valorem*. For a further discussion of these ministerial errors, a public version of the memorandum to file dated July 5, 1996, is on file in the Central Records Unit in room B–099 in the main Commerce Building.

The ministerial errors resulted in an increase in the final countervailable subsidy rate for Delverde and Tamma, a decrease in the final subsidy rate for Indalco, and an increase in the final countervailable subsidy rate for producers and exporters of pasta from Italy which are subject to the all-others rate. The corrected countervailable subsidy rates are published in the *Countervailing Duty Order* section of this notice, below.

Countervailing Duty Order

On July 17, 1996, pursuant to section 705(d) of the Act, the ITC notified the Department that an industry in the United States is materially injured by imports of the subject merchandise from Italy within the meaning of section 705(b)(1)(A) of the Act. Therefore, countervailing duties will be assessed on all unliquidated entries of pasta from Italy entered or withdrawn from warehouse for consumption on or after October 17, 1995, the date on which the Department published its preliminary countervailing duty determination in the Federal Register, and before February 14, 1996, the date the Department instructed the U.S. Customs Service to terminate the suspension of liquidation in accordance with section 703(d) of the Act, and on all entries and withdrawals made on or after the date of publication of this countervailing duty order in the Federal Register. Section 703(d) states that the suspension of liquidation pursuant to a preliminary determination may not remain in effect for more than four months. Entries of pasta made on or after February 14, 1996, and prior to the date of publication of this order in the Federal Register are not liable for the assessment of countervailing duties due to the Department's termination, effective February 14, 1996, of the suspension of liquidation.

In accordance with section 706 of the Act, the Department will direct United

States Customs officers to reinstate suspension of liquidation an to assess, upon further advice by the administering authority pursuant to section 706(a)(1) of the Act, countervailing duties for each entry of the subject merchandise in an amount based on the net countervailable subsidy rate for the subject merchandise.

On or after the date of publication of this notice in the Federal Register, U.S. Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the countervailable subsidy rates as noted below. The *ad valorem* countervailable subsidy rates are as follows:

Company	Ad valorem rate
Agritalia, S.r.l.	2.55
Arrighi S.p.A. Industrie Alimentari	2.44
Barilla G. e R. F.lli S.p.A.	0.65
De Matteis Agroalimentare S.p.A.	2.47
Delverde, S.r.l.	5.90
F.lli De Cecco di Filippo Fara S. Martino S.p.A.	3.37
Gruppo Agricoltura Sana S.r.L.	0.00
Industria Alimentare Colavita, S.p.A.	2.04
Isola del Grano S.r.L.	11.23
Italpast S.p.A.	11.23
Italpasta S.r.L.	2.44
La Molisana Alimentari S.p.A.,	4.17
Labor S.r.L.	11.23
Molino e Pastificio De Cecco S.p.A. Pescara	3.37
Pastificio Guido Ferrara	1.21
Pastificio Campano, S.p.A.	2.59
Pastificio Riscossa F.lli Mastromauro S.r.L.	6.91
Tamma Industrie Alimentari di Capitanata	5.90
All Others	3.85

The ''All Others'' rate applies to all exporters and producers of pasta from Italy not specifically listed.

Since the estimated net countervailable subsidy rate for Barilla G. e R. F.lli S.p.A. (''Barilla'') and Gruppo Agricoltura Sana S.r.L. (''Gruppo'') is either zero or *de minimis*, these companies are excluded from the application of the countervailing duty order on pasta from Italy. Pursuant to section 705(c)(3) of the Act, we are instructing the U.S. Customs Service to liquidate all pasta from Italy entered or withdrawn from warehouse for consumption by Barilla between October 17, 1995 and February 14, 1996, and to proceed with liquidation of merchandise from Barilla and Gruppo which enter the United States on or after the date of publication of this countervailing duty order in the Federal Register without regard to countervailing duties. Additionally, we are instructing the U.S. Customs Service that any cash deposit or bond collected with respect to countervailing duties on pasta from Barilla should be released or refunded. Gruppo was assigned a zero margin in our preliminary determination, and, accordingly, was excluded from the suspension of liquidation which resulted from our preliminary determination.

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 355.34(d). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This notice constitutes the countervailing duty order with respect to pasta from Italy. Interested parties may contact the Central Records Unit, room B–099 of the main Commerce Building, for copies of an updated list of countervailing duty orders currently in effect.

This notice of amendment of final determination and countervailing duty order is published in accordance with sections 705 (d) and (e) and 706(a) of the Act.

Dated: July 17, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–18702 Filed 7–23–96; 8:45 am]

BILLING CODE 3510–DS–P

[A–489–805]

Notice of Antidumping Duty Order and Amended Final Determination of Sales at Less Than Fair Value: Certain Pasta From Turkey

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

EFFECTIVE DATE: July 24, 1996.

FOR FURTHER INFORMATION CONTACT: John Brinkmann at (202) 482–5288, Jennifer Katt at (202) 482–0498, or Sunkyu Kim at (202) 482–2613, Office of Antidumping/Countervailing Duty Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

Applicable Statute and Regulations

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 by the Uruguay Round Agreements Act (URAA).

Amended Final Determination

In accordance with section 735(a) of the Tariff Act of 1930, as amended (the Act), on June 3, 1996, the Department made its final determination that certain pasta (pasta) from Turkey is being, or is likely to be, sold in the United States at less than fair value (61 FR 30309 (June 14, 1996)) (Final Determination). Subsequent to the final determination, we received a submission, timely filed pursuant to 19 CFR 353.28(b), from Borden, Inc., Hershey Foods Corp., and Gooch Foods, Inc. (collectively the petitioners) alleging a ministerial error in the Department's final determination for Maktas Makarnicilik ve Ticaret T.A.S. (Maktas). Maktas submitted comments on the petitioners' ministerial error allegation on June 20, 1996. In addition, Maktas submitted a ministerial error allegation on July 2, 1996.

We determine, in accordance with section 735(e) of the Act, that ministerial errors were made in our margin calculation for Maktas. Specifically, we erroneously did not revise Maktas's reported cost of production (COP) and constructed value (CV) to include certain depreciation expenses which the Department determined were excluded improperly by Maktas. Further, we incorrectly calculated these depreciation expenses. Additionally, in preparing the recalculation for the ministerial errors described above, we noted a minor inadvertent error in the programming for Maktas which constitutes a ministerial error within the meaning of section 735(e) of the Act. Although not noted by other parties, we are correcting this error for Maktas. For a detailed discussion of the above-cited ministerial errors and the Department analysis, *see* Memorandum from Case Analysts to Barbara R. Stafford, dated June 27, 1996 and Memorandum from William H. Jones to Christian B. Marsh dated July 15, 1996. In accordance with 19 CFR 353.28(c), we are amending the final determination of the antidumping duty investigation of pasta from Turkey to correct these ministerial errors. The revised final weighted-average dumping margins are as follows:

Manufacturer/producer/exporter	Original margin percentage	Revised margin percentage
Filiz	63.29	63.29
Maktas	56.87	60.87
All Others	56.87	60.87

Scope of Order

The scope of this order consists of certain non-egg dry pasta in packages of five pounds (or 2.27 kilograms) or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastases, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by this scope is typically sold in the retail market, in fiberboard or cardboard cartons or polyethylene or polypropylene bags, of varying dimensions.

Excluded from the scope of this order are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non-egg dry pasta containing up to two percent egg white. In the companion countervailing and antidumping duty investigations involving pasta from Italy, we have excluded imports of organic pasta that are accompanied by the appropriate certificate issued by the Associazione Marchigiana Agricultura Biologica (AMAB) or by Bioagricoop scrl. The Department has determined that AMAB and Bioagricoop scrl are legally authorized to certify foodstuffs as organic for the Government of Italy (GOI). If certification procedures similar to those implemented by the GOI are established by the Government of Turkey for exports of organic pasta to the United States, we would consider an exclusion for organic pasta at that time.

The merchandise under investigation is currently classifiable under item 1902.19.20 of the *Harmonized Tariff Schedule of the United States (HTSUS).* Although the *HTSUS* subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Antidumping Duty Order

On July 17, 1996, in accordance with section 735(d) of the Act, the U.S. International Trade Commission (ITC) notified the Department that the U.S. pasta industry is materially injured by imports of pasta from Turkey. Therefore, in accordance with section 736 of the Act, the Department will direct United States Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price for all entries of pasta from Turkey. These antidumping duties will be assessed on all unliquidated entries of pasta from Turkey entered, or withdrawn from warehouse, for consumption on or after January 19, 1996, the date on which the Department published its preliminary determination notice in the Federal Register (61 FR 1347).

On or after the date of publication of this notice in the Federal Register, U.S. Customs officers must require, at the same time as importers would normally deposit estimated duties, the following cash deposits for the subject merchandise:

Manufacturer/producer/exporter	Revised margin percentage
Filiz	63.29
Maktas	60.87
All Others	60.87

Article VI(5) of the General Agreement on Tariffs and Trade (1947) prohibits assessing dumping duties on the portion of the margin attributable to an export subsidy. In this case, the product under investigation is subject to a countervailing duty investigation (*see Final Affirmative Countervailing Duty Determination: Certain Pasta from Turkey* (61 FR 30288) (June 14, 1996)). Therefore, for all entries of pasta from Turkey, entered or withdrawn from warehouse for consumption made on or after the date on which the order in the companion countervailing duty investigation is published in the Federal Register, we will request for duty deposit purposes, that United States Customs deduct the portion of the margin attributable to the export subsidy from the countervailing duty investigation. As discussed in the *Final Determination*, Filiz's margin is based on total adverse facts available, taken from the petition. Insofar as the dumping margin for Filiz is not a calculated margin, we have not subtracted the amount for any export subsidy from that margin. The cash deposit rates for antidumping purposes will be as follows:

Manufacturer/producer/exporter	Deposit rate
Filiz	63.29
Maktas	48.26
All Others	51.49

This notice constitutes the antidumping duty order with respect to pasta from Turkey, pursuant to section 736(a) of the Act. Interested parties may contact the Central Records Unit, Room B–099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published pursuant to section 736(a) of the Act (19 U.S.C. 1673e(a)) and 19 CFR 353.21.

Dated: July 17, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–18703 Filed 7–23–96; 8:45 am]

BILLING CODE 3510–DS–P

[C–489–806]

Notice of Countervailing Duty Order: Certain Pasta (''Pasta'') From Turkey

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

EFFECTIVE DATE: July 24, 1996.

FOR FURTHER INFORMATION CONTACT: Elizabeth Graham, Import Administration, U.S. Department of Commerce, Room 3099, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–4105.

Case History

On June 14, 1996, the Department of Commerce (''the Department'') published its final determination in the countervailing duty investigation of pasta from Turkey (61 FR 30366). On July 17, 1996, the International Trade Commission (''ITC'') notified the Department of its final determination that an industry in the United States suffered material injury as a result of subsidized imports of pasta from Turkey.

Applicable Statute and Regulations

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'').

Scope of Order

The scope of this order consists of certain non-egg dry pasta in packages of five pounds (or 2.27 kilograms) or less,

whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastases, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by this scope is typically sold in the retail market, in fiberboard or cardboard cartons or polyethylene or polypropylene bags, of varying dimensions.

Excluded from the scope of this order are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non-egg dry pasta containing up to two percent egg white. In the companion countervailing and antidumping duty investigations involving pasta from Italy, we have excluded imports of organic pasta that are accompanied by the appropriate certificate issued by the Associazione Marchigiana Agricultura Biologica (AMAB) or by Bioagricoop scrl. The Department has determined that AMAB and Bioagricoop scrl are legally authorized to certify foodstuffs as organic for the Government of Italy (GOI). If certification procedures similar to those implemented by the GOI are established by the Government of Turkey for exports of organic pasta to the United States, we would consider an exclusion for organic pasta at that time.

The merchandise under investigation is currently classifiable under items 1902.19.20 of the *Harmonized Tariff Schedule of the United States (HTSUS).* Although the *HTSUS* subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Countervailing Duty Order

On July 17, 1996, pursuant to section 705(d) of the Act, the ITC notified the Department that an industry in the United States is materially injured by imports of the subject merchandise from Turkey within the meaning of section 705(b)(1)(A) of the Act. Therefore, countervailing duties will be assessed on all unliquidated entries of pasta from Turkey entered or withdrawn from warehouse for consumption on or after October 17, 1995, the date on which the Department published its preliminary countervailing duty determination in the Federal Register, and before February 14, 1996, the date the Department instructed the U.S. Customs Service to terminate the suspension of liquidation in accordance with section 703(d) of the Act, and on all entries and withdrawals made on or after the date of publication of this countervailing duty order in the Federal Register. Section 703(d) states that the suspension of liquidation pursuant to a preliminary determination may not remain in effect for more than four months. Entries of pasta made on or after February 14, 1996, and prior to the date of publication of this order in the Federal Register are not liable for the assessment of countervailing duties due to the Department's termination, effective February 14, 1996, of the suspension of liquidation.

In accordance with section 706 of the Act, the Department will direct U.S. Customs officers to reinstitute suspension of liquidation and to assess, upon further advice by the administering authority pursuant to section 706(a)(1) of the Act, countervailing duties for each entry of the subject merchandise in an amount based on the net countervailable subsidy rate for the subject merchandise.

On or after the date of publication of this notice in the Federal Register, U.S. Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the countervailable subsidy rates noted below. The All Others rate applies to all producers and exporters of pasta from Turkey not specifically listed below. The cash deposit rates are as follows:

Company	Cash deposit rate
Filiz Gida Sanayi ve Ticaret	3.87
Maktas Makarnacilik ve Ticaret	12.61
Oba Makarnacilik Sanayi ve Ticaret	15.82
All Others	9.38

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 355.34(d). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This notice constitutes the countervailing duty order with respect to pasta from Turkey. Interested parties may contact the Central Records Unit, Room B–099 of the Main Commerce Building, for copies of an updated list of countervailing duty orders currently in effect.

This countervailing duty order is published in accordance with section 706(a) of the Act.

Dated: July 17, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–18704 Filed 7–23–96; 8:45 am]

BILLING CODE 3510–DS–P

[A–475–818]

Notice of Antidumping Duty Order and Amended Final Determination of Sales at Less Than Fair Value: Certain Pasta From Italy

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

EFFECTIVE DATE: July 24, 1996.

FOR FURTHER INFORMATION CONTACT: John Brinkmann at (202) 482–5288, Jennifer Katt at (202) 482–0498, or Greg Thompson (202) 482–3003, Office of Antidumping/Countervailing Duty Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

Applicable Statute and Regulations

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 by the Uruguay Round Agreements Act (URAA).

Amended Final Determination

In accordance with section 735(a) of the Tariff Act of 1930, as amended (the Act), on June 3, 1996, the Department made its final determination that certain pasta (pasta) from Italy is being, or is likely to be, sold in the United States at less than fair value (61 FR 30287 (June 14, 1996)). Subsequent to the final determination, we received submissions, timely filed pursuant to 19 CFR 353.28(b), from La Molisana Industrie Alimentari S.p.A. (La Molisana), Pastificio Fratelli Pagani S.p.A. (Pagani), and De Matteis Agroalimentare S.p.A. (De Matteis), alleging ministerial errors in the Department's final determination for these respondents. We also received submissions from Borden Inc., Hershey Foods Corp., and Gooch Foods, Inc. (collectively the petitioners) alleging ministerial errors in the Department's final determination for Arrighi S.p.A. Industrie Alimentari (Arrighi) and its affiliate, Italpasta S.p.A. (Italpasta), Delverde, SrL (Delverde) including its affiliate Tamma Industrie Alimentari di Capitanata, SrL (Tamma), and Pagani. The parties filed comments to the

clerical error allegations on June 21, 27, and July 1, 1996.

We determine, in accordance with 19 CFR 353.28(d), that ministerial errors were made in our margin calculations for Arrighi and Pagani. Specifically, our calculation of Arrighi's cost of production failed to fully capture the semolina cost of affiliated suppliers. In the case of Pagani, our calculation incorrectly included the amount reported in the field old discount (OLDDISU) when calculating U.S. credit and discount expenses, and also understated certain general administrative expenses. Additionally, in preparing the recalculation for the ministerial error described above, we noted two minor inadvertent errors in the programming for Pagani which were not noted by either the petitioners or the respondents. For a detailed discussion of the above-cited ministerial errors and the Department's analysis, *see* Memorandum from Case Analysts to Barbara R. Stafford, dated July 8, 1996. In accordance with 19 CFR 353.28(c), we are amending the final determination of the antidumping duty investigation of pasta from Italy to correct these ministerial errors. The revised final weighted-average dumping margins are as follows:

Manufacturer/producer/exporter	Original margin percentage	Revised margin percentage
Arrighi/Italpasta	20.24	21.34
De Cecco	46.67 (facts available)	46.67 (facts available)
De Matteis	0.67 (de minimis)	0.67 (de minimis)
Delverde/Tamma	2.80	2.80
La Molisana	14.78	14.78
Liguori	12.41	12.41
Pagani	12.90	18.30
All Others	11.21	12.09

Scope of Order

The scope of this order consists of certain non-egg dry pasta in packages of five pounds (or 2.27 kilograms) or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastases, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by this scope is typically sold in the retail market, in fiberboard or cardboard cartons or polyethylene or polypropylene bags, of varying dimensions.

Excluded from the scope of this order are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non-egg dry pasta containing up to two percent egg white. Also excluded are imports of organic pasta from Italy that are accompanied by the appropriate certificate issued by the Associazione Marchigiana Agricultura Biologica (AMAB) or by Bioagricoop scrl.

On July 9, 1996, after the date of our final antidumping duty determination, Euro-USA Trading Co., Inc., of Pawcatuck, CT, submitted materials to the Department supporting its request for an exclusion for pasta certified to be ''organic pasta.'' Among the documents submitted are a decree from the Italian Ministry of Agriculture and Forestry authorizing Bioagricoop scrl to certify foodstuffs as organic for the implementation of EEC Regulation 2029/91. Also submitted is a letter (with an accompanying translation into English) from the Director of Controls of Processing and Marketing Firms at Bioargricoop stating that the organization will take responsibility for its organic pasta certificates and will supply the necessary documentation to U.S. authorities. On this basis, imports of organic pasta from Italy that are accompanied by the appropriate certificate issued by Bioagricoop scrl are excluded from the scope of this order.

The merchandise under order is currently classifiable under items 1902.19.20 of the *Harmonized Tariff Schedule of the United States (HTSUS)*. Although the *HTSUS* subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Antidumping Duty Order

On July 17, 1996, in accordance with section 735(d) of the Act, the U.S. International Trade Commission (ITC) notified the Department that the U.S. pasta industry is materially injured by imports of pasta from Italy. Therefore, in accordance with section 736 of the Act, the Department will direct United States Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price or constructed export price for all entries of pasta from Italy. These antidumping duties will be assessed on all unliquidated entries of pasta from Italy entered, or withdrawn from warehouse, for consumption on or after January 19, 1996, the date on which the Department published its preliminary determination notice in the Federal Register (61 FR 1347). On or after the date of publication of this notice in the Federal Register, U.S. Customs officers must require, at the same time as importers would normally deposit estimated duties, the following cash deposits for the subject merchandise:

Manufacturer/producer/exporter	Revised margin percentage
Arrighi/Italpasta	21.34
De Cecco	46.67
De Matteis	0.00
Delverde/Tamma	2.80
La Molisana	14.78
Liguori	12.41
Pagani	18.30
All Others	12.09

Article VI (5) of the General Agreement on Tariffs and Trade (1947) prohibits assessing dumping duties on the portion of the margin attributable to an export subsidy. In this case, the product under investigation is subject to a countervailing duty investigation (*see* Final Affirmative Countervailing Duty Determination: Certain Pasta from Italy (61 FR 30288 (June 14, 1996)). Therefore, for all entries of pasta from Italy, entered or withdrawn from warehouse for consumption made on or after the date on which the order in the companion countervailing duty investigation is published in the Federal Register, we will request for duty deposit purposes, that United States Customs deduct the portion of the margin attributable to the export subsidy from the countervailing duty investigation. The cash deposit rates for antidumping purposes will be as follows:

Manufacturer/producer/exporter	Cash deposit rate
Arrighi/Italpasta	19.09
De Cecco	46.67
De Matteis	0.00
Delverde/Tamma	1.68
La Molisana	14.73
Liguori	12.41
Pagani	18.30
All Others	11.26

This notice constitutes the antidumping duty order with respect to pasta from Italy, pursuant to section 736(a) of the Act. Interested parties may contact the Central Records Unit, Room B–099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published pursuant to section 736(a) of the Act (19 U.S.C. 1673e (a)) and 19 CFR 353.21.

Dated: July 17, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–18705 Filed 7–23–96; 8:45 am]

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federal register

Wednesday
July 24, 1996

Part VII

Department of Transportation

Federal Aviation Administration

14 CFR Parts 25 and 121

Miscellaneous Cabin Safety Changes; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 25 and 121

[Docket No. 28637; Notice No. 96–9]

RIN 2120–AF77

Miscellaneous Cabin Safety Changes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to revise the airworthiness standards for transport category airplanes relating to flight attendant assist space, flight attendant assist handles, door hold open features, outside viewing means, interior compartment doors and portable oxygen equipment. With one exception, these proposals are not the result of any specific incident or recommendation, but are part of the Agency's continuing effort to upgrade the regulations to improve the overall level of safety in areas where the state-of-the-art and good design practice have indicated that such upgrades are warranted. These proposals would result in both new type design regulations as well as retroactive requirements implemented via the operating rules.

DATES: Comments must be received on or before November 21, 1996.

ADDRESSES: Comments on this notice may be mailed in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC–200), Docket No. 28637, 800 Independence Avenue SW., Washington, DC 20591; or delivered comments in triplicate to: Federal Aviation Administration, Room 915G, 800 Independence Avenue SW., Washington, DC 20591. Comments must be marked Docket No. 28637. Comments may also be submitted electronically to nprmcmts@mail.hq.faa.gov.

Comments may be examined in the Rules Docket weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m. In addition, the FAA is maintaining an information docket of comments in the Transport Airplane Directorate (ANM–100), Federal Aviation Administration, 1601 Lind Avenue SW, Renton, Washington 98055–4056. Comments in the information docket may be examined in the Transport Airplane Directorate weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Jeffrey C. Gardlin, Regulations Branch, ANM–114, Transport Airplane Directorate, Aircraft Certification Service, FAA, 1601 Lind Avenue SW, Renton, Washington 98055–4056; telephone (206) 227–2136.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments relating to any environmental, energy, federalism, or economic impacts that might result from adoption of the proposal contained in this notice are also invited. Substantive comments should be accompanied by cost estimates. Commenters should identify the regulatory docket or notice number and submit comments in triplicate to the Rules Docket address above. All comments received on or before the closing date for comments will be considered by the Administrator before taking action on this proposed rulemaking. The proposal contained in this notice may be changed in light of comments received. All comments received will be available in the Rules Docket, both before and after the closing date for comments, for examination by interested persons. 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 must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 28637.'' A postcard will be date/time stamped and returned to the commenter.

Availability of NPRM

An electronic copy of this document may be downloaded using a modem and suitable communications software from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: 703–321–3339), the Federal Register's electronic bulletin board service (telephone: 202–512–1661), or the FAA's Aviation Rulemaking Advisory Committee Bulletin Board service (telephone: 202–267–5948).

Internet users may reach the FAA's web page at http://www.faa.gov or the Federal Register's web page at http://www.access.gpo.gov/su__docs for access to recently published rulemaking documents.

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591; or by calling (202) 267–9680. Communications must identify the notice number of this NPRM. Persons interested in being placed on the mailing list for future NPRM's should also request a copy of Advisory Circulator No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

Primarily as a result of accidents during the 1960's, several amendments (25–15, 25–17, 25–20, and 25–32) to part 25 pertaining to cabin safety and crashworthiness were enacted. These amendments were designed to correct certain deficiencies identified during the investigations of the aforementioned accidents, and were, in many cases, made retroactive for airplanes already in service. Recent amendments pertaining to cabin safety have resulted from research and development in the areas of fire safety and evacuation slide performance, among others. As a result of the Public Technical Conference on Evacuation held in Seattle, Washington, in September 1985, several regulatory and advisory actions have been taken by the FAA to further upgrade standards in the cabin safety area. In a continuing effort to upgrade these standards the FAA is proposing to make several additional amendments which would further improve cabin safety. These proposals are not directly a result of the public conference but are actions deemed appropriate by the FAA considering the current state-of-the-art and existing design practice. One of the proposals follows a National Transportation Safety Board (NTSB) recommendation. Although nearly all existing installations already comply, the proposed rulemaking would ensure that any others comply as well.

Current policy for FAA rulemaking projects is to endeavor to achieve harmonization with the Joint Airworthiness Authorities (JAA) and other airworthiness authorities through the Aviation Rulemaking Advisory Committee (ARAC) and its harmonization working groups. This rulemaking project has not been the subject of a harmonization working group activity because it was initiated prior to the time that harmonization became the policy with the FAA and JAA. The proposals contained in this notice have, however, been coordinated with the Joint Aviation Authorities (JAA), during specialist meetings between the FAA and JAA. The JAA is in agreement with the proposals, but may provide comments on the detailed regulatory language. The JAA intends to incorporate these proposals into

paragraph 25 of the Joint Aviation Requirements (JAR–25) after they are finalized by the FAA.

Discussion

Section 25.813 requires that each non-overwing exit equipped with an assist means also have adequate space next to the exit for a flight attendant to stand and assist occupants while evacuating. The size of this ''assist space'' is not specified in the regulations. Guidance material in Civil Aeronautics Manual (CAM) 4b.362–6(b) states that the assist space should be a 12×20-inch rectangle on the floor and be useable. A rectangle of this size is generally recognized as the minimum size acceptable for compliance with § 25.813 or its predecessor § 4b.362(g) of the Civil Air Regulations (CAR). Deviations are, however, permitted if the efficacy of the assist space is demonstrated. Demonstrations of a smaller or irregular shaped assist space usually take place in controlled evacuation tests conducted under conditions similar to those specified in Appendix J to Part 25 for emergency evacuation demonstrations. While these demonstrations have value, they do not account for the potentially adverse conditions likely to be encountered in service. A minimum size for assist spaces needs to be established in the regulations to provide more standardized application of the requirement and give additional margins of safety under adverse conditions which may be encountered in service.

Service experience, both in tests and actual incidents, indicates that the assist space recommended in CAM 4b.362–6(b) is adequate; therefore, this notice proposes to amend § 25.813 to require that the assist space be a minimum of 12×20 inches on the floor with the 12-inch dimension parallel to the exit opening. The current requirement that the assist space must not obstruct the required passageway would be retained. The proposal does not specify the location of the assist space relative to the exit opening, since the best location may vary from one installation to another. In any case, the assist space should be located to provide the maximum benefit to evacuation. The minimum dimensions specified assume that a flight attendant would be able to stand upright, and installations which do not provide adequate headroom to enable a 95 percentile male to stand upright would probably need an increase in the fore and aft dimension of the assist space to provide the same level of efficacy as a full height installation. (Information on anthropometry can be found in NASA reference publication 1024, Anthropometric Source Book Volume I, Anthropometry for Designers.) The amount of increase required in these instances would be dependent on the details of the installation and will not be specified in the regulation.

As proposed, the assist space requirement would apply to all of the larger exit types (i.e., Types I, II, and A) regardless of whether or not they are over the wing. Except for Type A exists, the current regulations do not require an assist space for exits over the wing. The need for an assist space at these exits is dependent primarily on the presence of an assist means where the rate of egress is critical. Future airplane designs, as well as current regulatory activity (Notice 90–4 (55 FR 6344, February 22, 1990)), may make the installation of overwing floor level exits an attractive option, so it is proposed to account for their use here. In addition, the current regulations only require an assist space for the larger exits when there is an assist means required. For airplanes of relatively small passenger capacity, service experience indicates that this is a reasonable standard. However, for airplanes with a larger passenger capacity, an assist space should be required whether or not an assist means is required. This proposal would also correct a longstanding editorial error in part 121, that states that assist spaces are required at all Type I or II exits, regardless of whether or not an assist means is installed. Therefore, this notice proposes to also require an assist space at all Type II or larger exits on airplanes with a passenger capacity of 79 or greater. (If a change proposed in Notice of Proposed Rulemaking 90–4 (55 FR 6344, February 22, 1990) is adopted, this would become 80 passengers in lieu of 79). This includes tailcone exits that are qualified for 25 additional passenger seats under the provisions of § 25.807(d)(3)(ii) and are required by § 25.810(a) to have such assist means, since these can become primary exits under certain evacuation scenarios and will require the assistance of a flight attendant to perform at their potential.

Conversely, the current regulations would require an assist space for a non-floor level, non-overwing exit which incorporates an assist means. There is at present one airplane with exits that fall into this category. Given the design difficulties presented by such a design, the prospects for such exits in the future do not seem likely. Furthermore the appropriateness of the current standards for such exits appears questionable (the one example currently in existence was approved by special conditions). This existing provision in the regulations would, therefore, be removed by this proposal. In the unlikely event a design of this nature were proposed, the FAA would develop criteria appropriate for that design in the form of special conditions.

Most existing installations currently comply with this proposal, however for the few that do not, the economic penalty for direct compliance would be quite high. It is also difficult to quantify the benefit that might be gained from reconfiguring airplanes already manufactured and placed in service to comply with this proposal; therefore, no retroactive action is proposed. For newly manufactured airplanes, the economic burden of compliance is minimal. Therefore, it is proposed to amend § 121.310(f)(2) to require that the assist spaces of all airplanes manufactured two years after the effective date of this amendment comply with these criteria.

One common design feature of large transport airplanes has been an assist handle to enable flight attendants to steady themselves while assisting passengers in evacuating. The assist handle can be crucial in permitting the flight attendant to perform his or her duties efficiently. This, in turn, can have a direct bearing on the success of an emergency evacuation. There is, at present, no requirement for assist handles and most if not all installations incorporate them. Although an assist handle may not always be necessary due to the unpredictable nature of an emergency evacuation, it is a valuable tool that should be available to the flight attendant when it is needed. In addition, the assist handle is an integral part of flight attendant training. The addition of the requirement in part 25 would eliminate incompatibilities between the type design and operational requirements.

In some cases a handle designed to provide leverage when opening, or more commonly, closing passenger and service doors is installed. Often, this handle is not located at the designated assist space. Service experience has shown that the presence of the handle at another location can mislead a flight attendant into standing in a location that could obstruct the required passageway. Service experience also indicates that there is a need for assist handles to enable flight attendants to steady themselves while actuating the manual inflation handle on escape slides. The manual handle is located on the door sill, and essentially requires the attendant to straddle the door opening when pulling the handle. The attendant is quite vulnerable to the possibility of being pushed out of the

exit. The FAA expects that it would be possible for one handle to serve both purposes; however, two different handles might be needed at the same exit in some instances. The assist handle(s) should be usable by the range of flight attendants encompassing the 5th percentile female to the 95th percentile male.

This notice proposes to require that assist handles be installed at the designated assist space for all floor level exists that require an assist space. In addition, a companion change to § 121.310(l) is proposed that would be applicable to newly manufactured airplanes entering the fleet and require retrofit of the existing in-service fleet. A two year retrofit period is proposed.

Emergency evacuations are frequently necessary either due to, or in combination with ,a hazard such as a fire outside the airplane. Because the hazard may pose an immediate threat to the occupants of the airplane, it is often necessary to avoid opening certain otherwise useable emergency exits to prevent injury to the evacuees. In this context, a viewing window or other means of assessing the outside conditions and determining whether an exit should be opened is extremely valuable. A viewing window is commonly provided in most exists in service; however, it is not required, and some exits in service do not incorporate one. The proposal would require a means (for example, either a window in the exit itself, or in an adjacent frame bay) that provides a view of the ground area where evacuees will make contact upon leaving the airplane. The means should provide visibility taking into account all conditions of landing gear collapse. Details such as size and prismatic characteristics of the viewing means are not specified. The FAA considers that sufficient design latitude should be available to permit several acceptable concepts. The viewing means would be required to be available to a person preparing to open an exit. Thus, if a window were in an adjacent frame bay, there could not be a partition or divider between the exit and the window to meet the intent of the proposal. For some exits, two windows might be installed at each exit in order to provide sufficient viewing coverage. This proposed viewing requirement would only apply to airplanes for which an application for type certificate is made after the effective date. Due to the technical difficulties and resultant cost of modifying existing airplanes, no retroactive requirement is proposed.

Also important is the capability of an exit to remain open during an evacuation without threat of premature closing. Adverse attitude, wind or contact by evacuating passengers could cause an unsecured door to close during an evacuation, and jeopardize the safety of subsequent passengers. Most passenger emergency exits currently incorporate a feature which holds the door open and requires a positive action to disengage. This notice proposes to require a means to prevent an emergency exit from inadvertently closing once it has been opened in an emergency. The means must automatically engage when the exit is opened and require positive action to disengage. A removable hatch would be considered to comply, by definition. This proposal would amend § 25.809 for new type certificates. It is proposed to create a new § 121.310(l), and redesignate existing paragraph (l) as a new paragraph (n), which would require that airplanes in service after a date two years after the effective date of the amendment comply with the provisions of the part 25 requirement.

Following accident experience in the 1960's the FAA amended part 25 in Amendment 25–15, to prohibit the installation of doors ''between passenger compartments.'' At the time of the amendment, it was common practice to divide the first class and tourist class cabins with a solid door. It was determined in the course of accident investigations that this door could be detrimental in evacuation of passengers, who tended not to recognize that there was an exit beyond the door, even if it were the closest available. The resulting regulatory change was geared specifically at preventing this occurrence. However, the current regulation is worded such that doors may be installed between passengers and exits provided there are not passengers on both sides of the door. For example, a door could be installed across the main passenger aisle at the end of a cabin. The current regulations only require that the door be open for takeoff and landing. It is now considered undesirable to permit the installation of a door between any passenger and an exit. Should such a door (either through omission or mechanical failure) become jammed in the event of an emergency evacuation, persons could be prevented or delayed in evacuating which could result in fatalities or injuries that would not otherwise have occurred. The hazards associated with a jammed door are still present whether or not passengers are on both sides of the door, and the recognition factor has not been mitigated. Either could result in the same consequences—failure of some passengers to evacuate the airplane. This notice proposes to prohibit the installation of any door between any passenger and any passenger emergency exit. This would include doors that close off galley areas as passageways or crossaisles, doors across emergency exits (frequently used on ''VIP'' airplanes), and doors into rooms that are occupiable for takeoff and landing. This would also include a door across one of the aisles on a multi-aisle airplane, since this closes off the most direct route to an exit for some of the passengers.

In the past there has been considerable discussion regarding what constituted a ''door.'' One common proposal has been to install a fabric diaphragm bounced by a metal frame which is movable, usually much like a pocket door. This type of installation has been accepted provided the frame provides no more resistance to a person passing through it than a normal curtain tie back. Such installations do, however, create the same recognition problem as do ''solid'' doors and would no longer be acceptable.

The proposed change to § 25.813(e) would apply to all transport category airplanes for which an application for type certificate is made after the effective date regardless of whether they are used in air carrier service. Section 25.813(f) would also be modified to account for seats that might be occupied by crew outside of the flight deck. In addition, § 121.310(f)(6) would make the new standards applicable to all other transport category airplanes manufactured after two years after the effective date of this amendment.

These requirements would not be applied retroactively to non air-carrier operations, i.e., corporate airplanes where the number of passengers involved is much smaller and there has been no demonstrated unsafe condition.

Finally, the FAA proposes to require that oxygen masks be connected to portable oxygen equipment. This proposal follows NTSB Safety Recommendation No. A–90–54. During the decompression experienced in the February 1989 United Airlines Flight 811 accident, the NTSB determined that flight attendants had difficulty in using the portable oxygen bottles. These bottles are intended to enable them to move about the cabin, with an adequate oxygen supply, after a decompression. The oxygen masks were not connected to the dispensing terminal of the oxygen bottle, thus requiring an additional action by the flight attendant before the unit was useable. The NTSB recommended that all such masks be connected to the oxygen supply, to

minimize the time and dexterity necessary for flight attendants to don and use the portable oxygen. The FAA agrees with this recommendation, and therefore proposes to change § 25.1447(c)(4) accordingly. In addition, a companion change is made to § 121.333(d), with a one year compliance time. A one year compliance time is chosen in this case because the modification required is a simple connection of the oxygen mask to the supply bottle. This can be done on an overnight visit, or any short interval maintenance visit. One year is considered more than enough time to achieve compliance.

A two year compliance time for incorporation of these changes into the existing fleet is used throughout this proposal, with the exception noted above. This approximates the ''C'' check maintenance cycles for most airplanes affected. This time period is sufficient to accomplish the relatively minor modifications required by this proposal, and offers operators some flexibility in scheduling. For newly manufactured airplanes, two years is considered sufficient to develop the necessary engineering and parts availability on airplanes which do not already incorporate the features described here. However, as previously noted, the majority of airplanes currently being delivered do incorporate these proposals, and so will not be affected by the compliance time.

An ambiguity in the provisions of § 25.853(d) concerning ash trays has been brought to the attention of the FAA. As presently worded, the second sentence could be misinterpreted to require ash trays in all areas of the cabin instead of just the designated smoking areas. Section 25.853(d) would be revised to require that all seated occupants in designated smoking areas are provided with ashtrays. Since designated smoking areas can vary from flight to flight, an adequate number of ashtrays would probably need to be installed at delivery to account for the largest smoking section anticipated by the airline. Alternatively, the size of the smoking section would be limited by the number and location of the ashtrays.

The introductory phrase in § 25.855, which contains safety standards for cargo and baggage compartments, states, ''For each cargo and baggage compartment not occupied by crew or passengers, the following apply.'' It has been brought to the attention of the FAA that this phrase may also cause confusion. By definition, some compartments must be accessible to crewmembers to fight fires in flight; therefore, the exception made by the introductory phrase can not (and has not been interpreted to) apply to compartments that are only occupied occasionally by crew or passengers. Furthermore, crew and passengers are not permitted to be seated or stationed on a full-time basis in cargo or baggage compartments. Since the exception does not apply to occasional occupancy and since crew and passengers do not occupy cargo or baggage compartments in flight on a full-time basis, the exception made in the phrase has no applicability. Using the present wording of the introductory phrase, it was alleged, in at least one instance, that the standards of § 25.855 did not apply because the cockpit was part of the cargo or baggage compartment. That allegation was unfounded regardless of the degree or method of separation, the cockpit can not be considered part of a cargo or baggage compartment. Nevertheless, it does show that the phrase can easily be misinterpreted. Since the exception has no applicability and may cause confusion, the introductory phrase would be reworded to simply state, ''For each cargo or baggage compartment, the following apply.'' This would be a nonsubstantive change that would place no additional burden on any person.

Finally, as a result of the extensive changes to part 25 adopted in Amendment 25–72, many referenced sections were changed. Some of the references to these sections were inadvertently retained, however, and are no longer correct. Therefore, the FAA proposes to correct these references to correspond to the current structure of part 25. These changes are purely editorial in nature and affect §§ 25.807(d)(3)(ii), 25.812(g)(l)(ii), 25.812(g)(2), 25.812(h), 25.819(f) and 25.1411(c).

Regulatory Evaluation Summary

Regulatory Evaluation, Regulatory Flexibility Determination, and Trade Impact Assessment

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs Federal agencies to promulgate new regulations or modify existing regulations only if the potential benefits to society justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Finally, the Office of Management and Budget directs agencies to assess the effects of regulatory changes on international trade. In conducting these assessments, the FAA has determined that this proposed rule: (1) Would generate benefits exceeding its costs and is not ''significant'' as defined in Executive Order 12866; (2) is not ''significant'' as defined in DOT's Policies and Procedures; (3) would not have a significant impact on a substantial number of small entities; and (4) would not constitute a barrier to international trade. These analyses, available in the docket, are summarized as follows.

Costs and Benefits

The proposed rule would impose minimal incremental compliance costs on existing airplanes and airplanes manufactured under existing type-certificate because it would codify existing industry practices and clarify FAA requirements concerning cabin configuration and equipment specifications. With one exception, this proposed rule is expected to impose minimal compliance costs on future part 25 type certificated airplanes. The one exception would arise from the proposed part 25 requirement for a viewing window at each emergency exit door or adjacent bay. In order for a tailcone emergency exit to meet this proposed requirement, considerable engineering redesign may be needed. The FAA specifically requests public comment on the technical and economic feasibility of this proposed provision.

Similarly, the proposed rule would generate minimal real incremental benefits because it would codify current industry practices. The fact that the proposed rule reflects current industry practice indicates that airplane manufacturers and air carriers have determined that the proposals are warranted means of enhancing passenger and flight attendant survivability of a post-accident fire.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. The RFA requires a Regulatory Flexibility Analysis if the proposed or final rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. FAA Order 2100.14A, Regulatory Flexibility Criteria and Guidance, prescribes standards for complying with RFA review requirements in FAA rulemaking actions. The Order defines ''small entities'' in terms of thresholds, ''significant economic impact'' in terms of annualized cost thresholds, and ''substantial number'' as a number which is not less than eleven and which

is more than one-third of the small entities subject to the proposed or final rule.

Order 2100.14A specifies a size threshold for classification as a small manufacturer as 75 or fewer employees. No transport category airplane manufacturer has 75 or fewer employees. Therefore, the proposed rule would not have a significant economic impact on a substantial number of small manufacturers. Since the proposed rule would impose little or no incremental costs, there would not be a significant impact on a substantial number of small operators.

International Trade Impact Assessment

The proposed rule would not constitute a barrier to international trade, including the export of U.S. airplanes to foreign countries and the import of foreign airplanes into the United States.

Federalism Implications

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.

International Compatibility

The FAA has reviewed the corresponding International Civil Aviation Organization regulations, where they exist, and had identified no differences in these proposed amendments and the foreign regulations. The FAA has also reviewed the Joint Airworthiness Authority Regulations and has discussed similarities and differences in these proposed amendments and the foreign regulations.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), there are no requirements for information collection associated with this proposed rule.

Conclusion

Because the proposed revised standards for airplane cabin safety are not expected to result in a substantial economic cost, the FAA has determined that this proposed regulation is not a significant regulation under Executive Order 12866. The FAA has also determined that this action is not significant as defined in Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since the airplanes involved are not manufactured by small entities, it is certified under the criteria of the Regulatory Flexibility Act that this proposed regulation, if adopted, will not have a significant economic impact, positive or negative, on a substantial number of small entities. A copy of the initial regulatory evaluation prepared for this proposal may be examined in the public docket or obtained from the person identified under the caption, **FOR FURTHER INFORMATION CONTACT.**

List of Subjects

14 CFR Part 25

Air transportation, Aircraft, Aviation safety, Safety.

14 CFR Part 121

Aviation safety, Safety, Air carrier, Air traffic control, Air transportation, Aircraft, Aircraft pilots, Airmen, Airplanes, Airports, Airspace, Cargo, Chemicals, Children, Narcotics, Flammable materials, Handicapped, Hazardous materials, Common carriers.

The Proposed Amendments

Accordingly, the Federal Aviation Administration (FAA) proposes to amend parts 25 and 121 of the Federal Aviation Regulations (FAR) (14 CFR parts 25 and 121) as follows:

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

1. The authority citation for part 25 continues to read as follows:

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

§ 25.807 [Amended]

By amending § 25.807, paragraph (d)(3)(ii) by removing the reference to ''§ 25.809(h)'' and inserting ''§ 25.810(a)'' in its place.

3. By amending § 25.809 by revising paragraph (a), and by adding a new paragraph (i) to read as follows:

§ 25.809 Emergency exit arrangement.

(a) Each emergency exit, including each flightcrew emergency exit, must be moveable door or hatch in the external walls of the fuselage, allowing unobstructed opening to the outside. In addition, each emergency exit must have means to permit viewing of the outside conditions when the exit is closed, so that likely areas of evacuee ground contact are visible. The likely areas of evacuee ground contact must be viewable with the landing fear extended as well as in all conditions of landing gear collapse. The viewing means may be on the exit, or adjacent to it provided no obstructions exist between the exit and the viewing means.

* * * * *

(i) Each emergency exit must have a means to retain the exit in the open position, once the exit is opened in an emergency. The means must be automatically engaged when the exit is fully opened, and must require positive action to disengage.

4. By amending § 25.812 by revising paragraphs (g)(1)(ii), (g)(2), and (h), introductory kit, to read as follows:

§ 25.812 Emergency Lighting

* * * * *

(g) * * *

(1) * * *

(i) * * *

(ii) Not less than 0.05 foot-candle (measured normal to the direction of the incident light) for a minimum width of 42 inches for a Type A overwing emergency exit and of 2 feet for all other overwing emergency exits along the 30 percent of the slip-resistant portion of the escape route required in § 25.810(c) that is farthest from the exit; and

* * * * *

(2) At each non-overwing emergency exit not required by § 25.810(a) to have descent assist means the illumination must be not less than 0.03 foot-candle (measured normal to the direction of the incident light) on the ground surface with the landing gear extended where an evacuee is likely to make first contact with the ground outside the cabin.

(h) the means required in §§ 25.810(a) and (d) to assist the occupants in descending to the ground must be illuminated so that the erected assist means is visible from the airplane.

* * * * *

5. By amending § 25.813 by revising paragraphs (b)(1)(i) and (ii), (b)(2), (b)(3), by Adding new paragraphs (b)(4) and (b)(5) and by revising paragraphs (e) and (f) to read as follows:

§ 25.813 Emergency exit access

* * * * *

(b) * * *

(1) * * *

(i) Each assist space must be a rectangle 12 X 20-inches on the floor (or the minimum size necessary to enable a crewmember, standing erect, to effectively assist evacuees, whichever is greater) with the 12-inch dimension parallel to the exit opening, and

(ii) There must be a handle, or handles, at each assist space, located to enable the crewmember to steady himself or herself while manually

activating the assist means and while assisting passengers during an evacuation.

(2) For each Type A exit, assist space must be provided at each side of the exit regardless of whether a means is required by § 25.810(a).

(3) For each Type I or II exit installed in an airplane with seating for 79 or more passengers, an assist space must be provided at one side of the passageway regardless of whether a means is required by § 25.810(a).

(4) For each Type I or II exit, an assist space must be provided at one side of the passageway if a means is required by § 25.810(a).

(5) For any tailcone exit that qualifies for 25 additional passenger seats under the provisions of § 25.807(d)(3)(ii), an assist space must be provided, if a means is required by § 25.810(a).

* * * * *

(e) No door may be installed between any passenger seat occupiable for takeoff and landing and any passenger emergency exit, such that the door crosses any egress path (including aisles, crossaisles and passageways).

(f) If it is necessary to pass through a doorway separating any seat, occupiable for takeoff and landing (except those seats on the flight deck), from any emergency exit, the door must have a means to latch it in the open position.

§ 25.819 [Amended]

6. By amending § 25.819, paragraph (f), by removing the reference to ''§ 25.785(c)'' and inserting ''§ 25.785(d)'' in its place.

7. By amending § 25.853 by revising paragraph (d) to read as follows:

§ 25.853 Compartment interiors.

* * * * *

(d) Smoking is not to be allowed in lavatories. If smoking is to be allowed in any area occupied by the crew or passengers, an adequate number of self-contained, removable ashtrays must be provided in designated smoking sections for all seated occupants.

* * * * *

8. By amending the introductory text in § 25.855 to read as follows:

§ 25.855 Cargo or baggage compartments.

For each cargo or baggage compartment, the following apply:

* * * * *

9. By amending § 25.1411 by revising paragraph (c) to read as follows:

§ 25.1411 General

* * * * *

(c) *Emergency exit descent device.* The stowage provisions for the emergency exit descent device required by § 25.810(a) must be at each exit for which they are intended.

* * * * *

10. By amending § 25.1447 by revising paragraph (c)(4) to read as follows:

§ 25.1447 Equipment standards for the oxygen distributing units.

* * * * *

(c) * * *

(4) Portable oxygen equipment must be immediately available for each cabin attendant. The portable oxygen equipment must have the oxygen dispensing unit connected to the portable oxygen supply.

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

11. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 46105.

12. By amending § 121.310 by revising paragraph (f)(2), by redesignating paragraph (f)(6) as (f)(7); by adding a new paragraph (f)(6); by redesignating existing paragraph (l) as paragraph (n); by adding a new paragraph (l); and by republishing newly redesignated paragraphs (f)(7) and (n) to read as follows:

§ 121.310 Additional emergency exit equipment.

* * * * *

(f) * * *

(2) For each Type I or Type II emergency exit equipped with an assist means, there must be enough space next to the exit to allow a crewmember to assist in the evacuation of passengers without reducing the unobstructed width of the passageway below that in paragraph (f)(1) of this section. In addition, all airplanes manufactured on or after [insert a date two years after the effective date of this amendment] must comply with the provisions of §§ 25.813 (b)(1), (b)(2) and (b)(3) in effect on [insert the effective date of this amendment.] However, the Administrator may authorize a deviation from this requirement for an airplane certificated under the provisions of part 5b of the Civil Air Regulations in effect before December 30, 1951, if he finds that special circumstances exist that provide an equivalent level of safety.

* * * * *

(6) No person may operate a transport category airplane after a date two years after the effective date of this amendment, that incorporates a door installed between any passenger seat occupiable for takeoff and landing and any passenger emergency exit, such that the door crosses any egress path (including aisles, crossaisles and passageways).

(7) If it is necessary to pass through a doorway separating the passenger cabin for other areas to reach required emergency exit from any passenger seat, the door must have a means to latch it in the open position, and the door must be latched open during each takeoff and landing. The latching means must be able to withstand the loads imposed upon it when the door is subjected to the ultimate inertia forces, relative to the surrounding structure, listed in § 25.561(b) of this chapter.

* * * * *

(l) After [insert a date two years after the effective date of this amendment] each airplane must comply with the provisions of §§ 25.809(i) and 25.813(b)(l)(ii) in effect on [insert the effective date of this amendment].

* * * * *

(n) *Portable lights.* After December 1, 1980, no person may operate a passenger-carrying airplane unless it is equipped with flashlight stowage provisions accessible from each flight attendant seat.

13. By amending § 121.333 by revising paragraph (d) as follows:

§ 121.333 Supplemental oxygen for emergency descent and for first aid; turbine engine powered airplanes with pressurized cabins.

* * * * *

(d) *Use of portable oxygen equipment by cabin attendants.* After a date one year after the effective date of this amendment each mask used for portable oxygen equipment must be connected to its oxygen supply. Above flight level 250, one of the following is required:

(1) Each attendant shall carry portable oxygen equipment with a 15 minute supply of oxygen; or

(2) There must be sufficient portable oxygen equipment (including masks and spare outlets) throughout the cabin so that such equipment is immediately available to each attendant, regardless of their location in the cabin.

* * * * *

Issued in Washington, D.C., on July 16, 1996.

Ava L. Robinson,

Special Assistant to Director, Aircraft Certification Service.

[FR Doc. 96–18824 Filed 7–23–96; 8:45 am]

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federal register

Wednesday
July 24, 1996

Part VIII

The President

Notice of July 22, 1996—Continuation of Iraqi Emergency

Federal Register
Vol. 61, No. 143
Wednesday, July 24, 1996

Presidential Documents

Title 3—

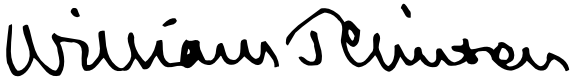
The President

Notice of July 22, 1966

Continuation of Iraqi Emergency

On August 2, 1990, by Executive Order 12722, President Bush declared a national emergency to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States constituted by the actions and policies of the Government of Iraq. By Executive Orders 12722 of August 2, 1990, and 12724 of August 9, 1990, the President imposed trade sanctions on Iraq and blocked Iraqi government assets. Because the Government of Iraq has continued its activities hostile to United States interests in the Middle East, the national emergency declared on August 2, 1990, and the measures adopted on August 2 and August 9, 1990, to deal with that emergency must continue in effect beyond August 2, 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 Iraq.

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



THE WHITE HOUSE,
July 22, 1996.

[FR Doc. 96–19020
Filed 7–22–96; 11:13 am]
Billing code 3195–01–P

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This is a list of public bills from the 104th Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–523–6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as ''slip laws'') from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–2470).

H.R. 1508/P.L. 104–163

National Children's Island Act of 1995 (July 19, 1996; 110 Stat. 1416)

H.R. 3121/P.L. 104–164

To amend the Foreign Assistance Act of 1961 and the Arms Export Control Act to make improvements to certain defense and security assistance provisions under those Acts, to authorize the transfer of naval vessels to certain foreign countries, and for other purposes. (July 21, 1996; 110 Stat. 1421)

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