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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 958

[Docket No. FV96–958–3 IFR]

Onions Grown in Certain Designated Counties in Idaho, and Malheur County, Oregon; Relaxation of Pack and Marking Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule permits bulk shipments of U.S. Commercial and U.S. No. 2 grade onions which contain more than 30 percent U.S. No. 1 grade onions. A bulk shipment is one in which the onions are packed in containers weighing 60 pounds or more. This rule also removes the requirement that bulk containers of onions packed as U.S. Commercial grade shall have the grade marked permanently and conspicuously on the containers. These changes are intended to improve the marketing of such onions, reduce handler packing costs, and increase returns to growers. These changes were recommended by the Idaho-Eastern Oregon Onion Committee (committee), the agency responsible for the local administration of the marketing order for onions grown in certain designated counties in Idaho, and Malheur County, Oregon.

DATES: Effective August 1, 1996; comments received by August 30, 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, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; FAX (202) 720–5698. All comments should reference the docket number and the date and page number of this issue of the Federal Register and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Gary D. Olson, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 1220 SW Third Avenue, room 369, Portland, Oregon 97204–2807; Telephone: (503) 326–2724, FAX: (503) 326–7440; or Robert F. Matthews, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2525, South Building, P.O. Box 96456, Washington, DC 20090–6456; Telephone: (202) 690–0464, Fax: (202) 720–5698. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, P.O. Box 96456, Room 2523–S, Washington, D.C. 20090–6456; telephone (202) 720–2491, Fax No. (202) 720–5698.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 130 and Marketing Order No. 958 (7 CFR part 958), as amended, regulating the handling of onions grown in certain designated counties in Idaho and Malheur County, Oregon, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C 601–674), hereinafter referred to as the ''Act.''

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

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

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

There are approximately 34 handlers who are subject to regulation under the order and approximately 550 producers in the production area. Small agricultural service firms, which includes handlers of Idaho-Eastern Oregon onions, have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those whose annual receipts are less than $500,000. The majority of Idaho-Eastern Oregon onion handlers and producers may be classified as small entities.

This interim final rule removes pack and container marking requirements for shipments of bulk containers. Bulk containers contain 60 pounds or more of onions. Currently, shipments of all varieties of onions (except red) which grade U.S. Commercial or U.S. No. 2 may not contain more then 30 percent U.S. No. 1 grade onions, regardless of container size. The intent of this requirement is to lessen the chances of market confusion by providing a clear distinction between onions packed as U.S. No. 1, the highest grade shipped from the production area, and those onions packed at the U.S. Commercial

or U.S. No. 2 grade levels. Also, containers of onions of the U.S. Commercial grade must be prominently and conspicuously marked to further achieve the distinction between the various grades packed and shipped from the production area.

Industry experience indicates that it is not important to limit the percentage of U.S. No. 1 onions in marketing bulk containers, because such onions normally go to firms that peel, slice, dice, chop, or otherwise prepare them for use in salad bars, fast food, or similar retail outlets. Shipments for the wholesale, retail, repacker, and export trade generally are made in containers weighing less than 60 pounds. Thus, the risk of confusion among buyers as to the quality of onions for traditional bulk shipment market outlets is quite low. Absent these changes, bulk shipments of onions containing more than 30 percent U.S. No. 1 grade onions would require handlers to repack the onions to meet the 30 percent tolerance and thereby incur additional expenses. This rule will especially benefit small handlers shipping bulk containers because such handlers normally operate with fewer packing lines and pack fewer onions. This makes it more difficult for small handlers to repack lots to meet the 30 percent U.S. No. 1 tolerance compared to larger handlers.

With the reduced packing costs, and greater marketing flexibility expected to result from these changes, small and large handlers in the Idaho-Eastern Oregon onion industry will be able to compete more effectively in the marketplace. Therefore, the AMS has determined that this action 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.

Section 958.52 of the order authorizes the issuance of grade, size, quality, container markings, pack, and container regulations for any variety or varieties of onions grown in the production area. Section 958.51 authorizes the modification, suspension, or termination of regulations issued under section 958.52.

This rule amends paragraphs (a)(1)(ii) and (a)(3)(i) of section 958.328 by removing, for onions packed in containers weighing 60 pounds or greater, the current requirement that all varieties of onions (except red) which grade U.S. No. 2 or U.S. Commercial may not be shipped if more than 30 percent of the lot is comprised of onions of U.S. No. 1 quality. This rule also amends paragraph (b) of section 958.328 by removing, for onions packed in containers weighing 60 pounds or greater, the current requirement that onions packed as U.S. Commercial grade shall have the grade marked permanently and conspicuously on such containers. These requirements would continue for onions shipped in containers weighing less than 60 pounds.

The committee unanimously recommended these changes at its June 18, 1996, meeting. The committee meets prior to and during each season to consider recommendations for modification, suspension, or termination of the regulatory requirements for Idaho-Eastern Oregon onions which have been issued on a continuing basis. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department reviews committee recommendations and information submitted by the committee and other available information, and determines whether modification, suspension, or termination of the regulatory requirements would tend to effectuate the declared policy of the Act.

The current requirement that all varieties of onions (except red) which grade U.S. No. 2 or U.S. Commercial may not be shipped if more than 30 percent of the lot is comprised of onions of U.S. No. 1 quality is intended to reduce market confusion by providing a clear distinction between onions packed as U.S. No. 1 and those packed at the U.S. No. 2 and U.S. Commercial grade levels. The goal of providing a clear distinction between packs in the marketplace is further achieved by requiring that onions packed as U.S. Commercial grade shall have the grade marked permanently and conspicuously on the container. Preventing market confusion is important to the industry in maintaining orderly marketing, and maximizing industry shipments.

The committee reports that this distinction is of little value for bulk shipments of onions, which normally are used for peeling, chopping, slicing, or repacking, and that these requirements have placed an undue regulatory burden on handlers and unnecessarily increased packing costs for such shipments. The committee reports that requiring the grade marking on bulk containers of U.S. Commercial grade onions is not necessary because the chance of market confusion between handlers and buyers of bulk containers is small.

The current requirement which prohibits the bulk shipment of a lot of onions that grades U.S. No. 2 or U.S. Commercial because it is comprised of more than 30 percent U.S. No. 1 quality grade sometimes forces handlers to resort such onions, or blend them with poorer quality onions to bring the lots into conformance with the 30 percent tolerance. Rather than incur these additional costs, handlers sometimes send such onions to lower value, secondary outlets, such as processing; e.g., canning, freezing, dehydration, or similar outlets. Removing the 30 percent commingling requirement for bulk onion shipments is expected to provide handlers with greater marketing flexibility, reduce packing costs, and increase returns to growers. Removing the U.S. Commercial grade marking requirement for bulk containers is expected to reduce handler packing costs and remove an unnecessary regulatory burden on handlers of such containers.

The 30 percent commingling and marking requirements for containers with less than 60 pounds of onions will continue in effect to maintain the distinction between the various grades shipped into non-bulk markets. As mentioned earlier, this is necessary to prevent market confusion and to maintain orderly marketing conditions.

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

Pursuant to 5 U.S.C. 553, it is also found 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) This rule relaxes the current pack and container marking requirements for bulk shipments of Idaho-Eastern Oregon onions; (2) this rule was unanimously recommended at a public meeting and all interested persons had an opportunity to express their views and provide input; (3) Idaho-Eastern Oregon onion handlers are aware of this rule and need no additional time to comply with the relaxed requirements; (4) Idaho-Eastern Oregon onions are shipped throughout the year, and this rule should be in effect by August 15, the date 1996 crop shipments are expected to begin; and (5) this rule provides a 30-day comment period and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 958

Marketing agreements, Onions, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 958 is amended as follows:

PART 958—ONIONS GROWN IN CERTAIN DESIGNATED COUNTIES IN IDAHO, AND MALHEUR COUNTY, OREGON

1. The authority citation for 7 CFR part 958 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 958.328 is amended by revising paragraphs (a)(1)(ii),(a)(3)(i), and (b) to read as follows:

§ 958.328 Handling regulation.

* * * * *

(a) * * *

(1) * * *

(ii) U.S. No. 2 or U.S. Commercial grade, at least 1½ inches minimum diameter but not more than 30 percent of the lot shall be comprised of onions of U.S. No. 1 quality when packed in containers weighing less than 60 pounds; or

* * * * *

(3) * * *

(i) U.S. No. 2 or U.S. Commercial grade, at least 3 inches minimum diameter, but not more than 30 percent of the lot shall be comprised of onions of U.S. No. 1 quality when packed in containers weighing less than 60 pounds; or

* * * * *

(b) *Pack*. Onions packed as U.S. Commercial grade in containers weighing less than 60 pounds shall have the grade marked permanently and conspicuously on the container.

* * * * *

Dated: July 25, 1996.

Sharon Bomer Lauritsen,

Acting Director, Fruit and Vegetable Division.

[FR Doc. 96–19375 Filed 7–30–96; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 981

[Docket No. FV96–981–2 IFR]

Almonds Grown in California; 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 Almond Board of California (Board) under Marketing Order No. 981 for the 1996–97 and subsequent crop years. The Board is responsible for local administration of the marketing order which regulates the handling of almonds grown in California. Authorization to assess almond handlers enables the Board to incur expenses that are reasonable and necessary to administer the program.

DATES: Effective July 1, 1996. Comments received by August 30, 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: Tershirra Yeager, Marketing Assistant, Marketing Order Administrative Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2522–S, Washington, DC 20090–6456, telephone (209) 720–5127, or FAX # (202) 720–5698; or Kathleen M. Finn, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2522–S, Washington, DC 20090–6456, telephone (202) 720–1509 or FAX # (202) 720–5698. Small businesses 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, DC 20090–6456; telephone: (202) 720–2491, Fax# (202) 720–5698.

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

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California almonds 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 almonds beginning July 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 the 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 7,000 producers of California almonds under this marketing order, and approximately 115 handlers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of California almond producers and handlers may be classified as small entities.

The California almond marketing order provides authority for the Board, 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 Board are producers and handlers of California almonds. They are familiar with the Board's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The Board met on May 10, 1996, and unanimously recommended 1996–97 crop year expenditures of $6,426,500 and an assessment rate of $0.01 per pound of almonds. In comparison, last year's budgeted expenditures were $4,952,591 with the assessment rate of $0.75 per pound. Major expenditures recommended by the Board for the 1996–97 crop year include $3,333,500 for information and research, $731,534 for salaries, $660,500 for international programs, $558,131, production research, $97,470 for travel, and $91,160 for crop estimate.

Of the $3,333,500 budgeted for information and research, the Board allotted $1.553 million for a ''coupon'' promotion project to be conducted on a national scale. In the 1995–96 crop year, $250,000 was budgeted for a similar project on a smaller scale. The Board will only conduct the 1996–97 budgeted project if the 1995–96 smaller scale project proves to be beneficial to the industry. The success of this program will be determined after the 1995–96 crop year is completed. In the event the Board decides not to undertake this project, appropriate adjustments will be made when billing handlers.

The assessment rate recommended by the Board was derived by dividing anticipated expenses by expected receipts of California almonds. Almond shipments for the year are estimated at 504.4 million pounds which should provide $5.044 million in assessment income. Income derived from handler assessments, interest, a production research conference, Market Access Program, along with funds derived from the Board's authorized reserve will be adequate to cover budgeted expenses. Any unexpended funds from the 1996–97 crop year may be carried over to cover expenses during the first four months of the 1997–98 crop year.

While this rule may 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 Board or other available information.

Although this assessment rate is effective for an indefinite period, the Board will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Board meetings are available from the Board or the Department. Board meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Board recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Board'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 recommendations submitted by the Board and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

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

List of Subjects in 7 CFR Part 981

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

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

PART 981—ALMONDS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 981 continues to read as follows:

Authority: 7 U.S.C. 601–674.

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

2. In part 981, a new subpart is added consisting of section 981.343 to read as follows:

Subpart—Assessment rates.

§ 981.343 Assessment rate.

On and after July 1, 1996, an assessment rate of $0.01 cent per pound of assessable almonds is established for California almonds.

Dated: July 25, 1996.

Sharon Bomer Lauritsen,

Acting Director, Fruit and Vegetable Division.

[FR Doc. 96–19377 Filed 7–30–96; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 993

[Docket No. FV96–993–1 IFR]

Dried Prunes Produced in California; 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 Prune Marketing Committee (Committee) under Marketing Order No. 993 for the 1996–97 and subsequent crop years. The Committee is responsible for local administration of the marketing order which regulates the handling of dried prunes produced in California. Authorization to assess prune 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 30, 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: Mary Kate Nelson, Marketing Assistant, Marketing Order Administration Branch, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, suite 102B, 2202 Monterey Street, Fresno, California 93721, telephone 209–487–5901, FAX 209–487–5906, or Martha Sue Clark, Program Assistant, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone 202–720–9918, FAX 202–720–5698. Small businesses 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, DC 20090–6456, telephone 202–720–2491, FAX 202–720–5698.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 993, both as amended (7 CFR part 993), regulating the handling of dried prunes produced in California, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California prune 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 prunes 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 1,400 producers of dried prunes in the production area and approximately 21 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 California dried prune producers and handlers may be classified as small entities.

The California prune 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 California dried prunes. They are familiar with the Committee's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget 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 June 27, 1996, and unanimously recommended 1996–97 expenditures of $283,500 and an assessment rate of $1.50 per salable ton of dried prunes. In comparison, last year's budgeted expenditures were $275,280. The assessment rate of $1.50 per salable ton is $0.05 lower than last year's established rate. Major expenditures recommended by the Committee for the 1996–97 crop year include $142,120 for salaries and wages, $30,000 for research and development, $22,000 for office rent, $20,000 for travel, $11,000 for an acreage survey, $8,430 for the reserve for contingency, and $6,500 each for office supplies and data processing. Budgeted expenses for these items in 1995–96 were $131,320, $30,000, $22,000, $20,000, $10,500, $19,310, $5,000, and $3,500, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of California dried prunes. Dried prune shipments for the year are estimated at 189,000 salable tons which should provide $283,500 in assessment income. Income derived from handler assessments will be adequate to cover budgeted expenses. Any funds not expended by the Committee during a crop year may be used, pursuant to § 993.81(c), for a period of five months subsequent to that crop year. At the end of such period, the excess funds are returned or credited to handlers.

This action will reduce the assessment obligation imposed on handlers. 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 from 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 prior to or during each crop year to recommend a budget of expenses and

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 crop years 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 crop year begins on August 1, 1996, and the marketing order requires that the rate of assessment for each crop year apply to all assessable dried prunes handled during such crop year; (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 past years; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 993

Marketing agreements, Plums, Prunes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 993 is amended as follows:

PART 993—DRIED PRUNES PRODUCED IN CALIFORNIA

1. The authority citation for 7 CFR part 993 continues to read as follows:

Authority: 7 U.S.C. 601–674.

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

2. A new Subpart—Assessment Rates and a new § 993.347 are added to read as follows:

Subpart—Assessment Rates

§ 993.347 Assessment rate.

On and after August 1, 1996, an assessment rate of $1.50 per salable ton is established for California dried prunes.

Dated: July 25, 1996.

Sharon Bomer Lauritsen,

Acting Director, Fruit and Vegetable Division.

[FR Doc. 96–19376 Filed 7–30–96; 8:45 am]

BILLING CODE 3410–02–P

Rural Utilities Service

7 CFR Part 1770

RIN 0572–AB10

Accounting Requirements for RUS Telecommunications Borrowers

AGENCY: Rural Utilities Service, USDA.

ACTION: Final rule.

SUMMARY: The Rural Utilities Service (RUS) is amending its regulations on accounting policies and procedures for RUS telecommunications borrowers as set forth in RUS's regulations concerning Accounting System Requirements for RUS Telecommunications Borrowers. This rule establishes an accounting interpretation for postretirement benefits that addresses both the requirements of the Financial Accounting Standards Board (FASB) and the Federal Communications Commission (FCC). It also sets forth accounting interpretations that establish uniform accounting procedures for Rural Telephone Bank (RTB) stock, cushion of credit investments, Rural Economic Development loans and grants, and satellite or cable television service investments.

EFFECTIVE DATE: This rule is effective August 30, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. Roberta D. Purcell, Director, Program Accounting Services Division, Rural Utilities Service, STOP 1523, room 2221, South Building, U.S. Department of Agriculture, Washington, DC 20250–1523, telephone number (202) 720–9450.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

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

Regulatory Flexibility Act Certification

The Administrator of RUS has determined that the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) does not apply to this final rule.

Information Collection and Recordkeeping Requirements

The information collection and recordkeeping requirements contained in this rule have been approved by OMB under control number 0572–0003 pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended.) Comments regarding these requirements may be sent to Roberta D. Purcell, Director, Program Accounting Services Division, Rural Utilities Service, STOP 1523, Washington, DC 20250–1523.

National Environmental Policy Act Certification

The Administrator, RUS, has determined that this final rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

Catalog of Federal Domestic Assistance

The program described by this final rule is listed in the Catalog of Federal Domestic Assistance Program under numbers 10.851—Rural Telephone Loans and Loan Guarantees and 10.852—Rural Telephone Bank loans. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402.

Executive Order 12372

This final rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation. A Notice of Final Rule entitled Department Programs and Activities Excluded from Executive Order 12372 (50 FR 47034) exempts RUS and RTB loans and loan guarantees, and RTB loans, to governmental and nongovernmental entities from coverage under this order.

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This final rule: (1) Will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with

this rule; (2) Will not have any retroactive effect; and (3) Will not require administrative proceeding before parties may file suit challenging the provisions of this proposed rule.

National Performance Review

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

Background

In order to facilitate the effective and economical operation of a business, adequate and reliable financial records must be maintained. Accounting records must provide a clear, accurate picture of current economic conditions from which management can make informed decisions in charting the company's future. The rate regulated environment in which a telecommunications carrier operates causes an even greater need for financial information that is accurate, complete, and comparable with that generated by other carriers. For this reason, the FCC prescribes a Uniform System of Accounts (USoA) for the telecommunications industry.

RUS, as a Federal lender and mortgagee, and in furthering the objectives of the Rural Electrification Act (RE Act) (7 U.S.C. 901 *et seq.*) has a legitimate programmatic interest and a substantial financial interest in requiring adequate records to be maintained. In order to provide RUS with financial information that can be analyzed and compared with the operations of other borrowers in the RUS program, all RUS borrowers must maintain financial records that utilize uniform accounts and uniform accounting policies and procedures. The standard RUS security instrument, therefore, requires borrowers to maintain their books, records, and accounts in accordance with methods and principles of accounting prescribed by RUS in the RUS USoA for its telecommunications borrowers.

To ensure that borrowers consistently account for and apply the provisions of recent pronouncements of the FASB and the FCC, the RUS USoA must be revised and updated as changes in generally accepted accounting principles and the FCC USoA occur. RUS is, therefore, establishing a new accounting interpretation that addresses the accounting requirements set forth in Statement of Financial Accounting Standards No. 106, Employers' Accounting for Postretirement Benefits Other Than Pensions (Statement No. 106). Statement No. 106 requires reporting entities to accrue the expected cost of postretirement benefits during the years the employee provides service to the entity. Copies of Statements of Financial Accounting Standards may be obtained from the Order Department of the Financial Accounting Standards Board, 401 Merritt 7, P.O. Box 5116, Norwalk, Connecticut 06856–5116.

RUS is also establishing an accounting interpretation for RTB bank stock that sets forth the journal entries necessary to record the required purchase of Class B RTB stock, patronage refunds in the form of additional shares of Class B RTB stock, purchases of Class C stock, and dividends received on Class C stock. The interpretation also addresses the proper accounting for the conversion of Class B stock to Class C stock after all RTB loans have been repaid.

RUS is also setting forth an accounting interpretation that establishes the accounting policies and procedures for the Rural Economic Development loan and grant programs recently established by the Rural Business and Cooperative Development Service and for investments in satellite and cable television services.

Comments

A proposed rule entitled Accounting Requirements for REA Telecommunications Borrowers, published September 14, 1994, at 59 FR 47097, invited interested parties to submit comments on or before November 14, 1994. Comments were received from telecommunications borrowers, certified public accountants (CPAs), state wide associations, and national trade associations. The following paragraphs address the various topics that were discussed by the commenters.

Interpretation No. 101, Postretirement Benefits

Comment. Some commenters questioned the need for actuarial studies if the only benefit provided is an item such as local phone service.

Response. As with all statements issued by FASB, the provisions of Statement No. 106 need not be applied to immaterial amounts. If the borrower and the independent CPA engaged to perform the annual audit of the borrower's financial statements are satisfied as to the immateriality of a benefit provided, Statement No. 106 need not be adopted and accordingly, an actuarial study is not required. It should be noted, however, that an initial actuarial study may be necessary in order to determine the materiality of the benefit provided. For this reason, no revision was made to the final rule.

Comment. Several commenters presented arguments for retaining the option to immediately recognize the transition obligation created by the implementation of Statement No. 106.

Response. On December 26, 1991, the FCC issued 6 FCC Rcd 7560, which requires telecommunications carriers to recognize the transition obligation on a delayed basis thereby eliminating the option of immediate recognition. In order to ensure the consistent and uniform application of generally accepted accounting principles among all telecommunications borrowers, RUS requires its borrowers to comply with the FCC USoA. Therefore, all RUS borrowers are required to adopt the delayed recognition required by the FCC. If a state regulatory body requires immediate recognition of the postretirement benefit transition obligation, the transition obligation should be recognized on a delayed basis with the jurisdictional difference accounts used to effect compliance with the state requirements.

Interpretation No. 102, Rural Telephone Bank Stock

Comment. Several commenters suggested that the purchase of Class B RTB stock should be accounted for as an increase in interest expense or as an amortizable loan cost rather than as the acquisition of an asset.

Response. While the investment in Class B RTB stock is a requirement for a borrower to secure financing from the RTB, the owner of Class B RTB stock is entitled to patronage refunds in the form of additional shares of Class B stock. When a borrower has repaid all of its RTB loans, the borrower may request that the Class B stock be converted into Class C stock. Class C stock earns cash dividends and may be redeemed at some future time in accordance with the bylaws of the RTB. The aforementioned characteristics are indicative of an investment, not an item of expense, and as such, no revision was made to the final rule.

Comment. One commenter stated that income should be recognized at the time the patronage refund is allocated to the owners of Class B RTB stock in order to insure that members of a telecommunications cooperative receive their fair share of the patronage refund.

Response. In 1975, this issue was considered by the Staff Subcommittee on Accounts of the National Association of Regulatory Utility Commissioners. Because Class B RTB stock has no known market value, pays no return or interest, and cannot be alienated except in connection with the transfer of the outstanding RTB loan, the committee

recommended that the patronage refunds be recorded as a memorandum entry on the books of account until such time as the value of the stock is realized, in cash, through its redemption.

Comment. Several commenters raised issues regarding RTB privatization.

Response. When privatization of the RTB actually begins, any necessary revisions to this regulation will be proposed and exposed for comment at that time.

Comment. One commenter questioned the determinability of the fair value of Class C stock based on Accounting Principle Board Opinion No. 29, Accounting for Nonmonetary Transactions (Opinion No. 29).

Response. The conversion of Class B RTB stock to Class C RTB stock meets the definition of a nonmonetary exchange as set forth in Opinion No. 29. In Opinion No. 29, the Accounting Principles Board concluded that the accounting for nonmonetary transactions should be based upon the fair value of the assets involved. Paragraphs 25 & 26 of the opinion, however, raise questions concerning the determination of fair value within reasonable limits. While the face value of Class C stock is considered to be its surrender value, the indefinite nature of its realizability requires the consideration of the time value of money. Calculating the present value of the Class C stock is not feasible because it is not known when the Class C stock will become redeemable. Therefore, the fair value of this transaction cannot be determined within reasonable limits and as such, must be accounted for at the recorded value of the Class B RTB stock. The final rule has been revised accordingly.

Comment. Several commenters expressed concern regarding the tax issues that would be raised if income is recognized at the time Class B stock is converted into Class C stock.

Response. While income tax issues are of great concern to RUS borrowers and we are sympathetic to these concerns, accounting interpretations issued by RUS must be based upon the appropriate, consistent application of generally accepted accounting principles (GAAP). As such, RUS cannot prescribe accounting requirements that do not comply with GAAP in an effort to circumvent either Federal or state income tax laws. It should be noted, however, that by recording the conversion of Class B stock at its recorded value, no income is recognized until the Class C stock is actually redeemed.

Interpretation No. 103, Cushion of Credit Investments

Comment. One commenter suggested that interest earned on the RUS Cushion of Credit account should be recorded as a credit to interest expense rather than interest income under the ''right of offset'' as discussed in FASB Technical Bulletin No. 88–2, Definition of a Right of Setoff (FTB No. 88–2).

Response. FTB No. 88–2 was superseded, in its entirety, by FASB Interpretation No. 39, Offsetting of Amounts Related to Certain Contracts (Interpretation No. 39). Interpretation No. 39 states that the offsetting of assets and liabilities in the balance sheet is improper except where a right of offset exists. A right of offset exists only when each of two parties owes the other determinable amounts. In accordance with paragraph 5, footnote 2, of Interpretation No. 39, cash on deposit at a financial institution must be considered cash by the depositor rather than an amount owed to the depositor. Therefore, deposits in the RUS Cushion of Credit account do not meet the criteria required for offsetting against the principle owed on an outstanding RUS loan. As such, no offset of interest income and expense is appropriate under Interpretation No. 39 and no revision was made to the final rule.

Interpretation No. 104, Rural Economic Development Loan and Grant Program

Comment. Two commenters objected to recording the funds received from a Rural Economic Development grant as income.

Response. The establishment of a revolving loan program with Federal grant funds creates special concerns from an accounting perspective. The customary Federal grant is made for a specific project or purpose. The income to the grantee is offset by the costs incurred in the project, thereby eliminating any net income effect. When a revolving loan program is established, however, the grantee incurs no immediate expense with which to offset the grant proceeds. The grant proceeds are loaned to a third party thereby creating an asset (receivable) from that third party. As the loan is repaid, the asset is reduced and additional funds are available for relending. While there may be the incidental costs of administering the loan program, no additional costs are incurred until a loan actually goes into default. In fact, under the Rural Business and Cooperative Development Service's grant program, after the initial grant funds have been loaned and repaid, the borrower may charge a reasonable rate of interest on its revolving loans. The grant program may, therefore, actually become income producing.

Additionally, because 7 CFR Part 1703, Subpart B, Rural Economic Development Loan and Grant Program, is somewhat ambiguous as to the final disposition of the grant funds upon termination of the revolving loan program, further accounting concerns are raised.

The accounting for a rural economic development grant is therefore, dependent upon the grant agreement itself. If the grant agreement requires repayment of the funds upon termination of the revolving loan program, the funds must be recorded as a liability. If the grant agreement stipulates that there is no obligation for repayment, the funds should be recorded as a permanent infusion of capital. If, however, the agreement is silent as to the final disposition of the grant funds, the funds must be recorded as income. The final rule has been revised accordingly.

Interpretation No. 105, Satellite and Cable Television Services

Comment. One commenter suggested that this interpretation should apply to any type of service offered through a subsidiary, joint venture, or as a segment of an entity's operations.

Response. While the underlying accounting principles used to establish this accounting interpretation are applicable to any type of service offered through a subsidiary, joint venture, or a segment of an entity's operations, the purpose of this interpretation was to specifically address borrowers' investments in satellite and cable television services. For this reason, no revision was made to the final rule.

List of Subjects in 7 CFR Part 1770

Accounting, Loan programs—communications, Reporting and recordkeeping requirements, Rural areas, Telecommunications, Uniform System of Accounts.

For the reasons set forth in the preamble, RUS hereby amends 7 CFR chapter XVII as follows:

PART 1770—ACCOUNTING REQUIREMENTS FOR RUS TELECOMMUNICATIONS BORROWERS

1. The authority citation for part 1770 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.*; 7 U.S.C.1921 *et seq.*; Pub. L. 103–354, 108 Stat. 3178 (7 U.S.C. 6941 *et seq.*).

2. Subpart C is added to read as follows:

Subpart C—Accounting Interpretations

Sec.
1770.26 General.
1770.27 Definitions.
1770.28–1770.45 [Reserved]

Appendix to Subpart C—Accounting Methods and Procedures Required of All Borrowers

Subpart C—Accounting Interpretations

§ 1770.26 General.

(a) The standard provisions of the security instruments utilized by the Rural Utilities Service (RUS) and the Rural Telephone Bank (RTB) for all telecommunications borrowers require borrowers to at all times keep and safely preserve, proper books, records, and accounts in which full and true entries will be made of all of the dealings, business, and affairs of the borrower in accordance with the methods and principles of accounting prescribed by the state regulatory body having jurisdiction over the borrower and by the Federal Communications Commission (FCC) in its Uniform System of Accounts for telecommunications companies (47 CFR part 32), as those methods and principles of accounting are supplemented from time to time by RUS.

(b) This subpart implements those standard provisions of the RUS and RTB security instruments by prescribing accounting principles, methodologies, and procedures applicable to all telecommunications borrowers for particular situations.

§ 1770.27 Definitions.

As used in this part:

Borrower is an RUS telecommunications borrower.

Cushion of Credit Account is a 5 percent interest bearing account established by RUS in which all voluntary payments or overpayments on Rural Electric and Telephone Revolving Funds after October 1, 1987, are deposited.

FCC is the Federal Communications Commission.

Part 32 is 47 CFR Part 32, Uniform System of Accounts, issued by the Federal Communications Commission.

RAO is the Responsible Accounting Officer of the Federal Communications Commission.

RE Act is the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 et seq.).

RETRF is the Rural Electric and Telephone Revolving Fund.

RTB is the Rural Telephone Bank.

RUS is the Rural Utilities Service, an agency of the United States Department of Agriculture, or its predecessor or successor.

§ 1770.28—1770.45 [Reserved]

Appendix to Subpart C—Accounting Methods and Procedures Required of All Borrowers

All borrowers shall maintain and keep their books of accounts and all other books and records which support the entries in such books of accounts in accordance with the accounting principles prescribed in this appendix.

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Number and Title

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102 Rural Telephone Bank Stock
103 Cushion of Credit Investments
104 Rural Economic Development Loan and Grant Program
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101 *Postretirement Benefits*

A. Statement of Financial Accounting Standards No. 106, Employers' Accounting for Postretirement Benefits Other than Pensions (Statement No. 106), requires reporting entities to accrue the expected cost of postretirement benefits during the years the employee provides service to the entity. For purposes of applying the provisions of Statement No. 106, members of the board of directors are considered to be employees of the cooperative. Prior to the issuance of Statement No. 106, most reporting entities accounted for postretirement benefit costs on a ''pay-as-you-go'' basis; that is, costs were recognized when paid, not when the employee provided service to the entity in exchange for the benefits. (Statement 106 is available from the Financial Accounting Standards Board, 401 Merritt 7, P.O. Box 5116, Norwalk, CT. 06856–5116.)

B. As defined in Statement No. 106, a postretirement benefit plan is a deferred compensation arrangement in which an employer promises to exchange future benefits for an employee's current services. Postretirement benefit plans may be funded or unfunded. Postretirement benefits include, but are not limited to, health care, life insurance, tuition assistance, day care, legal services, and housing subsidies provided outside of a pension plan.

C. Statement No. 106 applies to both written plans and to plans whose existence is implied from a practice of paying postretirement benefits. An employer's practice of providing postretirement benefits to selected employees under individual contracts with specific terms determined on a employee-by-employee basis does not, however, constitute a postretirement benefit plan under the provisions of this statement.

D. Postretirement benefit plans generally fall into three categories: single-employer defined benefit plans, multiemployer plans, and multiple-employer plans.

E. A single-employer plan is a postretirement benefit plan that is maintained by one employer. The term may also be applied to a plan that is maintained by related parties such as a parent and its subsidiaries. A multiemployer plan is a postretirement benefit plan in which two or more unrelated employers contribute, usually pursuant to one or more collective-bargaining agreements. One characteristic of a multiemployer plan is that the assets contributed by one participating employer may be used to provide benefits to employees of other participating employers since assets contributed by an employer are not segregated in a separate account or restricted to provide benefits only to employees of that employer.

F. A multiple-employer plan is a postretirement benefit plan that is maintained by more than one employer but is not a multiemployer plan. A multiple-employer plan is generally not collectively bargained and is intended to allow participating employers to pool their plan assets for investment purposes and reduce the cost of plan administration. A multiple-employer plan maintains separate accounts for each employer so that contributions provide benefits only for employees of the contributing employer.

G. The accounting requirements set forth in this interpretation focus on single- and multiple-employer plans. The accounting requirements set forth in Statement No. 106 for multiemployer plans or defined contribution plans shall be adopted for borrowers electing those types of plans.

H. Under the provisions of Statement No. 106, there are two components of the postretirement benefit cost: the current period cost and the transition obligation. The transition obligation is a one-time accrual of the costs resulting from services already provided. Statement No. 106 allows the transition obligation to be deferred and amortized on a straight-line basis over the average remaining service period of the active employees. If the average remaining service period of the active employees is less than 20 years, a 20-year amortization period may be used.

I. Accounting Requirements

A. All borrowers shall adopt the accrual accounting provisions and reporting

requirements as set forth in Statement No. 106. The transition obligation and accrual of the current period cost must be based upon an actuarial study. This study must be updated to allow the borrower to comply with the measurement date requirements of Statement No. 106; however, the study must, at a minimum, be updated every five years. Borrowers may not account for postretirement benefits on a ''pay-as-you-go'' basis.

B. Under the provisions of Statement No. 106, an entity may recognize the transition obligation, in its entirety, when Statement No. 106 is first adopted or the entity may elect to delay the recognition of the transition obligation. On December 26, 1991, however, the FCC issued 6 FCC Rcd 7560, which requires telecommunications carriers to recognize the transition obligation on a delayed basis. RUS reviewed this issuance and has determined that borrowers must comply with this ruling and recognize the transition obligation on a delayed basis.

C. The deferral and amortization of the transition obligation on a delayed basis is considered to be an off balance sheet item. As a result, an accounting entry is not required at the time of adoption of Statement No. 106. Instead, the transition obligation is recognized as a component of postretirement benefit cost as it is amortized. The amount of the unamortized transition obligation must be disclosed in the notes to the financial statements.

D. In accordance with the provisions of Responsible Accounting Officer (RAO) Letter 20, released by the FCC on April 24, 1992, Account 4310, Other Long-Term Liabilities, shall be used to record the liability accrued for postretirement benefits. (RAO Letter 20 is available from the Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.) Borrowers shall credit this account for the net periodic cost of postretirement benefits for the current year and shall debit this account for any fund payments made during the current year.

E. Net periodic postretirement benefit cost includes current period service cost, interest cost, return on plan assets, amortization of prior service cost, gains and losses, and amortization of the transition obligation. If fund payments create a debit balance in the postretirement benefits portion of Account 4310, the debit balance applicable to postretirement benefits shall be reported in Account 1410, Other Noncurrent Assets. Account 1410 shall also be used to record any prepaid postretirement benefit cost.

F. The benefits portion of the expense matrix for the appropriate Part 32 expense accounts shall be used to record the current period service cost component of the current year's net periodic postretirement benefit cost. The interest cost component, return on plan assets, amortization of prior service cost, gains and losses, and amortization of the transition obligation shall be charged to the benefits portion of the expense matrix of Account 6728, Other General and Administrative.

II. Effective Date and Implementation

A. For plans outside the United States and for defined benefit plans of employers that (a) are nonpublic enterprises and (b) sponsor defined benefit postretirement plans with no more than 500 plan participants in the aggregate, Statement No. 106 is effective for fiscal years beginning after December 15, 1994. For all other plans, Statement No. 106 is effective for fiscal years beginning after December 15, 1992.

102 *Rural Telephone Bank Stock*

A. Capital stock issued by the Rural Telephone Bank consists of Class A, Class B, and Class C stock. Class A stock is issued only to the Administrator of RUS on behalf of the United States in exchange for capital furnished to RTB.

B. Class B stock is issued only to recipients of loans under Section 408 of the Rural Electrification Act (RE Act). Borrowers receiving loan funds pursuant to Section 408(a) (1) or (2) of the RE Act are required to invest 5 percent of the amount of loan funds approved in Class B stock. No dividends are payable on Class B stock. All holders of Class B stock are entitled to patronage refunds in the form of Class B stock under the terms and conditions specified in the bylaws of the RTB.

C. Class C stock is available for purchase by borrowers, corporations, and public bodies eligible to borrow under Section 408 of the RE Act, or by organizations controlled by such borrowers, corporations and public bodies. The payment of dividends is in accordance with the bylaws of the RTB.

Accounting Requirements

A. The purchase of RTB stock required by the RE Act shall be debited to Account 1402.1, Investments in Nonaffiliated Companies—Class B RTB Stock. Patronage refunds in the form of additional shares of RTB Class B Stock shall be debited to Account 1402.1 and credited to Account 1402.11, Investments in Nonaffiliated Companies—Class B RTB Stock—Cr.

B. Purchases of Class C RTB stock shall be debited to Account 1402.2, Investments in Nonaffiliated Companies—Class C RTB Stock. Cash dividends received on Class C RTB stock shall be credited to Account 7310, Dividend Income.

C. Once a borrower has repaid all of its RTB loans, it may request that its Class B stock be converted to Class C stock. When the conversion is made, Account 1402.2 shall be debited and Account 1402.1 shall be credited for the face value of the stock converted. Account 1402.21, Investments in Nonaffiliated Companies—Class C RTB Stock—Cr., shall be credited and Account 1402.11 shall be debited for the face value of the Class B stock that has been received as patronage refunds.

103 *Cushion of Credit Investments*

A. The RUS Cushion of Credit account is an investment account bearing an interest rate of 5 percent. All voluntary payments or overpayments on Rural Electric and Telephone Revolving Fund (RETRF) loans made after October 1, 1987, are deposited into this account in the appropriate borrower's name.

Accounting Requirements

A. The following journal entries shall be used by RUS borrowers to record the transactions associated with cushion of credit payment:

1. Dr. 4210.18, RUS Notes—Advance Payments, Dr. Cr. 1130.1/1120.11, Cash—General Fund. To record the cushion of credit payment.
2. Dr. 4210.18, RUS Notes—Advance Payments, Dr. Cr. 7320/7300.2, Interest Income. To record interest earned on cushion of credit deposits.
3. Dr. 4210.12, RUS Notes, Cr. 4210.18, RUS Notes—Advance Payments, Dr. To apply cushion of credit payments (and interest) to the RUS note.

104 *Rural Economic Development Loan and Grant Program*

A. On December 21, 1987, Section 313, Cushion of Credit Payments Program (7 U.S.C. 901 et seq.), was added to the RE Act. Section 313 establishes a Rural Economic Development Subaccount and authorizes the Administrator of the RUS to provide zero interest loans or grants to RE Act borrowers for the purpose of promoting rural economic development and job creation projects. Effective December 5, 1994, this authority was assigned to the Administrator, Rural Business and Cooperative Development Service.

B. 7 CFR part 1703, Subpart B, Rural Economic Development Loan and Grant Program, sets forth the policies and procedures relating to the zero interest loan program and for approving and administering grants.

Accounting Requirements

A. The accounting journal entries required to record the transactions associated with a Rural Economic Development grant are as follows:

1. Dr. 1130.4/1120.14, Cash—General Fund—Economic Development Grant Funds. Cr. 4210.25, RUS Notes—Economic Development Grant; Cr. 4540.41, Other Capital—Miscellaneous; or Cr. 7360/7300.6, Other Nonoperating Income. To record grant funds disbursed by RUS. If the grant agreement requires repayment of the funds upon termination of the revolving loan program, Account 4210.25 shall be credited. If the grant agreement states that there is absolutely no obligation for repayment upon termination of the revolving loan program, the funds shall be accounted for as a permanent infusion of capital by crediting Account 4540.41. If, however, the grant agreement is silent as to the final disposition of the grant funds, Account 7360/7300.6 shall be credited.
2. Dr. 1401.1, Other Investments in Affiliated Companies—Federal Economic Development Grant Loans or Dr. 1402.4, Other Investments in Nonaffiliated Companies—Federal Economic Development Grant Loans Cr. 1130.4/1120.14, Cash—General Fund—Economic Development Grant Funds. To record a Federal revolving loan to an economic development project.

3. Dr. 1130.1/1120.11, Cash—General Fund. Cr. 7360/7300.6, Other Nonoperating Income. To record payment of loan servicing fees charged to the economic development project.
4. Dr. 1130.5/1120.15, Cash—General Fund—Economic Development Non-Federal Revolving Funds. Cr. 1401.1, Other Investments in Affiliated Companies—Federal Economic Development Grant Loans or Cr. 1402.4, Other Investments in Nonaffiliated Companies—Federal Economic Development Grant Loans. To record the repayment, by the project, of the Federal revolving loan.
5. Dr. 1401.2, Other Investments in Affiliated Companies—Non-Federal Economic Development Grant Loans or Dr. 1402.5, Other Investments in Nonaffiliated Companies—Non-Federal Economic Development Grant Loans. Cr. 1130.5/1120.15, Cash—General Fund—Economic Development Non-Federal Revolving Funds. To record a Non-Federal revolving loan to an economic development project.
6. Dr. 1210, Interest and Dividends Receivable Cr. 7320/7300.2, Interest Income. To record the interest earned on a Non-Federal revolving loan to an economic development project.
7. Dr. 1130.5/1120.15, Cash—General Fund—Economic Development Non-Federal Revolving Funds. CR. 1401.2, Other Investments in Affiliated Companies—Non-Federal Economic Development Grant Loans or Cr. 1402.5, Other Investments in Nonaffiliated Companies—Non-Federal Economic Development Grant Loans. To record the repayment, by the project, of the Non-Federal revolving loan.

B. The accounting journal entries required to record the transactions associated with a Rural Economic Development loan are as follows:

1. Dr. 4210.26, Economic Development Notes—Unadvanced, Fr. Cr. 4210.25, Economic Development Notes. To record the contractual obligation to RUS for the Economic Development Notes.
2. Dr. 1130.6/1120.16, Cash—General Fund—Economic Development Loan Funds Cr. 4210.26, Economic Development Notes—Unadvanced, Dr. To record the receipt of the economic development loan funds.
3. Dr. 1401.3, Other Investments in Affiliated Companies—Federal Econmic Development Loans or Dr. 1402.6, Other Investments in Nonaffilitated Companies—Federal Economic Development Loans. Cr. 1130.6/1120.16, Cash—General Fund—Ecoomice Development Loan Funds. To record the discursement of economci development loand funds to the project.
4. Dr. 1130.1/1120.11, Cash—General Fund. Cr. 7360/7300.6, Other Nonoperating Income. To record payment of loan servicing fees charged to the economic development project.
5. Dr. 1210, Interest and Dividends Receivable Cr. 7320/7300.2, Interest Income. To record the interest earned on the investment of rural economic development loan funds.
6. Dr. 7370, Special Charges. Cr. 1130.1, Cash—General Funds. To record the payment of interest earned in excess of $500 on the investment of rural economic development loan funds. Note: Interest earned in excess of $500 must be used for the rural economic development project for which the loan funds were received or returned to RUS.
7. Dr. 1130.6/1120.16, Cash—General Fund—Economic Development Loan Funds. Cr. 1401.3, Other Investments in Affiliated Companies—Federal Economic Development Loans or Cr. 1402.6, Other Investments in Nonaffiliated Companies—Federal Economic Development Loans. To record repayment, by the project, of the economic development loan.
8. Dr. 4210.25, Economic Development Notes. Cr. 1130.6/1120.16, Cash—General Fund—Economic Development Loan Funds. To record the repayment, to RUS, of the economic development loan funds.

105 *Satellite and Cable Television Services*

A. Many RUS borrowers have become involved in providing either satellite or cable television services to their members and others through subsidiaries, joint ventures, or as segments of their current operations.

Accounting Requirements

A. This section outlines the accounting to be followed when recording transactions involving satellite or cable television services.

1. Separate Subsidiary. If a borrower provides satellite or cable television services through a separate subsidiary, the investment in the subsidiary shall be debited to Account 1401, Investments in Affiliated Companies. The net income or loss of the subsidiary shall be debited or credited to Account 1401, as appropriate, with an offsetting entry to Account 7360, Other Nonoperating Income.

2. *Joint Venture.* i. If a borrower provides satellite or cable television services through a joint venture, the borrower's ownership interest dictates the accounting methodology. If the borrower has less than a 20 percent ownership interest in the joint venture, the investment is accounted for under the cost method of accounting in Account 1402, Investments in Nonaffiliated Companies. Under the cost method, the joint venture's net income or loss is not recorded in the borrower's records. Income is recognized only to the extent of any dividends declared by the joint venture. When a dividend is declared, the borrower shall debit Account 1210, Interest and Dividends Receivable, and credit Account 7310, Dividend Income. When the dividend is received in cash, the borrower shall debit Account 1130.1, Cash—General Fund, and credit Account 1210.

ii. If a borrower has a 20-percent or more ownership interest in the joint venture, the investment is accounted for under the equity method in Account 1401, Investments in Affiliated Companies. The borrower's proportionate share of the joint venture's net income or loss shall be debited or credited to Account 1401, as appropriate, with an offsetting entry to Account 7360, Other Nonoperating Income.

3. *Segment of Current Operations.* i. If a borrower provides satellite or cable television service as a segment of its current operations and there are no shared assets between this activity and the regulated telecommunications activities of the borrower, the investment shall be debited to Account 1406.1, Nonregulated Investments—Permanent Investment. The net income or loss from providing such service shall be debited or credited, as appropriate, to Account 1406.3, Nonregulated Investments—Current Net Income, with an offsetting entry to Account 7990, Nonregulated Net Income.

ii. If a borrower provides satellite or cable television service as a segment of current operations and shares assets between this activity and the regulated telecommunications activities of the borrower, the franchise and application fees shall be debited to a subaccount of Account 2690, Intangibles. The cost of the satellite or cable television equipment shall be debited to a subaccount of Account 2231, Radio Systems. Revenues earned from providing satellite or cable service shall be credited to Account 5280, Nonregulated Operating Revenue, while the associated expenses shall be recorded in a subaccount of the applicable regulated expense accounts.

4. *Sale and Installation of Satellite or Cable Television Equipment.* i. If a borrower sells or installs satellite or cable television equipment as a segment of its current operations and there are no shared assets between this activity and the regulated telecommunications activities of the borrower, the purchase of the equipment shall be debited to Account 1406.1, Nonregulated Investments—Permanent Investment. The net income or loss from providing such services shall be debited or credited, as appropriate, to Account 1406.3, Nonregulated Investments—Current Net Income, with an offsetting entry to Account 7990, Nonregulated Net Income.

ii. If a borrower sells or installs satellite or cable television equipment as a segment of its current operations and shares assets between this activity and the regulated telecommunications activities of the borrower, the purchase of the equipment shall be debited to Account 1220.2, Property Held for Sale or Lease. Revenues received for the sale or installation of the equipment shall be credited to Account 5280, Nonregulated Operating Revenue, while the associated expenses shall be debited to a subaccount of the applicable regulated expense accounts.

106 *Consolidated Financial Statements*

A. In October 1987, FASB issued Statement of Financial Accounting Standards No. 94, Consolidation of All Majority-Owned Subsidiaries (Statement No. 94). (Statement 94 is available from the Financial Accounting Standards Board, 401 Merritt 7, P.O. Box 5116, Norwalk, CT 06856–5116.) For purposes of reporting to RUS, Statement No. 94 shall be applied as follows:

1. A borrower that is a subsidiary of another entity shall prepare and submit to RUS separate financial statements even though this financial information is presented in the parent's consolidated statements.

2. In those cases in which a borrower has a majority-ownership in a subsidiary, the borrower shall prepare consolidated financial statements in accordance with the requirements of Statement No. 94. These consolidated statements must also include supplementary schedules presenting a Balance Sheet and Income Statement for each majority-owned subsidiary included in the consolidated statements.

B. Although Statement No. 94 requires the consolidation of majority-owned subsidiaries, the RUS Form 479, Financial and Statistical Report for Telecommunications Borrowers, shall be prepared on an unconsolidated basis by all borrowers.

Dated: July 17, 1996.

Jill Long Thompson,

Under Secretary, Rural Development.

[FR Doc. 96–18806 Filed 7–30–96; 8:45 am]

BILLING CODE 3410–15–P

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

Farm Service Agency

7 CFR Parts 1940, 1944 and 1965

Repeal of Certain Lobbyist Disclosure Provisions

AGENCIES: Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service, and Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: The Rural Housing Service (RHS) (formerly Rural Housing and Community Development Service (RHCDS)) is removing its regulations on ''Accountability Requirements of Persons Paid to Influence the Making of an RHCDS Housing Loan and/or Grant,'' due to the repeal of the statutory reporting and registration requirements (§ 24 of Pub. L. 104–65). The intended outcome is to remove imposed registration and reporting requirements on any person engaged for pay or for any consideration for the purpose of attempting to influence the making of a RHS loan or grant, and removes the limitation of fees a person may charge for this service.

EFFECTIVE DATE: July 31, 1996.

FOR FURTHER INFORMATION CONTACT: Cynthia L. Reese-Foxworth, Loan Specialist, Rural Rental Housing Branch, Multi-Family Housing Processing Division, Rural Housing Service, U.S. Department of Agriculture, AgBox 0781, Washington, DC 20250–0700; telephone (202) 720–1604 (this is not a toll free number).

SUPPLEMENTARY INFORMATION:

Classification

This action is not subject to the provisions of Executive Order 12866 since it only involves internal agency management. Since this rule relates only to Public Law (Pub. L.) 104–65, which repeals the reporting and registration requirements of 7 CFR part 1940, subpart S, this action is not published for proposed rulemaking. Therefore, publication for advance notice and comment is unnecessary and contrary to the public interest.

Paperwork Reduction Act

The information collection requirements contained in this regulation have been previously approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35 and has been assigned OMB control number 0575–0139 in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, ''Environmental Program.'' It is the determination of RHS that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

National Performance Review

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

Unfunded Mandate Reform Act of 1995

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA), Pub. 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, RHS 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, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires RHS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector. Thus today's rule is not subject to the requirements of section 202 and 205 of the UMRA.

Intergovernmental Consultation

This activity is not subject to Executive Order (EO) 12372 which requires intergovernmental consultation with State and local officials and is not listed in the Catalog of Federal Domestic Assistance, however, affected programs 10.415, 10.420, and 10.433 are subject to the provisions of EO 12372.

Program Affected

These programs or activities are listed in the Catalog of Federal Domestic Assistance under the following numbers:

10.405 Farm Labor Housing Loans and Grants
10.410 Very Low to Moderate Income Housing Loans
10.415 Rural Rental Housing Loans
10.417 Very Low-Income Housing Repair Loans and Grants
10.420 Rural Self-Help Housing Technical Assistance
10.433 Rural Housing Preservation Grants
10.442 Housing Application Packaging Grants

Discussion of Final Rule

7 CFR part 1940, subpart S implemented § 401(A) of the Housing and Urban Development Reform Act of 1989, Pub. L. 101–235, (December 15, 1989) (''HUD Reform Act''), which added § 536(d) to the Housing Act of 1949. Pursuant to § 24 of Pub. L. 104–65 (December 19, 1995), § 536(d) of the Housing Act of 1949 was repealed effective January 1, 1996. Therefore, 7 CFR part 1940, subpart S, ''Accountability Requirements of Persons Paid to Influence the Making of an RHCDS Housing Loan and/or Grant'', is being removed. However, all requirements found in FmHA Instruction 1940–Q, ''Restrictions on Lobbying,'' will still apply even though subpart S is deleted because FmHA Instruction 1940–Q contains the Department's lobbying regulations published in 7 CFR part 3018. Copies of FmHA Instruction 1940–Q are available in all Rural Development offices. Some

outdated references are also being revised.

List of Subjects

7 CFR Part 1940

Accountability, Low and moderate income housing—Rental, Reporting requirements.

7 CFR Part 1944

Administrative practice and procedure, Aged, Farm labor housing, Grant programs—Housing and community development, Handicapped, Home improvement, Loan programs—Housing and community development, Low and moderate income housing—Rental, Migrant labor, Mobile homes, Mortgages, Nonprofit organizations, Public housing, Rent subsidies, Reporting requirements, Rural housing, subsidies.

7 CFR Part 1965

Administrative practice and procedure, Low and moderate income housing—Rental, Mortgages.

Therefore, chapter XVIII, title 7, Code of Federal Regulations is amended as follows:

PART 1940—GENERAL

1. The authority citation for part 1940 is amended to read as follows:

Authority: 5 U.S.C. 301, 7 U.S.C. 1989 and 42 U.S.C. 1480.

§§ 1940.901 through 1940.950 (Subpart S)—[Removed and Reserved]

2. Subpart S, consisting of §§ 1940.901 through 1940.950 is removed and reserved.

PART 1944—HOUSING

3. The authority citation for part 1944 continues to read as follows:

Authority: 5 U.S.C. 301, 7 U.S.C. 1989, and 42 U.S.C. 1480.

Subpart A—Section 502 Rural Housing Loans Policies, Procedures, and Authorizations

§ 1944.27 [Amended]

4. Section 1944.27 is amended by removing paragraph (i).

§ 1944.31 [Amended]

5. Section 1944.31, paragraphs (a) and (e), is amended by revising the references to ''RHCDS'' to read ''RHS.''

Subpart B—Housing Application Packaging Grants

§ 1944.62 [Amended]

6. Section 1944.62 is amended by revising the reference to ''FmHA'' to read ''RHS.''

§ 1944.66 [Amended]

7. Section 1944.66 is amended by removing paragraph (b); by redesignating paragraphs (c) through (g) as (b) through (f) respectively; by amending newly redesignated paragraphs (b) and (c) to revise the phrase ''FmHA or its successor agency under Public Law 103–354 Office'' to read ''Agency Office,'' and by amending newly redesignated paragraph (d) to revise the reference to ''FmHA or its successor agency under Public Law 103–354'' to read ''RHS.''

§ 1944.67 [Amended]

8. Section 1944.67 is amended to revise the references to ''FmHA or its successor agency under Public Law 103–354'' to read ''Agency.''

§ 1944.69 [Amended]

9. Section 1944.69 is amended to revise the references to ''FmHA or its successor agency under Public Law 103–354'' to read ''Agency.''

§ 1944.70 [Amended]

10. Section 1944.70(b) is amended to revise the reference to ''FmHA or its successor agency under Public Law 103–354'' to read ''Agency.''

§ 1944.72 [Amended]

11. Section 1944.72 is amended to revise the references to ''FmHA or its successor agency under Public Law 103–354'' to read ''Agency.''

Subpart D—Farm Labor Housing Loan and Grant Policies, Procedures and Authorizations

§ 1944.170 [Amended]

12. Section 1944.170 is amended by removing paragraph (d) and revising the reference ''(c)(3)(ii)(B)'' in paragraph (c)(5)(ii)(C) to read ''(c)(5)(ii)(A).''

Subpart E—Rural Rental and Rural Cooperative Housing Loan Policies, Procedures, and Authorizations

§ 1944.215 [Amended]

13. Section 1944.215 is amended by removing paragraph (x) and by revising the references ''FmHA or its successor agency under Public Law 103–354'' to read ''RHS in paragraphs (v) and (w).''

Subpart I—Self-Help Technical Assistance Grants

§ 1944.408 [Removed and Reserved]

14. Section 1944.408 is removed and reserved.

§ 1944.409 [Amended]

15. Section 1944.409 is amended to revise the first two references to ''FmHA or its successor agency under Public Law 103–354'' to read ''Agency'' and to remove the last reference to ''FmHA or its successor agency under Public Law 103–354.''

§ 1944.410 [Amended]

16. Section 1944.410 is amended to revise the reference to ''FmHA or its successor agency under Public Law 103–354'' in the second sentence of the introductory text of paragraph (a) to read ''RHS.''

Subpart J—Section 504 Rural Housing Loans and Grants

§ 1944.463 [Amended]

17. Section 1944.463(c) introductory text is amended to revise the reference to ''FmHA or its successor agency under Public Law 103–354'' to read ''RHS.''

§ 1944.464 [Amended]

18. Section 1944.464 is amended to revise the references to ''FmHA or its successor agency under Public Law 103–354'' in the introductory paragraph to read ''RHS.''

§ 1944.466 [Removed and Reserved]

19. Section 1944.466 is removed and reserved.

Subpart N—Housing Preservation Grants

§ 1944.654 [Amended]

20. Section 1944.654 is amended to revise the phrase ''any FmHA or its successor agency under Public Law 103–354 Office'' to read ''any Agency office'' in paragraphs (a) and (b); to revise in the first sentence of paragraph (a) the phrase ''all FmHA or its successor agency under Public law 103–354 applicants'' to read ''all Rural Development applicants;'' and to revise in the second sentence of paragraph (b) the reference to ''FmHA or its successor agency under Public Law 103–354'' to read ''Rural Development.''

§ 1944.655 [Removed and Reserved]

21. Section 1944.655 is removed and reserved.

§ 1944.656 [Amended]

22. Section 1944.656 is amended to revise the references to ''FmHA or its successor agency under Public Law 103–354'' in the introductory paragraph to read ''Rural Development,'' and in the definitions of ''Grant agreement'' and ''Housing preservation'' to revise the references to ''FmHA or its successor agency under Public Law 103–354'' to read ''Agency.''

PART 1965—REAL PROPERTY

23. The authority citation for part 1965 continues to read as follows:

Authority: 5 U.S.C. 301, 7 U.S.C. 1989, and 42 U.S.C. 1480.

Subpart E—Prepayment and Displacement Prevention of Multi-Family Housing Loans

§1965.217 [Amended]

24. Section 1965.217 is amended by revising the reference in paragraph (d)(2)(i)(B) to ''FmHA or its successor agency under Public Law 103–354'' to read ''The Agency''; by removing paragraph (d)(2)(ii)(A), by redesignating paragraphs (d)(2)(ii) (B) through (D) as (d)(2)(ii) (A) through (C) respectively; by revising the reference in newly designated paragraph (d)(2)(ii)(B) to ''FmHA or its successor agency under Public Law 103–354'' to read ''Agency;'' by revising the reference in newly designated paragraph (d)(2)(C)(*1*) to ''7 CFR parts 3015 and 3016'' to read ''7 CFR parts 3015, 3016 and 3019;'' and by removing the reference in paragraph (d)(2)(iii)(A) to ''FmHA or its successor agency under Public Law 103–354.''

Dated: June 13, 1996.

Inga Smulkstys,

Deputy Under Secretary, Operations and Management.

[FR Doc. 96–19401 Filed 7–30–96; 8:45 am]

BILLING CODE 3410–07–U

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 96–052–1]

Horses From Mexico; Quarantine Requirements

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the regulations regarding the importation of horses from Mexico to require that such horses be quarantined for not less than 7 days. We are also amending the regulations to provide that quarantine and inspection of all horses imported into the United States from Mexico through land border ports must be carried out in Mexico at facilities approved by the Administrator and constructed so as to prevent the entry of mosquitoes and other hematophagous insects. These requirements would help ensure that horses imported into the United States from Mexico are not infected with Venezuelan equine encephalomyelitis and are necessary on an emergency basis to protect horses in the United States from the disease.

DATES: Interim rule effective July 26, 1996. Consideration will be given only to comments received on or before September 30, 1996.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 96–052–1, 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. 96–052–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Gary Colgrove, Chief Staff Veterinarian, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231, (301) 734–3276.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 92 (referred to below as ''the regulations'') govern the importation into the United States of specified animals and animal products, including horses from Mexico, to prevent the introduction into the United States of various animal diseases.

Under the regulations prior to the effective date of this interim rule, horses from Mexico, except those imported for immediate slaughter, were required to be quarantined at a designated port until they (1) Tested negative to an official test for dourine, glanders, equine piroplasmosis, and equine infectious anemia; (2) tested negative to such other tests that may have been required by the Administrator of the Animal and Plant Health Inspection Service, U.S. Department of Agriculture; and (3) were found free from any communicable disease and fever-tick infestation upon inspection.

Recently, the government of Mexico reported that Venezuelan equine encephalomyelitis (VEE) has been detected in horses in that country. VEE is an equine viral disease, transmitted primarily by mosquitoes and other hematophagous (blood-feeding) insects, particularly flying insects, and results in a high mortality rate in animals infected with the disease. Its introduction into the United States would pose a significant health risk to horses in this country.

Although tests exist for the presence of VEE in horses, the tests currently available may yield positive results for horses that have been vaccinated for VEE but are not otherwise affected with the disease. The most efficient method for initial identification of horses that may be infected with VEE is observation of the horses for clinical signs of the disease.

The clinical signs most commonly exhibited by horses affected by VEE are marked fever, depression, and incoordination, followed by death. A horse will usually exhibit signs of VEE within 2-5 days after contracting the disease.

Prior to the effective date of this interim rule, horses intended for importation into the United States from Mexico were not required to be held in quarantine for any specified number of days. This was in contrast to the 7-day quarantine period required for all other horses intended for importation into the United States from other places in the Western Hemisphere, except horses from Argentina, Bermuda, the British Virgin Islands, and Canada. The 7-day quarantine period for these other horses is necessary because VEE exists in the countries in question, and 7 days is the length of time necessary to ensure that any clinical signs of VEE manifest themselves. In order to ensure that horses imported from Mexico are likewise quarantined for a sufficient period of time, we are amending the regulations in § 92.308(a)(1) to provide that horses from Mexico must undergo the 7-day quarantine period required of certain other horses from the Western Hemisphere.

Horses Imported for Immediate Slaughter

Prior to the effective date of this interim rule, horses could be imported from Mexico for immediate slaughter without quarantine if they (1) were accompanied by a health certificate and were inspected and treated for cattle fever ticks at the port of entry; (2) were consigned from the port of entry to a recognized slaughtering establishment where they were slaughtered within 2 weeks from the date of entry; and (3) were moved from the port of entry in conveyances sealed with seals of the United States Government. These provisions were adequate to ensure that the horses were not infected with, and did not transmit, exotic equine diseases existing in Mexico, none of which were transmitted through flying insects.

Because VEE is transmitted primarily through flying insects, however, even horses moving to slaughter could potentially transmit the disease via mosquitoes and other vectors. Therefore, it is necessary to ensure that horses imported into the United States from Mexico that are moving to slaughter are not infected with VEE. We are therefore providing in § 92.326 that, in addition to meeting the previous requirements of that section (except as discussed below, under the heading ''Location of Inspection and Quarantine Facilities''), horses intended for importation into the United States from Mexico for immediate slaughter must be quarantined for not less than 7 days.

Construction of Quarantine Facilities

Because flying insects had not been vectors of the exotic diseases of concern of horses imported into the United States from Mexico, the regulations did not require that the facilities used to quarantine horses imported into the United States from Mexico through land border ports be constructed so as to prevent the entry of these insects. As noted above, however, VEE is transmitted primarily by flying insects, particularly mosquitoes. If the quarantine facility were not required to be constructed to prevent the entry of hematophagous insects, a mosquito carrying the VEE virus could enter the facility during a quarantine period and bite a horse scheduled for imminent release from quarantine. The horse could then be released for entry into the United States before it had time to develop any clinical signs of VEE. Also, if hematophagous insects could get into the quarantine facility, and a horse infected with VEE were in the quarantine facility, a mosquito not previously carrying the VEE virus could enter, bite the infected horse, and leave the facility carrying the virus. Because these facilities are close to the U.S. border with Mexico, the mosquito could transmit the virus to horses in the United States. Therefore, we are amending the regulations in § 92.324 to require that horses intended for importation into the United States from Mexico through land border ports be quarantined at a facility in Mexico constructed so as to prevent the entry of mosquitoes and other hematophagous insects.

Emergency Action

The Administrator of the Animal and Plant Health Inspection Service has determined that an emergency exists that warrants publication of this interim rule without prior opportunity for public comment. Immediate action is necessary to help ensure that horses imported into the United States from Mexico do not transmit VEE to horses in the United States.

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

Executive Order 12866 and Regulatory Flexibility Act

This 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 action amends the regulations regarding the importation of horses from Mexico because of VEE. This emergency situation makes compliance with section 603 and timely compliance with section 604 of the Regulatory Flexibility Act (5 U.S.C. 603 and 604) impracticable. This rule may have a significant economic impact on a substantial number of small entities. If we determine this is so, then we will discuss the issues raised by section 604 of the Regulatory Flexibility Act in our Final Regulatory Flexibility Act Analysis.

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 rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 92

Animal disease, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 92 is amended as follows:

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

1. The authority citation for part 92 continues to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 114a, 134a, 134b, 134c, 134d, 134f, 135, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.2(d).

§ 92.308 [Amended]

2. In § 92.308, paragraph (a)(1) is amended by removing the words ''§§ 92.317 and 92.324'' and adding in their place the words ''§ 92.317''.

§ 92.324 [Amended]

3. Section 92.324 is amended by removing the words ''until they qualify from release from such quarantine, either at an APHIS facility designated in § 92.303(a) or at a facility in Mexico'' and adding in their place the words '', for not less than 7 days and until they qualify for release from such quarantine, either at an APHIS facility designated in § 92.303(a) or at a facility in Mexico approved by the Administrator and constructed so as to prevent the entry of mosquitoes and other hematophagous insects''.

§ 92.326 [Amended]

5. In § 92.326, the first sentence is amended by removing the words ''and 92.323'' and adding in their place the words ''92.323, and 92.324''.

Done in Washington, DC, this 26th day of July 1996.

Donald W. Luchsinger,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 96–19477 Filed 7–30–96; 8:45 am]

BILLING CODE 3410–34–P

Food Safety and Inspection Service

9 CFR Parts 317 and 381

[Docket No. 96–020N]

Labeling of Sausages Made With Natural Casings

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of policy statement.

SUMMARY: FSIS is clarifying its policy on the labeling of meat or poultry sausages made with natural casings. The casings of such sausages must be derived from the animal species indicated by the product labeling. A sausage made with natural casings derived from a different

species is misbranded unless the product name is appropriately qualified or unless the statement of ingredients indicates the species from which the casings are derived.

FOR FURTHER INFORMATION CONTACT: Ms. Cheryl Wade, Director, Food Labeling Division, FSIS, West End Court Building, Washington, DC; (202) 254–2590.

SUPPLEMENTARY INFORMATION: Sausages are prepared using single or multiple species of meat or poultry. Some sausages are made with non-edible casings that must be removed before eating. Others are made with edible casings, such as those made from cellulose or collagen. Still others are made with natural casings, also referred to as animal casings, which are prepared from various sections of the viscera. Some sausages prepared in natural casings may have the species identified in the product name or statement of ingredients on the product label. However, sausages may also be made with natural casings derived from a species that is not identified on the label. For example, a combination beef-and-lamb sausage may be made with a pork casing.

The use of any particular type of casing is commonly determined by the price and availability of the casings and the size and shape of the sausage product. Natural casings are not prepared from poultry because poultry intestines are not the appropriate size for sausages customarily consumed in this country. More importantly, FSIS has only recently determined poultry intestines to be edible.

FSIS believes that consumers of sausages made with natural casings expect the casings to be derived from the same species as the species indicated on the product label, whether in the product name or in the ingredients statement. For example, the natural casing of a sausage labeled ''beef sausage'' should be derived from cattle. Similarly, FSIS believes that consumers of poultry sausage, e.g., chicken sausage, expect the sausage to be made from poultry and would not necessarily expect the casing to be derived from a red meat source.

Therefore, FSIS considers a sausage made with natural casings derived from a different species to be a misbranded product, unless the species from which the casings are derived is indicated in the product name or listed in the ingredients statement, or is in both places on the product label.

Done, at Washington, D.C., on: July 23, 1996.

Michael R. Taylor,

Acting Under Secretary for Food Safety.

[FR Doc. 96–19387 Filed 7–30–96; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF ENERGY

10 CFR Parts 1035 and 1036 and 48 CFR Part 909

RIN 1991–AB24

Debarment and Suspension (Procurement) and Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants) and Department of Energy Acquisition Regulation

AGENCY: Department of Energy (DOE).

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) today is publishing a final rule which amends its regulations governing debarment and suspension in procurement and nonprocurement activities. The rule establishes a common fact-finding process in procurement and nonprocurement cases involving a genuine dispute over material facts. The rule removes the Department's procurement debarment and suspension regulations from part 10 of the Code of Federal Regulations (CFR) and recodifies them in the Department of Energy Acquisition Regulation (DEAR), chapter 9 of title 48 of the Code of Federal Regulations.

EFFECTIVE DATE: This rule is effective August 30, 1996.

FOR FURTHER INFORMATION CONTACT: Mrs. Cynthia Yee, Office of Clearance and Support, Procurement and Assistance Management, HR–52, U. S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585, 202–586–1140.

SUPPLEMENTARY INFORMATION:

I. Background.
II. Public Comments.
III. Procedural Requirements.
A. Regulatory Review.
B. Review under the Regulatory Flexibility Act.
C. Review Under the Paperwork Reduction Act.
D. Review Under the National Environmental Policy Act.
E. Review Under Executive Order 12612.
F. Review Under Executive Order 12988.
G. Review Under the Unfunded Mandates Reform Act.

I. Background

The Department of Energy (DOE) today is publishing a final rule which removes 10 CFR Part 1035, Debarment and Suspension (Procurement), and recodifies the regulation at 48 CFR Part 909. In recodifying the procurement debarment and suspension regulations, DOE makes various changes to clarify the provisions of procurement debarment and suspension and to ensure consistency between the Federal Acquisition Regulation (FAR) and the DEAR. *See* explanation of the changes in the preamble to the Notice of Proposed Rulemaking published for this rule on February 2, 1996 (61 FR 3877). Under the recodified regulations, the Energy Board of Contract Appeals will conduct fact-finding in suspensions or proposed debarments in which the debarring/suspending official determines that material facts are in dispute.

This rule also amends 10 CFR Part 1036, Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants), which governs debarment and suspension with regard to DOE nonprocurement and grants programs. The changes made to 10 CFR Part 1036 are primarily technical or procedural in nature. They are explained in the preamble of the Notice of Proposed Rulemaking (61 FR 3877–3878), with the exception of changes to subparagraph (c)(1) of section 1036.110 and subparagraph (a) of section 1036.215, which were not in the proposed rule. These subparagraphs are being added because previous changes to the common rule resulted in them being inadvertently omitted. This final rule reinstates the subparagraphs and corrects references in those reinstated subparagraphs. Section 1036.700 provides for fact-finding by the Energy Board of Contract Appeals in suspensions or proposed debarments in which the debarring/suspending official determines that material facts are in dispute.

The Department of Energy Consolidated List of Debarred, Suspended, Ineligible and Voluntarily Excluded Awardees (DOE List) has been eliminated as unnecessary because the General Services Administration maintains, pursuant to Executive order 12549, a governmentwide list of parties excluded from federal procurement and nonprocurement programs.

Due to the extensive revisions to DEAR, the complete text of DEAR 909.4 is published. However, only those portions of Part 1036 that are affected by the changes are published, rather than

publishing the complete text of the common rule.

II. Public Comments

On February 2, 1996, DOE published a Notice of Proposed Rulemaking and invited public comment for a period of 60 days on these amendments to the Department's debarment and suspension regulations (61 FR 3877). No comments were received on the proposed rule. Except for the technical correction of sections 1036.110 and 1036.215, this final rule makes no changes to the rule as proposed.

III. Procedural Requirements

A. Regulatory Review

Today's final rule has been determined not to be a ''significant regulatory action'' under Executive Order 12866, ''Regulatory Planning and Review,'' (58 FR 51735, October 4, 1993). Nevertheless, a copy of the rule was submitted informally to the Office of Information and Regulatory Affairs because it relates to the subject matter of a Governmentwide common rule.

B. Review Under the Regulatory Flexibility Act

This final rule was reviewed under the Regulatory Flexibility Act of 1980, Public Law 96–354, which requires preparation of a regulatory flexibility analysis for any rule which is likely to have significant economic impact on a substantial number of small entities. Today's rule revises procedural requirements pertaining to suspension and debarment of DOE contractors. It contains no recordkeeping or substantive regulatory requirements. DOE certifies that this rule will not have a signficant economic impact on a substantial number of small entities, and therefore, no regulatory flexibility analysis has been prepared.

C. Review Under the Paperwork Reduction Act

No new information collection or recordkeeping requirements are imposed by this rule. Accordingly, no OMB clearance is required by the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

D. Review Under NEPA

DOE has determined that issuance of this rule is not a major federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 et seq., and therefore that neither an environmental assessment nor an environmental impact statement is required. Categorical exclusion A2 in DOE's regulations implementing NEPA, appendix A of subpart D of 10 CFR Part 1021, applies to this rulemaking. Categorical exclusion A2 encompasses procedural and administrative matters pertaining to contracts.

E. Review Under Executive Order 12612

Executive Order 12612, 52 FR 41685 (October 30, 1987), requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the national Government and the States, and in the distribution of power and responsibility among various levels of Government. If there are sufficient substantial direct effects, then the Executive Order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action.

Today's rule revises certain procedural requirements pertaining to suspension and debarment of DOE contractors. DOE has determined that none of the revisions will have a substantial direct effect on the institutional interests or traditional functions of the States.

F. Review Under Executive Order 12988

Section 3 of Executive Order 12988 instructs each agency to adhere to certain requirements in promulgating new regulations and reviewing existing regulations. These requirements, set forth in sections 3(a) and 3(b), include eliminating drafting errors and needless ambiguity, drafting the regulations to minimize litigation, providing clear and certain legal standards for affected conduct, and promoting simplification and burden reduction. Agencies are also instructed to make every reasonable effort to ensure that the regulation: specifies clearly any preemptive effect, effect on existing Federal law or regulation, and retroactive effect; describes any administrative proceedings to be available prior to judicial review and any provisions for the exhaustion of such administrative proceedings; and defines key terms. DOE has completed the required review and determined that, to the extent permitted by law, the final rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Pub. L. 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed ''significant intergovernmental mandate.'' Section 203 of the Act, which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that, among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals. 2 U.S.C. 1533.

The final rule published today does not contain any Federal mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

List of Subjects

10 CFR Part 1035

Administrative practice and procedure, Government procurement.

10 CFR Part 1036

Administrative practice and procedure, Drug abuse, Grant programs, Loan programs.

48 CFR Part 909

Government procurement.

Issued in Washington, DC, on June 7, 1996.

Richard H. Hopf,

Deputy Assistant Secretary for Procurement and Assistance Management.

For the reasons set out in the preamble, Title 10 Code of Federal Regulations Parts 1035 and 1036 and Chapter 9, Title 48 Code of Federal Regulations are amended as set forth below.

10 CFR PART 1035—DEBARMENT AND SUSPENSION (PROCUREMENT)—[REMOVED]

1. Under the authority of Section 644 of the DOE Organization Act, 42 U.S.C. 7254, Part 1035—Debarment and Suspension (Procurement) is removed.

PART 1036—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

2. The authority citation continues to read as follows:

Authority: E.O. 12689, E.O. 12549; Sec. 5151–5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 42 U.S.C. 701 et seq.); Secs. 644 and 646, Pub. L. 95–91, 91 Stat. 599 (42 U.S.C. 7254 and 7256); Pub. L. 97–258, 98 Stat. 1003–1005 (31 U.S.C.) 6301–6308.

Subpart A—General

§ 1036.105 Definitions. [Amended]

3. Section 1036.105 is amended by revising the phrase ''Director, Procurement and Assistance Management Directorate'' to read ''Deputy Assistant Secretary for Procurement and Assistance Management or designee'' in the definitions for ''Debarring Official''(paragraph (3)) and ''Suspending Official''(paragraph (3)); and removing the definitions for ''Director'' and ''DOE List.''

4. Section 1036.110 is amended by adding paragraphs (c) (1) and (2) to read as follows:

§ 1036.110 Coverage.

* * * * *

(c) * * *

(1) Debarment and suspension of DOE procurement contractors is covered by 48 CFR (DEAR) 909.4.

(2) *Reserved*.

Subpart B—Effect of Action

5. Section 1036.215 is amended by adding paragraphs (a) and (b) to read as follows:

§ 1036.215 Exception provision.

* * * * *

(a) The DOE authorized designee is the Deputy Assistant Secretary for Procurement and Assistance Management or designee.

(b) *Reserved*.

Subpart C—Debarment

§ 1036.312 Notice of proposed debarment. [Amended]

6. Section 1036.312 is amended by removing paragraph (b)(1); by removing paragraph (d)(1); by removing paragraph (e)(1); in paragraph (f) by revising ''Director'' to read ''debarring official;'' and in paragraph (g) by revising ''DOE'' to read ''GSA.''

§ 1036.313 Opportunity to contest proposed debarment. [Amended]

7. Section 1036.313 is amended in paragraph (a)(1) by revising ''Director'' to read ''debarring official'' and removing the citation ''(See § 1036.600(c)).''

§ 1036.314 Debarring official's decision. [Amended]

8. Section 1036.314 is amended by removing paragraph (d)(1)(vi) and redesignating paragraphs (d)(1) (vii) and (viii) as (d)(1) (vi) and (vii).

§ 1036.315 Settlement and voluntary exclusion. [Amended]

9. Section 1036.315 is amended by removing paragraph (c).

Subpart D—Suspension

§ 1036.411 Notice of Suspension. [Amended]

10. Section 1036.411 is amended by removing paragraph (c)(1); by removing paragraph (f)(1); in paragraph (h) by revising ''Director'' to read ''suspending official'' and in paragraph (j) by revising ''DOE'' to read ''GSA.''

§ 1036.412 Opportunity to contest suspension. [Amended]

11. Section 1036.412 is amended by removing paragraph (a)(1).

Subpart G—Additional DOE Procedures for Debarment and Suspension

12. Section 1036.700, Decisionmaking, is revised to read as follows:

§ 1036.700 Procedures.

(a) *Decisionmaking process for debarments.* (1) In actions based upon a conviction or civil judgment, and other actions in which there is no genuine dispute over material facts, the debarring official shall make a decision on the basis of all the information in the administrative record, including any submissions made by the awardee. If no suspension is in effect, the decision shall be made within 30 working days after receipt of any information and argument submitted by the awardee, unless the debarring official extends this period for good cause. The debarring official shall consider information and argument in opposition to the proposed debarment including identification of disputed material facts. If the respondent fails to submit a timely written response to a notice of proposed debarment, the debarring official shall notify the respondent in accordance with 10 CFR 1036.312 that the awardee is debarred.

(2) In actions not based upon a conviction or civil judgment, if it is found that the awardee's submission in opposition raises a genuine dispute over facts material to the proposed debarment, at the request of the awardee, the debarring official shall refer the matter to the Energy Board of Contract Appeals for a fact-finding conference, in accordance with rules consistent with this section promulgated by the Energy Board of Contract Appeals. The Energy Board of Contract Appeals shall report to the Debarring Official findings of fact, not conclusions of law. The findings shall resolve any disputes over material facts based on a preponderance of evidence.

(b) *Decisionmaking process for suspensions.* (1) In actions based on an indictment, the suspending official shall make a decision based upon the administrative record, which shall include submissions made by the awardee.

(2) In actions not based on an indictment, if it is found that the awardee's submission in opposition raises a genuine dispute over facts material to the suspension and if no determination has been made, on the basis of Department of Justice advice, that substantial interest of the Government in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced, the suspending official shall, at the request of the awardee, refer the matter to the Energy Board of Contract Appeals for a fact-finding conference, in accordance with rules promulgated by the Energy Board of Contract Appeals. The Energy Board of Contract Appeals shall report to the Suspending Official findings of fact, not conclusions of law. The findings shall resolve any disputes over material facts based on adequate evidence.

(c) *Meeting.* Upon receipt of a timely request therefore from the respondent, the debarring/suspending official shall schedule a meeting between the debarring/suspending official and the respondent, to be held no later than 30 days from the date the request is received. The debarring/suspending official may postpone the date of the meeting if the respondent requests a postponement in writing. At the meeting, the respondent, appearing personally or through an attorney or other authorized representative, may informally present and explain evidence that causes for debarment or suspension do not exist, evidence of any mitigating factors, and arguments concerning the imposition, scope, duration, or effects of a proposed debarment or suspension.

(d) *Fact-finding conference.* The purpose of a fact-finding conference under this section is to provide the respondent an opportunity to dispute material facts and to provide the debarring/suspending official with findings of fact based, as applicable, on adequate evidence or on a preponderance of the evidence. If the debarring/suspending official determines that a written response or a presentation at the meeting under paragraph (c) of this section puts material facts in dispute, the debarring/suspending official shall refer the matter to the Energy Board of Contract Appeals for fact-finding. The fact-finding conference shall be conducted in accordance with rules promulgated by the Energy Board of Contract Appeals. The Energy Board of Contract Appeals shall report to the Debarring Official findings of fact, but not conclusions of law. The findings shall resolve any disputes over material facts based on a preponderance of evidence if the case involves a proposal to debar, or on adequate evidence if the case involves a suspension. Since convictions or civil judgments generally establish the cause for debarment by a preponderance of the evidence, there usually is no genuine dispute over a material fact that warrants a fact-finding conference for those proposed debarments based on convictions or civil judgments.

13. Section 1036.705 is amended in the introductory paragraph by revising ''Director'' to read ''debarring/suspending official'' in the first and second sentences, revising reference to ''1036.700(b)(1) or (b)(2)'' to read ''1036.700(c)'' and by revising paragraph (b) to read as follows:

§ 1036.705 Coordination with Department of Justice.

* * * * *

(b) Deny additional proceedings and base the decision on all information in the administrative recording, including any submissions made by the respondent.

§ 1036.710 DOE consolidated list of debarred, suspended, ineligible, and voluntarily excluded awardees. [Removed]

14. Section 1036.710, DOE consolidated list of debarred, suspended, ineligible, and voluntarily excluded awardees, is removed.

§ 1036.715 Effects of being listed on the GSA list. [Amended]

15. Section 1036.715 is amended by revising the section heading to read ''Effects of being listed on the GSA list'' and, in the introductory paragraph, by revising ''Director'' to read ''Deputy Assistant Secretary for Procurement and Assistance Management or designee'' and by revising ''DOE List'' to read ''GSA List'' wherever it appears in paragraphs (a) through (g).

48 CFR PART 909—CONTRACTOR QUALIFICATIONS

16. The authority citation for Part 909 continues to read as follows:

Authority: 42 U.S.C. 7254; 40 U.S.C. 486(c).

17. Subpart 909.4 is revised to read as follows:

Subpart 909.4—Debarment, Suspension, and Ineligibility

Sec.
909.400 Scope of subpart.
909.401 Applicability.
909.403 Definitions.
909.405 Effect of listing.
909.406 Debarment.
909.406–2 Causes for debarment.
909.406–3 Procedures.
909.406–6 Requests for reconsideration of debarment.
909.407–2 Causes for suspension.
909.407–3 Procedures.

Subpart 909.4—Debarment, Suspension, and Ineligibility

§ 909.400 Scope of subpart.

This subpart—

(a) Prescribes policies and procedures governing the debarment and suspension of organizations and individuals from participating in Department of Energy (DOE) contracts, procurement sales contracts, and real property purchase agreements, and from participating in DOE approved subcontracts and subagreements.

(b) Sets forth the causes, procedures, and requirements for determining the scope, duration, and effect of DOE debarment and suspension actions; and

(c) Implements and supplements FAR subpart 9.4 with respect to the exclusion of organizations and individuals from procurement contracting and Government approved subcontracting.

§ 909.401 Applicability.

The provisions of this subpart apply to all procurement debarment and suspension actions initiated by DOE on or after the effective date of this subpart. Nonprocurement debarment and suspension rules are codified in 10 CFR part 1036.

§ 909.403 Definitions.

In addition to the definitions set forth at FAR 9.403, the following definitions apply to this subpart:

Debarring Official. The DOE Debarring Official is the Deputy Assistant Secretary for Procurement and Assistance Management, or designee.

DOE means the Department of Energy, including the Federal Energy Regulatory Commission.

Suspending Official. The DOE Suspending Official is the Deputy Assistant Secretary for Procurement and Assistance Management, or designee.

§ 909.405 Effect of listing. (DOE coverage—paragraph (e), (b), (g) and (h))

(e) The Department of Energy may not solicit offers from, award contracts to or consent to subcontract with contractors debarred, suspended or proposed for debarment unless the Deputy Assistant Secretary for Procurement and Assistance Management makes a written determination justifying that there is a compelling reason for such action in accordance with FAR 9.405(a).

(f) DOE may disapprove or not consent to the selection (by a contractor) of an individual to serve as a principal investigator, as a project manager, in a position of responsibility for the administration of Federal funds, or in another key personnel position, if the individual is on the GSA List.

(g) DOE shall not conduct business with an agent or representative of a contractor if the agent's or representative's name appears on the GSA List.

(h) DOE shall review the GSA List before conducting a preaward survey or soliciting proposals, awarding contracts, renewing or otherwise extending the duration of existing contracts, or approving or consenting to the award, extension, or renewal of subcontracts.

§ 909.406 Debarment.

§ 909.406–2 Causes for debarment. (DOE coverage—paragraphs (c) and (d))

(c) The Debarring Official may debar a contractor for any other cause of so serious or compelling a nature that it affects the present responsibility of a DOE contractor. Such cause may include but is not limited to:

(1) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a private contract or subcontract; and

(2) Inexcusable, prolonged, or repeated failure to pay a debt (including disallowed costs and overpayments) owed to DOE, provided the contractor has been notified of the determination of indebtedness, and further provided that the time for initiating any administrative or legal action to oppose or appeal the determination of indebtedness has expired or that such action, if initiated, has been concluded.

(d) The Debarring Official may debar a contractor:

(1) On the basis that an individual or organization is an affiliate of a debarred

contractor, subject to the requirements of FAR 9.406–1(b) and 9.406–3(c);

(2) For failure to observe the material provisions of a voluntary exclusion (see 10 CFR 1036.315 for discussion of voluntary exclusion).

§ 909.406–3 Procedures. (DOE coverage—paragraphs (a), (b) and (d))

(a) *Investigation and referral.* (1) Offices responsible for the award and administration of contracts are responsible for reporting to both the Deputy Assistant Secretary for Procurement and Assistance Management and the DOE Inspector General information about possible fraud, waste, abuse, or other wrongdoing which may constitute or contribute to a cause(s) for debarment under this subpart. Circumstances that involve possible criminal or fraudulent activities must be reported to the Office of the Inspector General in accordance with 10 CFR Part 1010, Conduct of Employees, § 1010.217(b), Cooperation with the Inspector General.

(2) At a minimum, referrals for consideration of debarment action should be in writing and should include the following information:

(i) The recommendation and rationale for the referral;

(ii) A statement of facts;

(iii) Copies of documentary evidence and a list of all witnesses, including addresses and telephone numbers, together with a statement concerning their availability to appear at a fact-finding proceeding and the subject matter of their testimony;

(iv) A list of parties including the contractor, principals, and affiliates (including last known home and business addresses, zip codes and DUNS Number);

(v) DOE's acquisition history with the contractor, including recent experience under contracts and copies of pertinent contracts;

(vi) A list of any known active or potential criminal investigations, criminal or civil proceedings, or administrative claims before the Board of Contract Appeals; and

(vii) A statement regarding the impact of the debarment action on DOE programs. This statement is not required for referrals by the Inspector General.

(3) Referrals may be returned to the originator for further information or development.

(b) *Decisionmaking process.* Contractors proposed for debarment shall be afforded an opportunity to submit information and argument in opposition to the proposed debarment.

(1) In actions based upon a conviction or civil judgment, or in which there is no genuine dispute over material facts, the Debarring Official shall make a decision on the basis of all the information in the administrative record, including any submissions made by the contractor. If the respondent fails to submit a timely written response to a notice of proposed debarment, the Debarring Official shall notify the respondent in accordance with FAR 9.406–3(e) that the contractor is debarred.

(2) In actions not based upon a conviction or civil judgment, the contractor may request a fact-finding hearing to resolve a genuine dispute of material fact. In its request, the contractor must identify the material facts in dispute and the basis for disputing the facts. If the Debarring Official determines that there is a genuine dispute of material fact, the Debarring Official shall refer the matter to the Energy Board of Contract Appeals for a fact-finding conference.

(3) *Meeting.* Upon receipt of a timely request therefor from a contractor proposed for debarment, the Debarring Official shall schedule a meeting between the Debarring Official and the respondent, to be held no later than 30 days from the date the request is received. The Debarring Official may postpone the date of the meeting if the respondent requests a postponement in writing. At the meeting, the respondent, appearing personally or through an attorney or other authorized representative, may present and explain evidence that causes for debarment do not exist, evidence of any mitigating factors, and arguments concerning the imposition, scope, or duration of a proposed debarment or debarment.

(4) *Fact-finding conference.* The purpose of a fact-finding conference under this section is to provide the respondent an opportunity to dispute material facts through the submission of oral and written evidence; resolve facts in dispute; and provide the Debarring Official with findings of fact based, as applicable, on adequate evidence or on a preponderance of the evidence. The fact-finding conference shall be conducted in accordance with rules consistent with FAR 9.406–3(b) promulgated by the Energy Board of Contract Appeals. The Energy Board of Contract Appeals will notify the affected parties of the schedule for the hearing. The Energy Board of Contract Appeals shall deliver written findings of fact to the Debarring Official (together with a transcription of the proceeding, if made) within a certain time period after the hearing record closes, as specified in the Energy Board of Contract Appeals Rules. The findings shall resolve any disputes over material facts based upon a preponderance of the evidence, if the case involves a proposal to debar, or on adequate evidence, if the case involves a suspension. Since convictions or civil judgments generally establish the cause for debarment by a preponderance of the evidence, there usually is no genuine dispute over a material fact that would warrant a fact-finding conference for those proposed debarments based on convictions or civil judgments.

(d) *Debarring Official's decision.* (4) The Debarring Official's final decision shall be based on the administrative record. In those actions where additional proceedings are necessary as to disputed material facts, written findings of fact shall be prepared and included in the final decision. In those cases where the contractor has requested and received a fact-finding conference, the written findings of fact shall be those findings prepared by the Energy Board of Contract Appeals. Findings of fact shall be final and conclusive unless within 15 days of receipt of the findings, the Department or the respondent requests reconsideration, as provided in the Board's Rules, or unless set aside by a court of competent jurisdiction. The Energy Board of Contract Appeals shall be provided a copy of the Debarring Official's final decision.

909.406–6 Requests for reconsideration of debarment.

(a) At any time during a period of debarment, a respondent may submit to the Debarring or Suspending Official a written request for reconsideration of the scope, duration, or effects of the suspension/debarment action because of new information or changed circumstances, as discussed at FAR 9.406–4(c).

(b) In reviewing a request for reconsideration, the Debarring or Suspending Official may, in his or her discretion, utilize any of the procedures (meeting and fact-finding) set forth in 48 CFR (DEAR) 909.406–3 and 909.407–3. The Debarring or Suspending Official's final disposition of the reconsideration request shall be in writing and shall set forth the reasons why the request has been granted or denied. A notice transmitting a copy of the disposition of the request for reconsideration shall be sent to the respondent and, if a fact-finding conference under 48 CFR (DEAR) 909.406–3(b)(4) is pending (as in the case of a request for reconsideration of a suspension, where the proposed debarment is the subject of a fact-finding conference), a copy of the disposition shall be transmitted to the Energy Board of Contract Appeals.

909.407–2 Causes for suspension. (DOE coverage—paragraph (d))

(d) The Suspending Official may suspend an organization or individual:

(1) Indicted for or suspected, upon adequate evidence, of the causes described in 48 CFR (DEAR) 909.406–2(c)(1).

(2) On the basis of the causes set forth in 48 CFR (DEAR) 909.406–2(d)(2).

(3) On the basis that an organization or individual is an affiliate of a suspended or debarred contractor.

909.407–3 Procedures. (DOE coverage—paragraphs (b) and (c))

(b) Decisionmaking process.

(1) In actions based on an indictment, the Suspending Official shall make a decision based upon the administrative record, which shall include submissions made by the contractor in accordance with 48 CFR (DEAR) 909.406–3(b)(1) and 909.406–3(b)(3).

(2) For actions not based on an indictment, the procedures in 48 CFR (DEAR) 909.406–3(b)(2) and FAR 9.407–3(b)(2) apply.

(3) Coordination with Department of Justice. Whenever a meeting or fact-finding conference is requested, the Suspending Official's legal representative shall obtain the advice of appropriate Department of Justice officials concerning the impact disclosure of evidence at the meeting or fact-finding conference could have on any pending civil or criminal investigation or legal proceeding. If such Department of Justice official requests in writing that evidence needed to establish the existence of a cause for suspension not be disclosed to the respondent, the Suspending Official shall:

(i) Decline to rely on such evidence and withdraw (without prejudice) the suspension or proposed debarment until such time as disclosure of the evidence is authorized; or

(ii) Deny the request for a meeting or fact-finding and base the suspension decision solely upon the information in the administrative record, including any submission made by the respondent.

(e) Notice of suspending official's decision. In actions in which additional proceedings have been held, following such proceedings, the Suspending Official shall notify respondent, as applicable, in accordance with paragraphs (e)(1) or (e)(2) of this section.

(1) Upon deciding to sustain a suspension, the Suspending Official shall promptly send each affected respondent a notice containing the following information:

(i) A reference to the notice of suspension, the meeting and the fact-finding conference;

(ii) The Suspending Official's findings of fact and conclusions of law;

(iii) The reasons for sustaining a suspension;

(iv) A reference to the Suspending Official's waiver authority under 48 CFR (DEAR) 909.405;

(v) A statement that the suspension is effective throughout the Executive Branch as provided in FAR 9.407–1(d);

(vi) Modifications, if any, of the initial terms of the suspension;

(vii) A statement that a copy of the suspension notice was sent to GSA and that the respondent's name and address will be added to the GSA List; and

(viii) If less than an entire organization is suspended, specification of the organizational element(s) or individual(s) included within the scope of the suspension.

(2) If the Suspending Official decides to terminate a suspension, the Suspending Official shall promptly send, by certified mail, return receipt requested, each affected respondent a copy of the final decision required under this section.

[FR Doc. 96–16015 Filed 7–30–96; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 121

[Docket No. 28072; Amendment No. 121–258]

RIN 2120–AF29

Advanced Simulation Plan Revisions

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correcting amendments.

SUMMARY: These correcting amendments clarify a final rule published Monday, June 17, 1996 (61 FR 30726). That final rule revised the Advanced Simulation Plan to update terminology used to describe simulators, to eliminate the requirement that the minimum of 1 year of employment as an instructor or check airman be with the operator of the simulator, and to authorize the use of Level C simulators for initial and upgrade training and checking for second-in-command duties.

EFFECTIVE DATE: July 31, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Gary E. Davis, Telephone: (202) 267–3747.

SUPPLEMENTARY INFORMATION:

Need for Correction

As published, the final rule did not modify the title or remove references to obsolete ''phrases'' of simulation contained in the introductory text of Appendix H to 14 CFR part 121, ''Advanced Simulation Plan.'' Therefore, the June 17, 1996, final rule may prove to be misleading and is in need of correction.

List of Subjects in 14 CFR Part 121

Air carriers, Aircraft, Federal Aviation Administration.

Accordingly, 14 CFR part 121 is corrected by making the following correcting amendments:

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

1. 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.

Appendix H to Part 121—[Corrected]

2. The heading and the introductory text of Appendix H are revised to read as follows:

Appendix H to Part 121—Advanced Simulation

This appendix provides guidelines and a means for achieving flightcrew training in advanced airplane simulators. This appendix describes the simulator and visual system requirements which must be achieved to obtain approval of certain types of training in the simulator. The requirements in this appendix are in addition to the simulator approval requirements in § 121.407. Each simulator which is used under this appendix must be approved as a Level B, C, or D simulator, as appropriate.

To obtain FAA approval of the simulator for a specific level, the following must be demonstrated to the satisfaction of the Administrator:

1. Documented proof of compliance with the appropriate simulator, visual system, and additional training requirements of this appendix for the level for which approval is requested.

2. An evaluation of the simulator to ensure that its ground, flight, and landing performance matches the type of airplane simulated.

3. An evaluation of the appropriate simulator and visual system requirements of the level for which approval is requested.

* * * * *

Issued in Washington, DC, on July 25, 1996.

Donald P. Byrne,

Assistant Chief Counsel, Regulations Division.

[FR Doc. 96–19357 Filed 7–30–96; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 95–NM–186–AD; Amendment 39–9704; AD 96–16–04]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9 and DC–9–80 Series Airplanes, and C–9 (Military) Airplanes, Equipped With a Ventral Aft Pressure Bulkhead

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–9 and DC–9–80 series airplanes, Model MD–88 airplanes, and C–9 (military) airplanes, that currently requires repetitive inspections to detect fatigue cracking in the area of the attach tees of the ventral aft pressure bulkhead. This amendment requires revised inspection and repair procedures, and provides for terminating action. It also deletes Model MD–88 airplanes from the applicability of the rule. This amendment is prompted by reports of fatigue cracking found in the subject area. The actions specified by this AD are intended to prevent the propagation of fatigue cracking, which could lead to structural failure of the ventral aft pressure bulkhead and subsequent rapid depressurization of the airplane.

DATES: Effective September 4, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 4, 1996.

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

FOR FURTHER INFORMATION CONTACT: Brent Bandley, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627–5237; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 89–16–12, amendment 39–6287 (54 FR 31649, August 1, 1989), which is applicable to certain McDonnell Douglas Model DC–9 and DC–9–80 series airplanes, Model MD–88 airplanes, and C–9 (Military) airplanes, was published in the Federal Register on August 1, 1989 (54 FR 31649). The action proposed to require revised inspection and repair procedures, and provide for terminating action. It also proposed to delete Model MD–88 airplanes from the applicability of the rule, since the terminating action was installed on those airplanes during production.

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

Support for the Proposal

Two commenters support the proposal.

Request To Allow Inspections at Current Intervals

Several commenters oppose the proposed shorter inspection intervals. These commenters request that the proposal be revised to permit operators to continue to conduct inspections at the same frequency as was mandated previously by AD 89–16–12. The commenters contend that the proposed AD is founded on the FAA's statement that improved inspection methods are available and should be used. These commenters do not object to modernizing the inspection methods, but state that nothing supports the proposed increase in inspection frequency. The commenters maintain that the increase in the frequency of inspections will be disruptive to airline maintenance programs and scheduling, and this will have an adverse economic impact on operators.

The FAA does not concur with the commenters' request. After cracking of the ventral aft pressure bulkhead tees was found, the FAA issued AD 89–16–12 only as an interim measure to mandate some type of inspection on these tees. Because no inspection procedures had been developed at that time for inspecting these specific tees, the FAA required that operators inspect them using the same inspection methods—and inspection intervals—that already had been developed for inspecting non-ventral aft pressure bulkhead tees. (Those inspection methods and intervals were described in McDonnell Douglas Service Bulletin A53–231.) The FAA issued AD 89–16–12 in the absence of any specific, pertinent technical data relative to appropriate inspections of ventral bulkhead tees, and considered that some type of inspection of these tees was better than none at all. Even at the time that AD 89–16–12 was issued, it was the FAA's intention to revise that AD once the manufacturer had developed inspection methods that were specific to ventral bulkhead tees. (The FAA explained this in the preamble to AD 89–16–12.)

When McDonnell Douglas eventually developed inspections for the ventral bulkhead tees, it issued Service Bulletin A53–232, which contained the inspection instructions and recommended inspection intervals. The inspection intervals were shorter than those that had been recommended for non-ventral bulkhead tees. These shorter intervals were determined based on the crack growth rate of these specific tees, residual strength of uncracked tees, and the detectability of the cracking using the inspection method. The FAA reviewed and approved the technical material presented in Service Bulletin A53–232.

Based on that material and other data gathered from the in-service fleet, the FAA has determined that:

1. The structure of the ventral and non-ventral bulkheads differs enough to justify the difference in the inspection intervals of the associated attach tees;

2. Using the same inspection interval for both ventral and non-ventral attach tees cannot be technically justified;

3. Shorter repetitive inspection intervals are appropriate for the ventral attach tees; and

4. The shorter inspection intervals will ensure that fatigue cracking at the attach tees positioned in the ventral aft pressure bulkhead is detected and corrected before cracking can grow to a critical length and jeopardize the integrity of the bulkhead.

While operators may incur additional costs because of more frequent inspections and maintenance schedule changes, the FAA finds that these costs are necessary in order to ensure the continued airworthiness of these

airplanes and the safety of the flying public.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 1,500 Model DC–9 and DC–9–80 series airplanes, and C–9 (military) airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,000 airplanes of U.S. registry will be affected by this proposed AD.

To accomplish the actions specified as ''OPTION I'' of the AD will entail approximately 22 work hours per visual inspection and 12 work hours per low frequency eddy current inspection. The average labor rate is $60 per work hour. Based on these figures, the cost impact on U.S. operators who elect to accomplish OPTION I is estimated to be $2,040 per airplane per inspection cycle.

To accomplish the actions specified as ''OPTION II'' of the AD will entail approximately 8 work hours per high and low frequency eddy current inspection. The average labor rate is $60 per work hour. Based on these figures, the cost impact on U.S. operators who elect to accomplish OPTION II is estimated to be $480 per airplane per inspection cycle.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–6287 (54 FR 31649, August 1, 1989), and by adding a new airworthiness directive (AD), amendment 39–9704, to read as follows:

96–16–04 McDonnell Douglas: Amendment 39–9704. Docket 95–NM–186–AD. Supersedes AD 89–16–12, Amendment 39–6287.

Applicability: Model DC–9–10, –20, –30, –40, and –50 series airplanes; Model DC–9–81 (MD–81), DC–9–82 (MD–82) and DC–9–83 (MD–83) series airplanes; and C–9 (military) airplanes; equipped with a ventral aft pressure bulkhead; as listed in McDonnell Douglas Alert Service Bulletin A53–232, Revision 2, dated April 28, 1995; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must 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 the propagation of fatigue cracks that could result in structural failure of the ventral aft pressure bulkhead, accomplish the following:

(a) Accomplish the requirements of either paragraph (a)(1), ''OPTION I,'' or (a)(2), ''OPTION II,'' of this AD in accordance with McDonnell Douglas Alert Service Bulletin A53–232, Revision 2, dated April 28, 1995. The initial inspection of either option must be accomplished at the applicable time specified in Table 1 of this AD.

TABLE 1

Total accumulated landings as of the effective date of this AD	Initial inspection
Less than 35,000.	Prior to the accumulation of 36,500 total landings, or within 1,500 landings after the effective date of this AD, whichever occurs later.
35,000 or more.	Within 300 landings after the effective date of this AD; or within 3,500 landings after accomplishing the last inspection performed in accordance with AD 89–16–12; whichever occurs later.

(1) OPTION I: Accomplish the requirements of paragraphs (a)(1)(i), (a)(1)(ii), and (a)(1)(iii) of this AD.

(i) Conduct a low frequency eddy current inspection to detect cracks of the side areas above the floor between longerons 7 and 17 on fuselage left and right sides. Repeat this inspection at intervals not to exceed 1,500 landings.

(ii) Conduct an optically aided detailed visual inspection to detect cracks of the top and lower areas from longeron 7 left side to longeron 7 right side, and on the lower fuselage from longeron 17 to longeron 20 on fuselage left and right sides. Repeat this inspection thereafter at intervals not to exceed 1,500 landings.

(iii) Conduct an optically aided detailed visual inspection to detect cracks of the bottom area from longeron 20 left side to longeron 20 right side. Repeat this inspection thereafter at intervals no to exceed 3,500 landings.

(2) OPTION II: Conduct both a high frequency and a low frequency eddy current inspection for cracks around the entire periphery of the fuselage from the forward side of the bulkhead. Repeat these inspections at intervals not to exceed 2,500 landings.

(b) If any cracked tee section is found during any inspection required by this AD, prior to further flight, accomplish the requirements of either paragraph (b)(1) or (b)(2) of this AD, in accordance with the procedures specified in McDonnell Douglas Alert Service Bulletin A53–232, Revision 2, dated April 28, 1995:

(1) Replace the cracked tee section with a new like part. Once that replaced part has accumulated 35,000 landings, repeat the inspections required by paragraph (a) of this AD. Or

(2) Replace the cracked tee section with an improved part, as specified in the alert service bulletin. Such replacement

constitutes terminating action for the repetitive inspections of that section of the tee only.

(c) Replacement of all six aft pressure bulkhead tee sections with new improved parts, in accordance with McDonnell Douglas Alert Service Bulletin A53–232, Revision 2, dated April 28, 1995, constitutes terminating action for the inspections required by 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, Los Angeles Aircraft Certification Office (ACO), 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, Los Angeles ACO.

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

(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.

(f) The inspections and replacements shall be done in accordance with McDonnell Douglas Alert Service Bulletin A53–232, Revision 2, dated April 28, 1995. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Department C1–L51 (2–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on September 4, 1996.

Issued in Renton, Washington, on July 24, 1996.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–19314 Filed 7–30–96; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 946

[Docket No. 960418114–6201–03]

RIN: 0648–AF72

Weather Service Modernization Criteria

AGENCY: National Weather Service, National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Final rule.

SUMMARY: In accordance with the Weather Service Modernization Act, 15 U.S.C. 313n. (the Act), the National Weather Service (NWS) is publishing an amendment to its criteria for modernization actions requiring certification. This amendment adds criteria unique to automating a field office to ensure that automation actions will not result in any degradation of service. Automating a field office occurs after automated surface observing system (ASOS) equipment is installed and commissioned at a field office and the News employees that were performing surface observations at that office are removed or reassigned.

EFFECTIVE DATE: July 31, 1996.

ADDRESSES: Requests for copies of documents stated in the preamble as being available upon request should be sent to Julie Scanlon, NOAA/NWS, SSMC2, Room 9332, 1325 East-West Highway, Silver Spring, Maryland 20910.

FOR FURTHER INFORMATION CONTACT: Nicholas Scheller, 301–713–0454.

SUPPLEMENTARY INFORMATION: On May 2, 1996, the NWS published, for comment, proposed modernization criteria unique to automating a field office (*see* 61 FR 19594). In significant part, the proposed criteria embodied the four levels of service contained in the Federal Aviation Administration's (FAA) Weather Observation Service Standards for level A, B, C and D airports (*see* 61 FR 32887). After consideration of the public comments that were received and, after consultation with the National Research Council's (NRC) NWS Modernization Committee and the Modernization Transition Committee (MTC), the NWS is now establishing the final modernization criteria for automating a field office only at service level A, B and C airports. Establishment of final modernization criteria for automating a field office at service level D airports is being deferred pending further consultation with the MTC.

Consultation with the NRC's NWS Modernization Committee was completed on June 10, 1996. During consultation with the MTC on June 27, 1996, the MTC offered the following:

The Modernization Transition Committee (MTC) has reviewed the comments received in response to the notice in the Federal Register, considered information provided through presentations and reports, and thoroughly discussed the issue of level of service provided by the modernized weather service as compared to on-site observers, with the following conclusion:

The MTC approves the proposed automation criteria for airport service level A, B and C airports believing that there will be no degradation of service associated with these certifications. However, the Committee has drawn no conclusion about degradation of service at D service level airports that previously had an NWS observer. The Committee will address the remaining portion of D service level airports at their next scheduled meeting.

Peter R. Leavitt

Chair, Modernization Transition Committee.

A total of 44 public comments were received with postmarks by the closing date for comments. Six additional comments were received with postmarks after the closing date. The issues raised in these late comments however, were similar to others raised in the timely comments. All comments received were considered and are included in the numerical totals below. The issues and concerns raised in the comments and the Government's response follows. Most comments have to do with leaving ASOS unattended, either generally or at specific airports. The number of issues/concerns exceeds the total number of comments, since multiple issues/concerns were raised in some comments. A list of persons submitting comments is also included.

A. Comments related to leaving ASOS unattended:

1. *Comment:* 33 comments stated that service level D was inadequate for their particular airport.

Response: Establishment of final criteria for service level D airports has been deferred. The NWS will not take any action to automate field offices at service level D airports, pending further consultation with the MTC. Accordingly, the 27 airports proposed for service level D have been deleted from Appendix B.

2. *Comment:* 10 comments expressed the following concerns about ASOS: (a) ASOS can not be left in the unattended mode; (b) a human presence is required at all ASOS sites; and (c) ASOS observation is sometimes unrepresentative of actual conditions.

Response: Development and testing of automated weather observing

equipment has been in progress for nearly 20 years. Numerous studies and evaluations were conducted on automated observation systems beginning in the 1970s which included systems and technology similar to that of ASOS. Assessments of representativeness were made by comparing automated reports, specifically, ceiling and visibility to the human observer. As a result of the more than two decades of development and testing, ASOS has evolved into a highly accurate, consistent, and reliable complement to meteorological observations.

The most recent testing effort was the ASOS Aviation Demonstration that was carried out jointly by the NWS, the FAA, and the aviation industry, from February 15, 1995 through August 15, 1995. During this Demonstration, NWS observers were asked to record those cases when ASOS observations did not represent the true meteorological situation. Based on reports supplied by NWS observers, ASOS was found to report the correct individual weather parameters at least 98% of the time under all conditions combined.

From the beginning, ASOS was never intended to be the sole source of surface weather data. ASOS data will be supplemented by products derived from other remote automated systems including satellite, radar, and lightning networks. Efforts to develop and refine these new sensors and additional data products are underway. However, ASOS observations will continue to be ''augmented'' by human observers, at those sites required by the aviation community, until these additional sensors and data products are available, and their use is fully understood.

The strength of ASOS is not that it is ''better'' than the observer, but that the sensor suite can be put in the area most sensitive to the weather that the pilot needs, that multiple sensors can be used at those sites where required, and that ASOS observations are consistent from station to station, day to night, and continuous 24 hours a day.

3. *Comment:* One comment stated that the FAA, NWS, aviation community agreement on service level D included a requirement for both freezing rain and lightning detection sensors.

Response: The deployment of freezing rain sensors as part of the ASOS is underway. Funding has been allocated for acquisition of over 400 sensors. The freezing rain software and hardware upgrade deployment will be deployed at NWS sites by winter 1996/1997.

Automated thunderstorm detection capability is presently being acquired as part of the Automated Weather Observing System (AWOS) Data Acquisition System and will provide an automated thunderstorm report in the METAR format from the ASOS at all level A, B, C and D sites. Deployment of this automated thunderstorm reporting capability will begin in June 1997. Until that time, thunderstorms will be detected and reported manually at all sites with implemented level A, B and C Weather Observation Service Standards.

Pending automation of freezing rain and thunderstorm detection and reporting, neither of these parameters will be manually augmented at level D sites. This policy was clearly established during the extensive discussions on Weather Observation Service Standards with the aviation industry during the last 18 months.

4. *Comment:* Three comments regarding Astoria, Oregon, proposed as a D level airport, requested that local public hearings be held before ASOS implementation.

Response: The ASOS has already been ''implemented'' at Astoria, Oregon to the extent that it was commissioned on March 1, 1993. The second stage of implementation will be to ''automate'' this office and the Weather Service Modernization Act already provides for extensive public input at this stage in several ways. Criteria by which these actions will be certified are made available for public comment through publication in the Federal Register. Two independent committees are consulted during the establishment of final criteria: The National Research Council's NWS Modernization Committee which is composed of scientific and technical experts, and the Modernization Transition Committee (MTC) which represents users of weather services. During these consultations, both Committees are apprised of all public comments received. There are two other opportunities for public input during the certification process. Each proposed certification is published in the Federal Register for a 60-day public comment period. The MTC is apprised of all public comments received and has the opportunity to recommend a course of action to the Secretary of Commerce with regard to the final certification of ''no degradation of service''. Finally, the MTC is a Federal advisory committee and as such, all MTC meetings are open to the public. As part of the consultation with the MTC on certifications and preceding deliberations by the MTC, there is a public comment period during which the public may address the MTC.

B. Other comments:

1. *Comment:* Six comments were concerned that there might be a delay in implementing service levels A and B due to lack of funds and that the delay would result in a degradation of service. One comment requested that a ban on further ASOS commissionings be instituted until funds are available to implement service levels A and B.

Response: The FAA will fund full implementation of the Weather Observation Service Standards, including all level A and B airports. Accordingly, NWS has eliminated any funding contingency from criterion 4a.

2. *Comment:* Two comments indicated that the list of airports published in the May 2 Federal Register notice was incomplete and/or confusing.

Response: The airports in the May 2, 1996 Federal Register notice list were the 143 ''field offices'' which require a certification prior to automation under the Weather Service Modernization Act. The Act defines a field office as a Weather Service Office (WSO) or a Weather Service Forecast Office (WSFO). Beyond these 143 locations, there are additional airports where NWS has surface observing responsibility that either: (1) Are not field offices—Weather Service Meteorological Observatories (WSMOs) and Weather Service Contract Meteorological Observatories (WSCMOs); or (2) are field offices, but NWS will continue to perform surface observing functions. There are also a number of airports where the FAA has surface observing responsibility. On June 25, 1996, the FAA published in the Federal Register its Weather Observation Service Standards and a more comprehensive list of all airports where either NWS or FAA has had surface observing responsibility (*see* 61 FR 32887). Not included in this June 25 notice are the so called ''expansion sites'', which are sites that have not had a Federally sponsored surface observation.

3. *Comment:* One comment stated that automation, as proposed, will have an adverse impact on snowfall records.

Response: Snowfall data will continue to be recorded at 46 Weather Forecast Offices (WFO) co-located with ASOS as well as new snowfall climatologies will commence at 73 WFOs during the 1996–1997 winter season. In addition, snow-depth observations will continue at 22 Tower Level 5 airports next winter season. In addition, along the Washington and Oregon coastline, there are over 30 NWS cooperative observer (COOP) climate stations that will continue to report daily snowfall, snow depth, and accurate precipitation amounts for climatologists. The primary

purpose of this volunteer network is the taking of long-term climate records. The NWS is now in the process of implementing a system that will allow these observations to be disseminated to external users once-a-day in near real-time.

Washington and Oregon contain about one dozen first-order airport stations that historically reported snowfall information that will no longer be available. However, data from COOP climate stations in both states are actually considered to be the data of choice by most climate-change researchers. The COOPs are located off airports at locations where people live. COOPs with decades of records are found in the temperate rain forests, Olympic mountains, and other ecologically sensitive areas.

The volunteer COOP network will continue to provide high-quality climate data for NWS and external users. The NWS is even considering opening new COOP stations in areas where observations are scarce with snowfall information unavailable and whereby no current COOP is located in the surrounding vicinity.

In addition, the Supplementary Data Program (*see* 60 FR 64020), became operational on October 1, 1995 at 119 WFOs, where staffing and equipment permits. This includes the providing of event driven supplementary data observations (i.e., ice pellets, snow increase rapidly, size of hailstones) and routinely scheduled supplementary climatological data (i.e., depth of new snow, duration of sunshine, water equivalent of snow on ground).

4. *Comment:* One comment expressed concerns with ASOS's inability to detect clouds above 12,000 feet, use of ''fair'' for sky conditions when ASOS reports ''CLR below 12,000 ft.'', and ASOS not reporting freezing rain.

Response: A few years ago, NOAA started generating a Satellite Cloud Product (SCP) to complement ASOS above 12,000 ft. SCPs, generated for a 50x50-km grid centered around ASOS sites, are available in regional collectives through the Family of Services with the following bulletin headings:

GOES–8

TCUS40 KWBC—Eastern US
TCUS41 KWBC—Central US
TCUS42 KWBC—Southern US

GOES–9

TCUS51 KWBC—Central US
TCUS52 KWBC—Southern US
TCUS53 KWBC—Western US

Among other things, the SCPs indicate the cloud category (CLR, SCT, BKN, OVC) and the height of the cloud in 100's of feet.

NWS is sensitized to the ''FAIR'' issue and is working toward a more representative depiction of sky conditions on the Hourly (State) Weather Roundup (SWR). NWS sites which ''run'' the SWR can merge the SCP data with the ASOS data, thereby producing a better combined sky condition. Many NWS sites are already doing this and more will be doing so in the future once SCPs are generated for all ASOS sites.

The issue of the ''FAIR'' on The Weather Channel (TWC) is a little different. TWC gets its observational data from Weather Services International (WSI) Corporation. WSI does not presently process NWS SWRs. ''FAIR'' is a WSI term.

NWS has had discussions with both TWC and WSI about this issue. Both are working on schemes to assimilate the SCP data, thereby making a more representative sky condition. In lieu of utilizing the WSI observational data stream, TWC is independently investigating the feasibility of ''ingesting'' and displaying the NWS SWRs on their ''Weather on the 8's'' segment.

The concern about reporting of freezing rain is addressed in the response to comment A3.

5. *Comment:* One comment stated that ASOS should be replaced by METAR.

Response: The writer of this comment has misunderstood the difference between METAR and ASOS.

The Aviation Routine Weather Report (METAR) does not replace ASOS. ASOS is an automated and integrated group of sensors to collect surface weather parameters.

METAR on the other hand is the reporting format in which the weather elements are provided from the ASOS. Historically, there have been two weather reporting formats. North American countries (United States, Canada and Mexico) used a format referred to as a Surface Aviation Observation (SAOP, and the rest of the world, with minor differences, used a format called Aviation Routine Weather Report (METAR) to report weather. For years discussions took place on standardizing the reporting format. Agreement was reached in 1989 and the resultant code, still referred to as METAR, represents a blend of the existing SAO and METAR reports. Because countries were permitted to file exceptions to the code format, not all METAR reports are identical, and thus there will be slight differences among the codes. Canada and Mexico have already implemented the METAR code format, and the United States, in accordance with international agreements, implemented the METAR code format on July 1, 1996.

6. *Comment:* One comment stated that the ASOS at Wheeling-Ohio County Airport remains uncommissioned.

Response: The ASOS at Wheeling—Ohio County airport is an FAA-sponsored ASOS and requires FAA long-line communications for commissioning. Currently, plans are to install the communications lines in the fall 1996 followed by commissioning in January/February 1997.

7. *Comment:* One comment stated that there is no radio transmission from the ASOS at Marathon Airport (MTH), Florida.

Reponse: A ground-to-air radio was installed at Marathon in March 1994. Shortly after installation, radio frequency interference was reported. That interference problem was corrected on May 14, 1996 and the radio is now broadcasting.

8. *Comment:* Three comments raised concerns about specific public forecast product, the quality of the forecasts, timeliness of NOAA Weather Radio updates, elimination of the agricultural forecast program and closure of the Astoria, Oregon Weather Service Office (WSO).

Response: These issues are not related to ASOS and/or automation and are more appropriately addressed during the certification process for actions involving the particular WSOs.

List of Persons Submitting Comments

Dean Jacobs, Executive Director, Valentine Chamber of Commerce, Valentine, Nebraska
Dean Jacobs, Executive Director, Visitor Promotion Committee, Cherry County, Valentine, Nebraska
concerned citizen, Freeland, Michigan
Jay Trobec, KELO–TV, Sioux Falls, South Dakota
Mike Boggs, Airport Manager, Eugene Airport, Eugene, Oregon
Kelly Kilmer, Quality Control Focal Point, Valentine ASOS Station, Valentine, Nebraska
Troy Kimmel, Chief Meteorologist, KTBC–TV, Austin, Texas
Robert Kilmer, Airport Manager, Valentine, Nebraska (2 comments)
Evelyn Kilmer, Valentine, Nebraska (2 comments)
Gerald Ellison, Valentine Nebraska
Allan L. Jameson, Commercial Pilot, Valentine, Nebraska
Robert A. Peterson, Administrator, Valentine, Nebraska
Tim Bader, Valentine, Nebraska
Paul Joseph, Chief Meteorologist, WTMJ–TV, Milwaukee, Wisconsin
Thomas S. Tominack, Airport Manager, Wheeling–Ohio County Airport, Wheeling West Virginia

A. Earl Cheal, Vice President and General Manager, The Flight Department, Marathon Airport, Marathon, Florida
Timothy M. Kellett, Paso Robles, California (2 comments)
Leo D. Hollis, Director—Flight Control, America West Airlines, Phoenix, Arizona
Joe Bakkensen, Chair, Board of Commissioners, Clatsop County, Astoria, Oregon
Thomas G. Macklin, Paso Robles, California
Sean Boyd, KSEE–TV, Fresno, California
Ron Larsen, Director of Operations, Port of Astoria, Astoria, Oregon (2 comments)
Melvin Christenson, Cherry County Sheriff, Valentine, Nebraska
John P. Raichl, Sheriff and Director of Emergency Services, Clatsop County, Astoria, Oregon
Richard Carlson, Sequim, Washington
Steve Fick, President, Salmon for All, Astoria, Oregon
William N. Sears, Director, Air Traffic Capacity & Meteorology, Air Transport Association, Washington, DC
Robert J. Massey, Chairman, Aviation Weather Committee, Air Line Pilots Association, Herndon, Virginia
Warren L. Qualley, Manager—Weather Services, American Airlines, DFW Airport, Texas
Tom Fahey, Manager, Northwest Airlines Meteorology, St. Paul, Minnesota
Paul Gross, WDIV–TV, Detroit, Michigan
Barbara Balensifier, Mayor of Warrenton, Warrenton, Oregon
Brad Barclay, Contract Weather Observer, Paso Robles Airport, Atascadero, California
Drs. Richard & Janet Laughlin, Astoria, Oregon
Robert D. DeLong, City Manager, Astoria, Oregon
Paul O'Connell, RN, Flight Supervisor, Good Samaritan Hospital, Kearney, Nebraska
Robert Stratton, Templeton, California
Paul Levesque, Executive Assistant, Tillamook County Commissioners, Tillamook, Oregon
Monte M. Eliason, Airport Manager, Glacier Park International Airport, Kalispell, Montana
Pam Birmingham, Pete Anderson Realty, Inc., Seaside, Oregon
Tim Josi, State Representative, District 2, Salem, Oregon
Dennis Ernest, Program Director, KNEB AM/FM, Scottsbluff, Nebraska
William R. McDonald, Chairman, Columbia County Board of Commissioners, St. Helens, Oregon
Oliver Vernor, Mayor, City of Seaside, Seaside, Oregon
Pat Hamilton, Chairperson, Pacific County Commissioners, South Bend, Washington
William F. Shea, Commissioner, Port of Astoria, Astoria, Oregon

A. Classification Under Executive Order 12866

These regulations establish procedures and criteria for certifying that certain actions to modernize NWS will not result in any degradation of weather services to the affected service area. They will not result in any direct or indirect economic impacts, and have been determined not to be significant for purposes of E.O. 12866.

B. Regulatory Flexibility Act Analysis

These regulations set forth the criteria for certifying that certain modernization actions will not result in a degradation of service to the affected area. These criteria will be appended to the Weather Service Modernization regulations. The Assistant General Counsel for Legislation and Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration when these criteria were proposed, that if adopted as proposed, they will not have a significant economic impact on a substantial number of small entities. These criteria are intended for internal agency use, and the impact on small business entities will be negligible. The proposed criteria do not directly affect ''small government jurisdictions'' as defined by Pub. L. 96–354, the Regulatory flexibility Act. Accordingly, no initial regulatory flexibility analysis was prepared.

C. Paperwork Reduction Act of 1980

These regulations will impose no information collection requirements of the type covered by Pub. L. 96–511, the Paperwork Reduction Act of 1980.

D. Executive Order 12612

This rule does not contain policies with sufficient Federalism implications to warrant preparation of a Federalism assessment under Executive Order 12612.

E. National Environmental Policy Act

NOAA has concluded that issuance of this rule does not constitute a major Federal action significantly affecting the quality of the human environment. Therefore, an environmental impact statement is not required. A programmatic Environmental Impact Statement (EIS) regarding NEXRAD was prepared in November 1984, and an Environmental Assessment to update the portion of the EIS dealing with the bioeffects of NEXRAD non-ionizing radiation was issued in 1993.

List of Subjects in 15 CFR Part 946

Administrative practice and procedure, Certification, Commissioning. Decommissioning, national Weather Service, Weather service modernization.

Dated: July 26, 1996.

Elbert W. Friday, Jr.,

Assistant Administrator for Weather Services.

For the reasons set out in the preamble, 15 CFR part 946 is amended as follows:

1. The authority citation for part 946 continues to read as follows:

Authority: Title VII of Pub. L. 102–567, 106 Stat 4303 (15 U.S.C. 313n.)

2. Appendix A to part 946 is amended by adding a new Subsection (D) under Section II. CRITERIA FOR MODERNIZATION ACTIONS REQUIRING CERTIFICATION, to read as follows:

(D) Modernization Criteria Unique to Automation Certifications

1. Compliance with flight aviation rules (applies on airports only): Consultation with the Federal Aviation Administration (FAA) has verified that the weather services provided after the commissioning of the relevant ASOS unit(s) will be in full compliance with applicable Federal Aviation Regulations promulgated by the FAA.

2. ASOS Commissioning: The relevant ASOS unit(s) have been successfully commissioned in accordance with the criteria set forth in section I.A.1 of Appendix A to the Weather Service Modernization Regulations, 15 CFR part 946.

3. User Confirmation of Services: Any valid user complaints related to actual system performance received since commissioning of the ASOS have been satisfactorily resolved and the issues addressed in the MIC's recommendation for certification.

4. Aviation Observation Requirement: At sites subject to automation certification, all surface observations and reports required for aviation services can be generated by an ASOS augmented as necessary by non-NWS personnel.

a. The ASOS observation will be augmented/backed-up to the level specified in Appendix B as described in the Summary Chart of the FAA's Weather Observation Service Standards.

b. The transition checklist has been signed by the appropriate Region Systems Operations Division Chief.

5. General Surface Observation Requirement: The total observations available are adequate to support the required inventory of services to users in the affected area. All necessary hydrometeorological data and information are available through ASOS as augmented in accordance with this section, through those elements reported as supplementary data by the relevant Weather Forecast Office(s), or through other complementary sources. The adequacy of the total surface observation is addressed in the MIC's recommendation for certification.

BILLING CODE 3510–12–M

Summary of FAA's Weather Observation Service Standards

"D" Level Service
Stand-Alone ASOS

v

"C" Level Service Add-Ons
- Backup basic service
- Augmentation of:
  - Thunderstorm occurrence
  - Tornadic activity
  - Hail
  - Virga
  - Volcanic ash
  - Tower visibility

v

"B" Level Service Augmentation Add-Ons
- Long-line Runway Visual Range (RVR) at designated sites* (may be instantaneous readout)
- Freezing drizzle
- Ice pellets
- Snow depth on ground
- Snow increasing rapidly remark
- Thunderstorm/lightning location remark
- Observed significant weather not at station

v

"A" Level Service Augmentation Add-Ons
- Either 10-minute long-line RVR or visibility increments down to 1/8, 1/16, and 0 miles
- Sector visibility
- Variable sky
- Cloud types
- Cloud layers above 12,000 feet
- Widespread dust, sand, and smoke obstructions
- Volcanic eruptions

Sites that will provide long-line RVR are designated with an * in Appendix B

BILLING CODE 3510–12–C

Appendix B is added to Part 946 to read as follows:

Appendix B to Part 946—Airport Tables

''A'' Level Service Airports

*Akron, OH ....CAK
*Albany, NY ....ALB
*Atlanta, GA ....ATL
*Baltimore, MD....BWI
*Boston, MA ....BOS
Charlotte, NC....CLT
*Chicago-O'Hare (AV), IL ....ORD
Cincinnati, OH ....CVG
Columbus, OH ....CMH
*Dayton, OH....DAY
*Des Moines, IA....DSM
*Detroit, MI ....DTW
*Fairbanks, AK ....FAI
*Fresno, CA ....FAT
*Greensboro, NC ....GSO
*Hartford, CT ....BDL
*Indianapolis, IN....IND
*Kansas City, MO....MCI
*Lansing, MI....LAN
Las Vegas, NV ....LAS
Los Angeles (AV), CA....LAX
*Louisville, KY ....SDF
*Milwaukee, WI....MKE
*Minneapolis, MN ....MSP
*Newark, NJ....EWR
*Oklahoma City, OK ....OKC
Phoenix, AZ....PHX
*Portland, OR ....PDX
*Providence, RI ....PVD
*Raleigh, NC....RDU
*Richmond, NC....RIC
*Rochester, NY....ROC
*Rockford, IL ....RFD
*San Antonio, TX....SAT
San Diego, CA....SAN
*San Francisco, CA ....SFO
*Spokane, WA ....GEG
*Syracuse, NY....SYR
Tallahassee, FL ....TLH
Tulsa, OK ....TUL

''B'' Level Service Airports

*Baton Rouge, LA ....BTR
*Billings, MT....BIL
*Charleston, WV....CRW
*Chattanooga, TN ....CHA
Colorado Springs, CO ....COS
Daytona Beach, FL ....DAB
El Paso, TX ....ELP
Flint, MI ....FNT
Fort Wayne, IN ....FWA
Honolulu, HI ....HNL
*Huntsville, AL ....HSV
*Knoxville, TN ....TYS
*Lincoln, NE....LNK
Lubbock, TX....LBB
*Madison, WI ....MSN
*Moline, IL ....MLI
*Montgomery, AL....MGM
*Muskegon, MI....MKG
*Norfolk, VA....ORF
Peoria, IL ....PIA
*Savannah, GA ....SAV
*South Bend, IN ....SBN
Tucson, AZ ....TUS
*West Palm Beach, FL ....PBI
*Youngstown, OH....YNG

''C'' Level Service Airports

Abilene, TX....ABI
Allentown, PA ....ABE
Asheville, NC ....AVL
Athens, GA ....AHN
Atlantic City, NJ ....ACY
Augusta, GA ....AGS
Austin, TX ....AUS
Bakersfield, CA ....BFL
Bridgeport, CT ....BDR
Bristol, TN ....TRI
Casper, WY....CPR
Columbia, MO ....COU
Columbus, GA....CSG
Dubuque, IA ....DBQ
Erie, PA....ERI
Eugene, OR ....EUG
Evansville, IN ....EVV
Fargo, ND ....FAR
Fort Smith, AR ....FSM
Grand Island, NE....GRI
Helena, MT ....HLN
Huntington, WV ....HTS
Kahului, HI....OGG
Key West, FL....EYW
Lewiston, ID ....LWS
Lexington, KY ....LEX
Lynchburg, VA ....LYH
Macon, GA ....MCN
Mansfield, OH....MFD
Meridian, MS ....MEI
Olympia, WA ....OLM
Port Arthur, TX ....BPT
Portland, ME ....PWM
Rapid City, SD ....RAP
Redding, CA ....RDD
Reno, NV ....RNO
Roanoke, VA ....ROA
Rochester, MN....RST
Salem, OR ....SLE
Santa Maria, CA ....SMX
Sioux City, IA ....SUX
Springfield, IL ....SPI
Stockton, CA ....SCK
Toledo, OH ....TOL
Waco, TX ....ACT
Waterloo, IA ....ALO
Wilkes-Barre, PA ....AVP
Williamsport, PA ....IPT
Wilmington, DE ....ILG
Worcester, MA ....ORH
Yakima, WA ....YKM

*Long-line RVR designated site.

[FR Doc. 96–19412 Filed 7–30–96; 8:45 am]

BILLING CODE 3510–12–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Ivermectin Tables and Chewable Cubes

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of two supplemental new animal drug applications (NADA's) filed by Merck Research Laboratories, Division of Merck & Co., Inc. The supplemental NADA's provide for label changes including a revised indication and limitation for oral use of ivermectin tablets and chewable cubes for dogs to prevent canine heartworm disease.

EFFECTIVE DATE: July 31, 1996.

FOR FURTHER INFORMATION CONTACT: Marcia K. Larkins, Center for Veterinary Medicine (HFV–112), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0137.

SUPPLEMENTARY INFORMATION: Merck Research Laboratories, Division of Merck & Co., Inc., P.O. Box 2000, Rahway, NJ 07065, filed supplemental NADA's 138–412 and 140–886, which provide for use of Heartgard® (ivermectin) Tablets and Heartgard® (ivermectin) Chewables for dogs. The supplemental NADA's amend the approved indications for use to read ''To prevent canine heartworm disease by eliminating the tissue stage of heartworm larvae (*Dirofilaria immitis*) for 1 month (30 days) after infection.'' The supplements also amend the limitations pertaining to puppies to state ''Recommended for dogs 6 weeks of age and older.'' These changes are necessary to be consistent with the labeling for Heartgard-30® Plus (ivermectin and pyrantel pamoate) NADA 140–971, as published in the Federal Register of April 15, 1996 (61 FR 15185 at 15186). The supplemental NADA's 138–412 and 140–886 are approved as of June 14, 1996, and the regulations are amended in 21 CFR 520.1193(c)(2) and (c)(3) to reflect the approval.

Approval of these supplements did not require submission of new data and information. Therefore, freedom of information summaries under part 20 (21 CFR part 20) and 21 CFR 514.11(e)(2)(ii) are not required.

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(iii)), these approvals do not qualify for marketing exclusivity because the supplements do not contain reports of new clinical or field investigations (other than bioequivalence or residue studies) essential to the approvals and conducted or sponsored by the applicant.

The agency has determined under 21 CFR 25.24(d)(1)(i) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

2. Section 520.1193 is amended by revising paragraphs (c)(2) and (c)(3) to read as follows:

§ 520.1193 Ivermectin tablets and chewable cubes.

* * * * *

(c) * * *

(2) *Indications for use.* To prevent canine heartworm disease by eliminating the tissue stage of heartworm larvae (*Dirofilaria immitis*) for 1 month (30 days) after infection.

(3) *Limitations.* Use once-a-month. Recommended for dogs 6 weeks of age and older. Initial use within 1 month after first exposure to mosquitoes. Final use within 1 month after last exposure to mosquitoes. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: June 9, 1996.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 96–19410 Filed 7–30–96; 8:45 am]

BILLING CODE 4160–01–F

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21 CFR Part 803

RIN 0910–AA09

Docket No. [91N–0295]

Medical Devices; Medical Device Reporting; Baseline Reports; Stay of Effective Date

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: In response to numerous requests for the Food and Drug Administration (FDA) to further consider comments concerning manufacturer medical device reporting (MDR) baseline reporting requirements, FDA is staying the effective date of certain portions of the baseline reporting requirements. The stay of these requirements will allow FDA to further evaluate the issues raised by the comments and to determine whether the requirements should be revised.

EFFECTIVE DATE: July 31, 1996.

FOR FURTHER INFORMATION CONTACT: Earl W. Robinson, Center for Devices and Radiological Health (HFZ–530), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–594–2735.

SUPPLEMENTARY INFORMATION: In the Federal Register of December 11, 1995 (60 FR 63578) FDA published a final rule amending part 803 (21 CFR part 803) requiring medical device manufacturers to submit certain reports relating to adverse events (hereinafter referred to as the December 1995 final rule). The effective date of this rule was initially to be April 11, 1996. However, on April 11, 1996 (61 FR 16043), FDA extended the effective date to July 31, 1996.

Under the December 1995 final rule, manufacturers were required to submit individual reports of adverse events on a monthly basis, as well as annual baseline reports. Section 803.55 requires that the baseline reports include information specifically identifying a device for which an adverse event has been submitted, the number of devices manufactured and distributed in the last 12 months, an estimate of the number of devices in current use, and a brief description of any methods used to estimate the number of devices distributed and in current use. Among the primary purposes of these baseline data requirements is to provide information on population exposure to a particular device which together with the number of adverse event reports would provide relevant information about the rate of reported events for a particular device to aid the agency in evaluating an adverse event's significance. For example, information concerning the number of devices manufactured, distributed or in current use (hereinafter referred to as denominator data) is intended to enable the agency to determine how many people are exposed to potential risk from a device and whether 100 malfunction reports for a particular device represents a .001 percent (100 of 10,000,000) reported failure or a 10 (100 of 1,000) percent reported failure.

After issuing the December 11, 1995, final rule, FDA received numerous requests for reconsideration of the baseline reporting requirements. Specifically, industry objected that the requirements for denominator data were burdensome. These comments led FDA to meet with the Health Industry Manufacturers Association (HIMA) and several other industry representatives on April 19, May 23, June 13, and July 1, 1996. During these meetings and FDA internal meetings, issues concerning industry burdens and FDA evaluation of data were put forth that had previously not been considered.

Specifically, issues were raised about the ability to derive accurate information about adverse event rates of devices by the denominator data. The agency needs additional time to consider and better understand methods used to derive denominator estimates. FDA believes that a pilot program to analyze how certain variables affect the denominator data and how that data is used would allow the agency to implement denominator data requirements to evaluate the rate of and relative impact of adverse events more accurately. FDA intends to evaluate these issues further, and with the cooperation of industry in the near future, to implement such a pilot program, and subsequently to analyze these factors. Assuming that there is sufficient participation in the program, FDA anticipates that the completion of a successful pilot program would take from 12 to 18 months.

Because of the need for further analysis of variables affecting denominator data, FDA believes that baseline denominator data requirements should be stayed. The agency believes a pilot program may allow FDA to analyze the best possible means to obtain denominator data. At the completion of the pilot program, or a determination that because of inadequate participation, the pilot program is not feasible, FDA will either lift the stay of the December 1995 final rule baseline denominator reporting requirements, retain the stay, or proceed to revise these requirements.

The Administrative Procedure Act (Pub. L. 79–404) and FDA regulations provide that the agency may issue a regulation without notice and comment procedures when the agency for good cause finds (and incorporates the finding and a brief statement of reasons thereof in the rules issued) that notice and public comment procedures thereon are impracticable, unnecessary, or contrary to the public interest (5 U.S.C. 553(b)(8); § 10.40(e)(1)).) FDA finds that there is good cause for dispensing with notice and comment procedures to stay the effective date of the manufacturer baseline reporting requirements for denominator data (§ 803.55((b)(9) and (10)) (corresponding with data elements 15 and 16 on FDA Form 3417) because such notice and comment procedures are impracticable and contrary to the public interest.

Notice and comment rulemaking on the postponement of baseline reporting denominator data is impracticable. FDA was not aware of significant issues relating to these requirements until after publication of the December 1995 final rule. Since that time, FDA has had numerous meetings with industry representatives and internal meetings to decide the best approach to resolve issues concerning the rule. The last such meeting occurred on July 1, 1996. Without the issuance of a stay under good cause procedures, the baseline denominator information reporting requirements would become effective on July 31, 1996.

In addition, notice and comment rulemaking on the stay of the baseline denominator reporting data would be contrary to the public interest. Because there is not enough time to allow notice and comment on the issue of staying the effective date before it occurs, the baseline denominator data requirements would go into effect on July 31, 1996. Consequently, industry would be required to implement additional procedures that may, after further evaluation, soon be replaced with different procedures leading to more accurate information. This may lead to unnecessary confusion and expense.

List of Subjects in 21 CFR Part 803

Imports, Medical devices, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 803 is amended as follows:

PART 803—MEDICAL DEVICE REPORTING

1. The authority citation for 21 CFR part 803 continues to read as follows:

Authority: Secs. 502, 510, 519, 520, 701, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 352, 360, 360i, 371, 374).

2. In the revision of part 803 which was published at 60 FR 63578 (December 11, 1995), the effective date of which was extended until July 31, 1996, at 61 FR 16043 (April 11, 1996), the provisions of § 803.55(b)(9) and (10) are stayed until further notice.

Dated: July 25, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–19411 Filed 7–30–96; 8:45 am]

BILLING CODE 4160–01–F

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

5 CFR Chapter LXXIV

29 CFR Part 2703

RIN 3209–AA15

Supplemental Standards of Ethical Conduct for Employees of the Federal Mine Safety and Health Review Commission

AGENCY: Federal Mine Safety and Health Review Commission (Commission).

ACTION: Final rule.

SUMMARY: The Federal Mine Safety and Health Review Commission, with the concurrence of the Office of Government Ethics (OGE), is issuing a final rule for Commission employees that supplements the Standards of Ethical Conduct for Employees of the Executive Branch issued by OGE. This final rule is a necessary supplement to the Standards because it addresses ethical issues unique to the Commission. The final rule prohibits the acquisition or holding of certain financial interests and requires certain employees to obtain prior approval for outside employment. The Commission also is repealing, except for a regulatory waiver provision, its old standards of conduct regulations that are superseded by the Standards, OGE's executive branch-wide financial disclosure regulations, and this final rule. In their place, the Commission is adding a cross-reference section to the current ethics provisions and a section specifying the Chairman's authority to appoint the Commission's ethics officials.

EFFECTIVE DATE: These regulations are effective July 31, 1996.

FOR FURTHER INFORMATION CONTACT: Norman Gleichman, Designated Agency Ethics Official, Federal Mine Safety and Health Review Commission, 1730 K Street, NW., 6th Floor, Washington, DC 20006; telephone: (202) 653–5610 (202–566–2673 for TDD Relay). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

I. Background

On August 7, 1992, the Office of Government Ethics (OGE) published a final rule entitled Standards of Ethical Conduct for Employees of the Executive Branch (Standards). *See* 57 FR 35006–35067, as corrected at 57 FR 48557, 57 FR 52583, and 60 FR 51667, with additional grace period extensions at 59 FR 4779–4780, 60 FR 6390–6391, and 60 FR 66857–66858. The Standards, codified at 5 CFR part 2635 and made effective February 3, 1993, establish uniform standards of ethical conduct that are applicable to all executive branch employees.

With the concurrence of OGE, 5 CFR 2635.105 authorizes executive branch agencies to publish agency-specific regulations supplementing 5 CFR part 2635 that are necessary to implement their respective ethics programs. With OGE's concurrence, the Commission has determined that the following supplemental regulations, being codified in new 5 CFR chapter LXXIV, consisting of part 8401, are necessary for successful implementation of the Commission's ethics program, in light of the Commission's unique programs and operations.

II. Analysis of the Regulations

Section 8401.101 General

Section 8401.101 explains that the supplemental regulations apply to Commission employees and supplement the Standards at 5 CFR part 2635. This section also cross-references the executive branch-wide financial disclosure regulations at 5 CFR part 2634.

Section 8401.102 Prohibited Financial Interests

The Standards, at 5 CFR 2635.403(a), authorize an agency to issue a supplemental regulation prohibiting or restricting the acquisition or holding of a financial interest or a class of financial interests by the agency's employees or any category of its employees, based on a determination that the acquisition or holding of such interests would cause a reasonable person to question the imparti ality and objectivity with which agency programs are administered. Where it is necessary for the agency to carry out its mission, such prohibitions or restrictions may be extended to employees' spouses and minor children, since such family members' financial interests are imputed to employees for conflict of interest purposes.

Section 8401.102(a) expressly prohibits Commission employees (other than special Government employees), as well as the spouses and minor children of such employees, from having any financial interest, including indebtedness or compensated employment, in any company or other person who operates, controls, or supervises a mine subject to the provisions of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq., or any independent contractor performing services or construction at such a mine. The prohibition has been made applicable to employees' spouses

and minor children based on a determination that such application of the prohibition is necessary to the ability of Commission employees to fulfill their official duties and the ability of the Commission to carry out its mission. Furthermore, the prohibition in this section, including its applicability to employees' spouses and minor children, is necessary to maintain public confidence in the impartiality and objectivity with which the Commission conducts its adjudicatory functions. The Commission believes it important to the success of its mission that those affected by agency decisions have this additional degree of assurance that agency decisions are not influenced by considerations of personal gain on the part of Commission personnel.

A ''financial interest'' is defined in the Standards at 5 CFR 2635.403(c). In accordance with 5 CFR 2635.403(a), § 8401.102(a) generally prohibits such interests in mining enterprises subject to the Commission's jurisdiction. This section is essentially a readoption of 29 CFR 2703.09(b), in which the Commission has prohibited employees from having a financial interest in mining enterprises subject to the Commission's jurisdiction. The Commission interpreted the provision to also apply to spouses and minor children of Commission employees.

Section 8401.102(b) sets forth exceptions to the general financial interest prohibition in § 8401.102(a). The exceptions are intended to permit the acquisition or holding of financial interests that are unlikely to raise questions regarding the objective and impartial performance of Commission employees' official duties or the possible misuse of their positions.

Under § 8401.102(b)(1), the prohibition in § 8401.102(a) does not apply to investments in a publicly traded or publicly available investment fund which, in its prospectus, does not indicate the objective or practice of concentrating its investments in the securities of any company or other person who operates, controls, or supervises a mine subject to the provisions of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq., or any independent contractor performing services or construction at such a mine, if the employee neither exercises control over the financial interests held in the fund nor has the ability to exercise such control. Under § 8401.102(b)(2), unless there is a ''substantial conflict'' within the meaning of 5 CFR 2635.403(b), an employee may own or control a financial interest obtained prior to the employee's commencement of employment, through a change in marital status, or through circumstances beyond the employee's control, such as acquisition by inheritance, gift, or merger. However, the employee must make full written disclosure to the Designated Agency Ethics Official (DAEO) and the employee will be disqualified from participating in any decision or other particular matter having a direct and predictable effect on the financial interest in question.

Under § 8401.102(c), the DAEO may require divestiture of a financial interest that would otherwise be allowed to be retained under § 8401.102(b)(2), using the standard of ''substantial conflict'' set forth in 5 CFR 2635.403(b).

Under § 8401.102(d), the DAEO may grant a waiver from the financial interest prohibition in this section based on a determination that the waiver is not inconsistent with 5 CFR part 2635 or otherwise prohibited by law and that, under the particular circumstances, application of the prohibition is not necessary to avoid the appearance of misuse of position or loss or impartiality and objectivity with which Commission programs are administered. An employee may be required under the waiver to disqualify himself from a particular matter or take other appropriate action.

Section 8401.103 Prior Approval for Outside Employment

Under 5 CFR 2635.803 an agency that determines it is necessary or desirable for the purpose of administering its ethics program may, by supplemental regulation, require employees to obtain prior written approval before engaging in outside employment. The Commission's old standards of conduct regulation at 29 CFR 2703.12 (which is now being repealed) is a grace period (grandfathered) provision which has long required Commission employees classified at GS–13 or above and Commission attorneys at any grade level to obtain approval before engaging in outside employment. The Commission has found this requirement useful in ensuring that its employees avoid violations of the standards of conduct and conflict of interest statutes.

In accordance with 5 CFR 2635.803, the Commission has determined that it is necessary to the administration of its ethics program to continue to require such prior approval. Accordingly, § 8401.103(a) provides that a Commission employee, other than a special Government employee, must obtain the advance written approval from the employee's immediate supervisor and the DAEO before engaging in any outside employment. This section also sets forth the minimum information required to be included in the request for prior approval.

Section 8401.103(b) provides that approval shall be granted only upon a determination that the outside employment is not expected to involve conduct prohibited by statute or Federal regulation, including 5 CFR part 2635 and the Commission's supplemental standards of ethical conduct at this new part 8401 of 5 CFR.

''Employment'' is broadly defined in § 8401.103(c)(1) to cover services as an agent, contractor, general partner, teacher, trustee, or writing when done under an arrangement with another person for production or publication of the written product. It does not, however, include participation in the activities of a nonprofit charitable, religious, professional, or public service organization, unless such activities involve providing professional services as defined in 5 CFR 2636.305(b)(1) or are for compensation other than reimbursement of expenses.

III. Repeal and Revision of Commission Employee Responsibilities and Conduct Regulations

The Commission is repealing its old employee responsibilities and conduct regulations codified at 29 CFR part 2703 which have been superseded by the new executive branch standards of ethical conduct and financial disclosure regulations, 5 CFR parts 2634 and 2635, and the Commission's supplemental standards of ethical conduct established by this rulemaking. In place of its old standards, the Commission is issuing a residual cross-reference provision at new 29 CFR 2703.1 to refer to the executive branch-wide Standards and financial disclosure regulations and to the Commission's new supplemental standards of ethical conduct.

In addition, in accordance with the ethics program responsibility of an agency head, at 5 CFR 2638.202(b), to select a DAEO and alternate DAEO, the Commission is including in 29 CFR part 2703 a new § 2703.2, which provides that the Chairman of the Commission shall appoint such officials to coordinate and manage the Commission's ethics program. Finally, the Commission is retaining in 29 CFR part 2703 the regulatory waiver at § 2703.09(c) (now being redesignated as § 2703.3) which was issued under the prior version of 18 U.S.C. 208(b)(2) (1988) and which has remained in effect pending OGE's issuance of superseding executive branch-wide regulatory waivers.

IV. Matters of Regulatory Procedure

Administrative Procedure Act

The Commission has determined that these rules relate solely to agency organization, procedure, and practice. Therefore, the provisions of the Administrative Procedure Act, as codified at 5 U.S.C. 553, generally requiring notice of proposed rulemaking and other opportunity for public participation, are not applicable. The Commission further finds that there is good cause to make these rules, which are necessary to the successful implementation of the Commission's ethics program, effective upon publication in the Federal Register.

E.O. 12866, Regulatory Planning and Review

The Commission has determined that these rules are not subject to Office of Management and Budget review under Executive Order 12866.

Regulatory Flexibility Act

The Commission has determined under the Regulatory Flexibility Act (5 U.S.C. 601–611) that these rules will not have significant economic impact on a substantial number of small entities because they affect only Commission employees. Therefore, a Regulatory Flexibility Statement and Analysis has not been prepared.

Paperwork Reduction Act

The Commission has determined that the Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because these rules do not contain any information collection requirements that require the approval of the Office of Management and Budget.

List of Subjects in 5 CFR Part 8401 and 29 CFR Part 2703

Conflict of interests, Executive branch standards of conduct, Government employees.

Dated: July 18, 1996.

Mary Lu Jordan,

Chairman, Federal Mine Safety and Health Review Commission.

Approved: July 19, 1996.

Stephen D. Potts,

Director, Office of Government Ethics.

For the reasons set forth in the preamble, the Federal Mine Safety and Health Review Commission, with the concurrence of the Office of Government Ethics, is amending title 5 and title 29 of the Code of Federal Regulations as follows:

TITLE 5—[AMENDED]

1. A new chapter LXXIV, consisting of part 8401, is added to title 5 of the Code of Federal Regulations to read as follows:

CHAPTER LXXIV—FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

PART 8401—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sec.
8401.101 General.
8401.102 Prohibited financial interests.
8401.103 Prior approval for outside employment.

Authority: 5 U.S.C. 7301; 5 U.S.C. App. (Ethics in Government Act of 1978); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp. p. 306; 5 CFR 2635.105, 2635.403(a), 2635.802(a), 2635.803.

§ 8401.101 General.

In accordance with 5 CFR 2635.105, the regulations in this part apply to the employees of the Federal Mine Safety and Health Review Commission (Commission) and supplement the Standards of Ethical Conduct for Employees of the Executive Branch at 5 CFR part 2635. Commission employees also are subject to the executive branch financial disclosure regulations at 5 CFR part 2634.

§ 8401.102 Prohibited financial interests.

(a) *Prohibition.* Except as provided in this section, no employee (other than a special Government employee), or spouse or minor child of such an employee, shall have a financial interest, including compensated employment or indebtedness, in any company or other person engaged in mining activities subject to the Federal Mine Safety and Health Act of 1977 (Federal Mine Safety and Health Act), 30 U.S.C. 801 et seq.

(b) *Exceptions.* (1) This section does not prohibit an employee, or the spouse or minor child of an employee, from investing in a publicly traded or publicly available investment fund which, in its prospectus, does not indicate the objective or practice of concentrating its investments in the securities of any company or other person engaged in mining activities subject to the Federal Mine Safety and Health Act, provided that the employee neither:

(i) Exercises control over the financial interests held in the fund; nor

(ii) Has the ability to exercise control over the financial interests held in the fund.

(2)(i) Unless divestiture is required by paragraph (c) of this section, this section does not prohibit an employee, or the spouse or minor child of an employee, from owning or controlling securities of any company or other person engaged in mining activities subject to the Federal Mine Safety and Health Act, whenever:

(A) Ownership or control was acquired prior to the employee's commencement of employment, through a change in marital status, or through circumstances beyond the employee's control and without the appearance of attempting to circumvent the prohibitions in this section, such as acquisition by inheritance, gift, or merger, acquisition or other change in corporate ownership, provided that: (*1*) The employee makes full, written disclosure to the designated agency ethics official within 30 days after the security is acquired or the employment is commenced; and

(*2*) The employee is disqualified from participating in any decision, examination, audit, or other particular matter having a direct and predictable effect on such company or other person, in which the employee holds a direct or indirect interest.

(B) The securities result from a stock split, stock dividend or the exercise of preemptive rights arising out of securities permitted by paragraph (b)(2)(i)(A) of this section. This paragraph does not permit the holding of stocks purchased through voluntary reinvestment of cash dividends.

(ii) For purposes of this section, the term ''securities'' includes all interests in debt or equity instruments. The term includes, without limitation, secured and unsecured bonds, debentures, notes, securitized assets and commercial paper, as well as all types of preferred and common stock. The term encompasses both current and contingent ownership interests, including any beneficial or legal interest derived from a trust. It extends to any right to acquire or dispose of any long or short position in such securities and includes, without limitation, interests convertible into such securities, as well as options, rights, warrants, puts, calls, and straddles with respect thereto.

(c) *Divestiture.* The designated agency ethics official may require an employee to divest a security the employee is otherwise authorized to retain under paragraph (b)(2) of this section, based on a determination of substantial conflict under § 2635.403(b) of this title.

(d) *Waivers.* The designated agency ethics official may grant a written

waiver from the prohibition contained in this section based on a determination that the waiver is not inconsistent with 5 CFR part 2635 or otherwise prohibited by law and that, under the particular circumstances, application of the prohibition is not necessary to avoid the appearance of misuse of position or loss of impartiality, or otherwise to ensure confidence in the impartiality and objectivity with which Commission programs are administered. A waiver under this paragraph may be accompanied by appropriate conditions, such as requiring execution of a written statement of disqualification. Notwithstanding the grant of any waiver, an employee remains subject to the disqualification requirements of 5 CFR 2635.402 and 2635.502.

§ 8401.103 Prior approval for outside employment.

(a) *Prior approval requirement.* (1) Before engaging in any outside employment, whether or not for compensation, a Commission employee who is classified at GS–13 or above, as well a Commission attorney at any grade level, must obtain the written approval of the employee's immediate supervisor and the designated agency ethics official. This requirement does not apply to a special Government employee of the Commission.

(2) Requests for approval shall be forwarded through the employee's immediate supervisor to the designated agency ethics official and shall include at a minimum the name of the person, group, or organization for whom the work is to be performed; the type of work to be performed; and the proposed hours of work and approximate dates of employment.

(b) *Standard for approval.* Approval shall be granted only upon a determination that outside employment is not expected to involve conduct prohibited by statute or Federal regulation, including 5 CFR 2635 and this part.

(c) *Definitions.* For purposes of this section:

(1) *Employment* means any form of non-Federal employment or business relationship involving the provision of personal services by the employee. It includes but is not limited to personal services as an officer, director, employee, agent, attorney, consultant, contractor, general partner, trustee or teacher. It also includes writing when done under an arrangement with another person for production or publication of the written product. It does not, however, include participation in the activities of a nonprofit charitable, religious, professional, social, fraternal, educational, recreational, public service or civic organization, unless such activities involve the provision of professional services or advice or are for compensation other than reimbursement expenses.

(2) *Professional services* means the provision of personal services by an employee, including the rendering of advice or consultation, which involves application of the skills of a profession as defined in 5 CFR 2636.305(b)(1).

TITLE 29—[AMENDED]

CHAPTER XXVII—FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

2. Part 2703 of 29 CFR chapter XXVII is revised to read as follows:

PART 2703—EMPLOYEE RESPONSIBILITIES AND CONDUCT

Sec.

2703.1 Cross-reference to employee ethical conduct standards and financial disclosure regulations.
2703.2 Designated Agency Ethics Official and Alternate Designated Agency Ethics Official.
2703.3 Conflict of interest exemption.

Authority: 5 U.S.C. 7301; 18 U.S.C. 208; 5 CFR 2638.202.

§ 2703.1 Cross-reference to employee ethical conduct standards and financial disclosure regulations.

Members and employees of the Federal Mine Safety and Review Commission are subject to the executive branch-wide Standards of Ethical Conduct at 5 CFR part 2635; the Commission's regulations at 5 CFR part 8401, which supplement the executive branch-wide standards; and the executive branch-wide financial disclosure regulations at 5 CFR part 2634.

§ 2703.2 Designated Agency Ethics Official and Alternate Designated Agency Ethics Official.

The Chairman shall appoint an individual to serve as the designated agency ethics official, and an individual to serve in an acting capacity in the absence of the primary designated agency ethics official (alternate designated agency ethics official), to coordinate and manage the Commission's ethics program.

§ 2703.3 Conflict of interest exemption.

The financial interests hereinafter described are, to the extent indicated, exempted from application of the financial conflict of interest prohibition at 18 U.S.C. 208(a) because they have been determined to be too remote or inconsequential to affect the integrity of a Commission employee's services in any matter in which he may act in an official capacity:

Ownership of shares of stock, bonds, other corporate securities, or shares in a mutual fund or regulated fund or regulated investment company, so long as the current aggregate fair market value of such holdings in a single enterprise does not exceed $5,000.

[FR Doc. 96–19393 Filed 7–30–96; 8:45 am]

BILLING CODE 6735–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD08–96–025]

RIN 2115–AE47

Drawbridge Operation Regulations; Red River, LA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This rule removes the regulation for the Kansas City Southern Railroad Bridge across the Red River, mile 88.0 at Alexandria, Rapides Parish, Louisiana because the swing span bridge has been removed.

EFFECTIVE DATE: This regulation is effective on July 31, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Phil Johnson, Bridge Administration Branch, (504) 589–2965.

SUPPLEMENTARY INFORMATION:

Background and Purpose

The Kansas City Railroad Bridge was removed from service and demolished on May 3, 1996. Since there is no longer a drawbridge at this location, there is no longer a need for the drawbridge operation regulation.

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making the regulation effective less than 30 days after Federal Register publication. Publishing a notice of proposed rulemaking and delaying the effective date are impracticable and unnecessary because the swing span of the bridge is no longer in existence.

Regulatory Evaluation

This rule is not a significant regulatory action under Executive Order 12866 and is not significant under the DOT Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that

a full Regulatory Evaluation is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this rule will have a significant economic impact on a substantial number of small entities. ''Small entities'' include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as ''small business concerns'' under section 3 of the Small Business Act (15 U.S.C. 632). This rule will have little impact on either vehicular or navigational traffic. Because it expects the impact of this final rule to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that it will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under section 2.B.2 of Commandant Instruction M16475.1 (series), this proposal is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continued to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

§ 117.491 [Amended]

2. In § 117.491, paragraph (b) is removed and (c), (d), (e) and (f) are redesignated (b), (c), (d) and (e), respectively.

Dated: July 11, 1996.

T.W. Josian,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 96–19479 Filed 7–30–96; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 4

RIN 2900–AE95

Schedule for Rating Disabilities; Infectious Diseases, Immune Disorders and Nutritional Deficiencies (Systemic Conditions)

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends that portion of the Department of Veterans Affairs (VA) Schedule for Rating Disabilities concerning Infectious Diseases, Immune Disorders and Nutritional Deficiencies (formerly entitled Systemic Conditions). The effect of this action is to update this portion of the rating schedule to ensure that it uses current medical terminology, unambiguous criteria, and that it reflects medical advances that have occurred since the last review.

EFFECTIVE DATE: This amendment is effective August 30, 1996.

FOR FURTHER INFORMATION CONTACT: Caroll McBrine, M.D., Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Ave. NW, Washington DC, 20420, (202) 273–7230.

SUPPLEMENTARY INFORMATION: As part of the first comprehensive review of its Schedule for Rating Disabilities since 1945, VA published in the Federal Register of April 30, 1993 (58 FR 26083–87) a proposal to amend the portion of the Schedule for Rating Disabilities concerning Systemic Conditions. This document has renamed that portion of the rating schedule as Infectious Diseases, Immune Disorders and Nutritional Deficiencies. Interested persons were invited to submit written comments on or before June 29, 1993. We received comments from the Disabled American Veterans and the Paralyzed Veterans of America.

The final rule includes a diagnostic code (DC 6354) and diagnostic criteria (38 CFR 4.88a) for chronic fatigue syndrome. These provisions for chronic fatigue syndrome were added to the portion of the rating schedule then titled Systemic Conditions by a final rule published in the Federal Register of July 19, 1995 (60 FR 37012–13).

We proposed to reduce or eliminate the convalescence periods for several infectious diseases, and both commenters disagreed with those proposals.

We proposed to change the convalescent periods for Asiatic cholera (DC 6300), Bartonellosis (DC 6306), and scrub typhus (DC 6317) from six months to three months, noting that when treated in a straightforward manner, the active phase of the diseases resolves quickly, and need for convalescence is typically much less than six months. One commenter questioned what ''treated in a straightforward manner'' means. A second commenter felt that a shorter convalescent period for Bartonellosis is not justified because convalescence is slow, and gradual normalization of red blood cell mass begins three to six weeks after onset of disease.

The six-month periods of convalescence for these conditions were established prior to the modern antibiotic era, and were appropriate at the time. However, with modern therapy, the course of these infectious diseases has dramatically improved. Scrub typhus deaths are rare, and convalescence is short (''Harrison's Principles of Internal Medicine'' 760 (Jean D. Wilson, M.D., et al., eds., 12th ed. 1991)); with specific therapy, recovery is prompt and uneventful (''The Merck Manual'' 173 16th ed. 1992). Similarly, treatment for Asiatic cholera is simple, and the condition is self-limited to a few days (Harrison, 632). Bartonellosis responds rapidly to antibiotics and the red blood cells stabilize in about six weeks (Harrison, 634). While the characteristic severe anemia that occurs in an individual with Bartonellosis may require time after treatment to resolve, three months is an adequate period of convalescence in the average person. We have therefore adopted the proposed provisions, which provide for a three-month convalescent evaluation for these conditions.

The previous schedule called for a 100 percent evaluation for leprosy (DC 6302) as active disease and for one year's convalescence. We proposed to remove the one-year period of convalescence. One commenter said that a convalescent period should be retained because of the serious nature of the disease, and another questioned whether there is a medical basis for the change.

On further consideration, VA agrees that a continued 100 percent evaluation

for convalescence of leprosy is warranted because the disease is debilitating, sometimes extremely so, and a period of convalescence is warranted to allow recovery of strength. Accordingly, we have amended DC 6302 to continue the 100 percent evaluation indefinitely when the disease is no longer active. Further, the final rule amends DC 6302 to require an examination six months after the date that an examining physician has determined the leprosy is inactive. Any change in evaluation will be carried out under the provisions of § 3.105(e). This will assure that a total evaluation will continue long enough to allow recovery from the debilitating effects of the disease, and will also assure that the extent of any residual impairment is documented by examination. This method of determining the duration of the period of convalescence is consistent with the method we have used following treatment of malignancies, in previously published rules that revised other sections of the rating schedule.

The previous schedule provided a 100 percent evaluation for visceral leishmaniasis (DC 6301) as active disease and for one year's convalescence. We proposed to remove the one-year period of convalescence. One commenter questioned whether there is any medical basis for the change. Another commenter said that visceral leishmaniasis is still a debilitating disease and warrants a reasonable convalescent period.

In view of the frequency of debilitation in visceral leishmaniasis, with findings such as hepatosplenomegaly, emaciation, and pancytopenia, we have determined that a period of convalescence for DC 6302 similar to that for leprosy is appropriate. We have added a note to continue the 100 percent evaluation indefinitely when treatment for active leishmaniasis has been completed, and to require an examination six months after cessation of treatment. Any change in evaluation will be carried out under the provisions of § 3.105(e). This will assure that a total evaluation will continue long enough to allow recovery from the debilitating effects of the disease, and will also assure that the extent of any residual impairment is documented by examination.

Another commenter stated that any reduction in the convalescence period exceeds the Congressional mandate that ratings be based upon ''average impairment.''

VA does not concur. The convalescence periods adopted in this change, as discussed above, represent, in our judgment, neither the longest nor the shortest periods that any individual patient might require for recovery, but the usual or normal periods during which an average patient, under normal circumstances, would be expected to recover from a specific condition.

Although the proposed regulation made only editorial changes to the evaluation criteria for beriberi, DC 6314, both commenters argued that the evaluation criteria at the 30 and 60 percent and 60 and 100 percent levels for beriberi were nearly identical and therefore unrealistic.

We agree and have revised the evaluation criteria for beriberi to reflect the different levels of disability with specific clinical symptoms. A 100 percent evaluation requires congestive heart failure, anasarca, or Wernicke-Korsakoff syndrome. The 60 percent level requires cardiomegaly or peripheral neuropathy with footdrop or atrophy of thigh or calf muscles. The 30 percent level requires peripheral neuropathy with absent knee or ankle jerk and loss of sensation or weakness, fatigue, anorexia, dizziness, heaviness and stiffness of legs, headache or sleep disturbance. The revised criteria establish clear distinctions between the evaluation levels and will allow for more realistic and consistent evaluations.

We proposed to delete the previous evaluation formula for filariasis, DC 6305, which provided a 100 percent evaluation for the initial infection or severe recurrences, 60 and 30 percent evaluations for the chronic form of the disease with beginning permanent deformity or while symptomatic, and a zero percent evaluation if the disease subsided after a single attack. A second set of evaluation criteria for permanent deformities of an extremity or of the genitalia provided levels of 60 percent for ''severe,'' 30 percent for ''moderate,'' and 10 percent for ''mild,'' and these evaluations for permanent deformities could be combined among themselves to cover multiple involvements. We proposed to provide a 100 percent evaluation while the disease is active, and to rate the residuals of the disease under the appropriate body system. One commenter felt that deleting the formula does not improve the schedule because the peculiarities of the disease require more detailed evaluation criteria.

We do not agree. The previous dual formula, plus the subjectivity of criteria such as ''mild'', may have resulted in inconsistent evaluations.

Any time the disease is active, it produces total disability, and this is reflected in the new criteria. The most equitable and consistent way to evaluate chronic residuals such as lymphadenitis or deformities of an extremity or of the genitalia, however, is to use evaluation criteria specifically intended for the body system affected. While allowing for the broadest possible scope of evaluations, this method will also assure more consistent evaluations because they will be based on more objective criteria.

One commenter felt that the criteria for evaluation of HIV-Related Illness, DC 6351, should be based on the 1993 revised classification system for the disease issued by the Center for Disease Control (CDC).

VA's Schedule for Rating Disabilities is designed to evaluate functional impairment (See 38 CFR 4.10), whereas the CDC classification system for HIV infection is designed to guide the medical management of persons infected with HIV and for HIV infection surveillance. Under the CDC classification system, an individual is placed in one of three categories based on the presence of clinical conditions associated with HIV infection and on T4 cell counts. The condition is always classified at the most advanced category it has reached even though the specific complication or infection warranting the classification subsequently resolves. That system is clearly not compatible with VA's Schedule for Rating Disabilities because the severity of the functional impairment caused by the conditions used to categorize the HIV infection under the CDC system varies significantly.

One commenter, noting that there were no zero percent evaluations proposed for any conditions other than HIV-Related Illness, suggested that we add zero percent evaluations for every diagnostic code in this section.

On October 6, 1993, VA revised its regulation addressing the issue of zero percent evaluations (38 CFR 4.31) to authorize assignment of a zero percent evaluation for any disability in the rating schedule when minimum requirements for a compensable evaluation are not met. In general, that regulatory provision precludes the need for zero percent evaluation criteria unless the predictable effects of a particular condition are likely to result in a situation where a rating agency must determine whether a commonly occurring finding more nearly approximates the requirements for a ten percent or zero percent evaluation. (*See* 38 CFR 4.7.) Such a situation is the presence of lymphadenopathy in an otherwise asymptomatic individual who is HIV positive. In our judgment, lymphadenopathy does not warrant a ten percent evaluation, and in order to

ensure that rating agencies consistently assign a zero percent evaluation, we have included zero percent evaluation criteria under DC 6351. For the five other conditions in this section where we have provided multiple evaluation levels, in our judgment there are no commonly occurring effects that would make it unclear as to whether a zero or higher evaluation would be warranted.

The proposed rule, which would require stomatitis, persistent diarrhea and symmetrical dermatitis for a 40 percent evaluation for pellagra, DC 6315, was substantially unchanged from the previous rule.

One commenter felt that the requirement of ''persistent diarrhea'' is too stringent. He noted that the term ''persistent'' is qualitative and suggested that it be replaced with a more reasonable, quantifiable alternative, but offered no alternate language for us to consider.

We agree in principle and have revised the criteria for both pellagra and avitaminosis (DC 6313), which have the same evaluation formula. While retaining the five evaluation levels, we have removed the adjectives modifying diarrhea in the 40 and 20 percent levels, and deleted the requirement for diarrhea at the 10 percent level. Without changing the essence of the criteria, this will give the rater clear instructions as to how to evaluate the disability and eliminate qualitative adjectives from the evaluation criteria.

The previous evaluation formula for brucellosis, DC 6316, provided a 100 percent evaluation for the active febrile disease with complications such as arthritis; 50, 30 and 10 percent evaluations for the chronic form of the disease; and a Note instructing the rating specialist to rate complications separately. We proposed to revise this formula to provide a 100 percent evaluation while the disease is active, and to rate the residuals of the disease under the appropriate body system. One commenter felt that unless the previous evaluation criteria for brucellosis are retained, recurrent febrile undulation cannot be properly evaluated.

We disagree. The criteria in the previous rating schedule could lead to inconsistency in evaluations because arthritis and other complications were included as part of a 100 percent evaluation, but were also identified in the note as complications to be rated separately. By providing clear instructions to evaluate the active form of the disease as totally disabling and to rate residuals under the appropriate body system, any ambiguity is removed from this evaluation formula. The undulating or intermittent fever form of this disease is rare (Cecil, *Textbook of Medicine,* 19th edition, p.1727–8), but, in any event, it would be evaluated as the active incapacitating febrile stage and would be assigned a 100 percent evaluation.

We have revised the note proposed under DC 6350 (lupus erythematosus), to make it more clear that lupus erythematosus is evaluated either by combining the evaluations for residuals or by evaluating under the DC 6350 criteria, whichever method results in a higher evaluation.

VA appreciates the comments submitted in response to the proposed rule, which is now adopted as a final rule with the changes noted above.

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

This regulatory action has been reviewed by the Office of Management and Budget under Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993.

The Catalog of Federal Domestic Assistance numbers are 64.104 and 64.109.

List of Subjects in 38 CFR Part 4

Disability benefits, Individuals with disabilities, Pensions, Veterans.

Approved: March 7, 1996.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 4 is amended as set forth below:

PART 4—SCHEDULE FOR RATING DISABILITIES

1. The authority citation for part 4 continues to read as follows:

Authority: 38 U.S.C. 1155.

Subpart B—Disability Ratings

2. The undesignated center heading appearing before § 4.88 is revised to read as follows:

Infectious Diseases, Immune Disorders and Nutritional Deficiencies

4.88 [Removed and reserved]

3. Section 4.88 is removed and that section is reserved.

4. Section 4.88b is revised to read as follows:

§ 4.88b Schedule of ratings—infectious diseases, immune disorders and nutritional deficiencies.

	Rating
6300 Cholera, Asiatic:	
As active disease, and for 3 months convalescence	100
Thereafter rate residuals such as renal necrosis under the appropriate system	
6301 Visceral Leishmaniasis:	
During treatment for active disease	100
NOTE: A 100 percent evaluation shall continue beyond the cessation of treatment for active disease. Six months after discontinuance of such treatment, the appropriate disability rating shall be determined by mandatory VA examination. Any change in evaluation based upon that or any subsequent examination shall be subject to the provisions of § 3.105(e) of this chapter. Rate residuals such as liver damage or lymphadenopathy under the appropriate system	
6302 Leprosy (Hansen's Disease):	
As active disease	100
NOTE: A 100 percent evaluation shall continue beyond the date that an examining physician has determined that this has become inactive. Six months after the date of inactivity, the appropriate disability rating shall be determined by mandatory VA examination. Any change in evaluation based upon that or any subsequent examination shall be subject to the provisions of § 3.105(e) of this chapter. Rate residuals such as skin lesions or peripheral neuropathy under the appropriate system	
6304 Malaria:	
As active disease	100

	Rating
NOTE: The diagnosis of malaria depends on the identification of the malarial parasites in blood smears. If the veteran served in an endemic area and presents signs and symptoms compatible with malaria, the diagnosis may be based on clinical grounds alone. Relapses must be confirmed by the presence of malarial parasites in blood smears	
Thereafter rate residuals such as liver or spleen damage under the appropriate system	
6305 Lymphatic Filariasis:	
As active disease	100
Thereafter rate residuals such as epididymitis or lymphangitis under the appropriate system	
6306 Bartonellosis:	
As active disease, and for 3 months convalescence	100
Thereafter rate residuals such as skin lesions under the appropriate system	
6307 Plague:	
As active disease	100
Thereafter rate residuals such as lymphadenopathy under the appropriate system	
6308 Relapsing Fever:	
As active disease	100
Thereafter rate residuals such as liver or spleen damage or central nervous system involvement under the appropriate system	
6309 Rheumatic fever:	
As active disease	100
Thereafter rate residuals such as heart damage under the appropriate system	
6310 Syphilis, and other treponemal infections:	
Rate the complications of nervous system, vascular system, eyes or ears. (See DC 7004, syphilitic heart disease, DC 8013, cerebrospinal syphilis, DC 8014, meningovascular syphilis, DC 8015, tabes dorsalis, and DC 9301, dementia associated with central nervous system syphilis)	
6311 Tuberculosis, miliary:	
As active disease	100
Inactive: See §§ 4.88c and 4.89.	
6313 Avitaminosis:	
Marked mental changes, moist dermatitis, inability to retain adequate nourishment, exhaustion, and cachexia	100
With all of the symptoms listed below, plus mental symptoms and impaired bodily vigor	60
With stomatitis, diarrhea, and symmetrical dermatitis	40
With stomatitis, or achlorhydria, or diarrhea	20
Confirmed diagnosis with nonspecific symptoms such as: decreased appetite, weight loss, abdominal discomfort, weakness, inability to concentrate and irritability	10
6314 Beriberi:	
As active disease:	
With congestive heart failure, anasarca, or Wernicke-Korsakoff syndrome	100
With cardiomegaly, or; with peripheral neuropathy with footdrop or atrophy of thigh or calf muscles	60
With peripheral neuropathy with absent knee or ankle jerks and loss of sensation, or; with symptoms such as weakness, fatigue, anorexia, dizziness, heaviness and stiffness of legs, headache or sleep disturbance	30
Thereafter rate residuals under the appropriate body system.	
6315 Pellagra:	
Marked mental changes, moist dermatitis, inability to retain adequate nourishment, exhaustion, and cachexia	100
With all of the symptoms listed below, plus mental symptoms and impaired bodily vigor	60
With stomatitis, diarrhea, and symmetrical dermatitis	40
With stomatitis, or achlorhydria, or diarrhea	20
Confirmed diagnosis with nonspecific symptoms such as: decreased appetite, weight loss, abdominal discomfort, weakness, inability to concentrate and irritability	10
6316 Brucellosis:	
As active disease	100
Thereafter rate residuals such as liver or spleen damage or meningitis under the appropriate system	
6317 Typhus, scrub:	
As active disease, and for 3 months convalescence	100
Thereafter rate residuals such as spleen damage or skin conditions under the appropriate system	
6318 Melioidosis:	
As active disease	100
Thereafter rate residuals such as arthritis, lung lesions or meningitis under the appropriate system	
6319 Lyme Disease:	
As active disease	100
Thereafter rate residuals such as arthritis under the appropriate system	
6320 Parasitic diseases otherwise not specified:	
As active disease	100
Thereafter rate residuals such as spleen or liver damage under the appropriate system	
6350 Lupus erythematosus, systemic (disseminated):	
Not to be combined with ratings under DC 7809 Acute, with frequent exacerbations, producing severe impairment of health	100
Exacerbations lasting a week or more, 2 or 3 times per year	60
Exacerbations once or twice a year or symptomatic during the past 2 years	10
NOTE: Evaluate this condition either by combining the evaluations for residuals under the appropriate system, or by evaluating DC 6350, whichever method results in a higher evaluation	
6351 HIV-Related Illness:	
AIDS with recurrent opportunistic infections or with secondary diseases afflicting multiple body systems; HIV-related illness with debility and progressive weight loss, without remission, or few or brief remissions	100
Refractory constitutional symptoms, diarrhea, and pathological weight loss, or; minimum rating following development of AIDS-related opportunistic infection or neoplasm	60

	Rating
Recurrent constitutional symptoms, intermittent diarrhea, and on approved medication(s), or; minimum rating with T4 cell count less than 200, or Hairy Cell Leukoplakia, or Oral Candidiasis	30
Following development of definite medical symptoms, T4 cell of 200 or more and less than 500, and on approved medication(s), or; with evidence of depression or memory loss with employment limitations	10
Asymptomatic, following initial diagnosis of HIV infection, with or without lymphadenopathy or decreased T4 cell count	0
NOTE (1): The term ''approved medication(s)'' includes medications prescribed as part of a research protocol at an accredited medical institution.	
NOTE (2): Psychiatric or central nervous system manifestations, opportunistic infections, and neoplasms may be rated separately under appropriate codes if higher overall evaluation results, but not in combination with percentages otherwise assignable above	
6354 Chronic Fatigue Syndrome (CFS):	
Debilitating fatigue, cognitive impairments (such as inability to concentrate, forgetfulness, confusion), or a combination of other signs and symptoms:	
Which are nearly constant and so severe as to restrict routine daily activities almost completely and which may occasionally preclude self-care	100
Which are nearly constant and restrict routine daily activities to less than 50 percent of the pre-illness level, or; which wax and wane, resulting in periods of incapacitation of at least six weeks total duration per year	60
Which are nearly constant and restrict routine daily activities to 50 to 75 percent of the pre-illness level, or; which wax and wane, resulting in periods of incapacitation of at least four but less than six weeks total duration per year	40
Which are nearly constant and restrict routine daily activities by less than 25 percent of the pre-illness level, or; which wax and wane, resulting in periods of incapacitation of at least two but less than four weeks total duration per year	20
Which wax and wane but result in periods of incapacitation of at least one but less than two weeks total duration per year, or; symptoms controlled by continuous medication	10
NOTE: For the purpose of evaluating this disability, the condition will be considered incapacitating only while it requires bed rest and treatment by a physician.	

[FR Doc. 96–19386 Filed 7–30–96; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 55 and 71

[FRL–5545–1]

State and Local Jurisdictions Where a Federal Operating Permits Program Is Effective on July 31, 1996

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of States and local jurisdictions subject to 40 CFR parts 55 and 71.

SUMMARY: On July 1, 1996, pursuant to title V of the Clean Air Act (Act) as amended in 1990, EPA published a new regulation at 61 FR 34202 (codified as 40 CFR part 71) setting forth the procedures and terms under which the Administrator will issue operating permits to covered stationary sources. This rule, called the ''Part 71 rule,'' becomes effective on July 31, 1996. In general, the primary responsibility for issuing operating permits to sources rests with State, local, and Tribal air agencies. However, EPA will administer a Federal operating permits program in areas that lack an EPA-approved or adequately administered operating permits program and in other limited situations. The Federal operating permits program will serve as a ''safety net'' to ensure that sources of air pollution are meeting their permitting requirements under the Act. Federally-issued permits will meet the same title V requirements as do state-issued permits. The purpose of this document is to provide the names of those State and local jurisdictions where a Federal operating permits program is effective on July 31, 1996.

FOR FURTHER INFORMATION CONTACT: Scott Voorhees at (919) 541–5348.

SUPPLEMENTARY INFORMATION:

I. Background, Authority and Purpose

Title V of the Act as amended in 1990 (42 U.S.C. 7661 *et seq.*) directs States to develop, administer, and enforce operating permits programs that comply with the requirements of title V (section 502(d)(l)). Section 502(b) of the Act requires that EPA promulgate regulations setting forth provisions under which States develop operating permits programs and submit them to EPA for approval. Pursuant to this section, EPA promulgated 40 CFR part 70 on July 21, 1992 (57 FR 32250), which specifies the minimum elements of approvable State operating permits programs.

Sections 502(d)(3) and 502(i)(4) of the Act require EPA to promulgate a Federal operating permits program when a State does not obtain approval of its program within the timeframe set by title V or when a State fails to adequately administer and enforce an approved program. The part 71 rule published on July 1, 1996 establishes a national template for a Federal operating permits program that EPA will administer and enforce in those situations. Part 71 also establishes the procedures for issuing Federal permits to sources for which States do not have jurisdiction (e.g., Outer Continental Shelf sources outside of State jurisdictions and sources located in Indian Country over which EPA or Indian Tribes have jurisdiction). In addition, part 71 establishes the procedures to be used when EPA must take action on a permit that has been proposed or issued by an approved part 70 permitting authority but that EPA determines is not in compliance with the applicable requirements of the Act. Finally, part 71 provides for delegation of certain duties that may provide for a smoother program transition when part 70 programs are approved.

This notice makes frequent use of the term ''State.'' This term includes a State or a local air pollution control agency that would be the permitting authority for a part 70 permit program. The term ''permitting authority'' can refer to State, local, or Tribal agencies and may also apply to EPA, where the Agency is the permitting authority of record.

II. Description of Action

The EPA is, by this notice, providing a list of State and local jurisdictions where EPA will assume responsibility to issue permits, effective as of July 31, 1996. Included are three U.S. territories where EPA is assuming responsibility to issue permits to major sources of hazardous air pollutants (HAP) and solid waste incinerators. The EPA has received submittals from all 56 State and Territorial Agencies and all 60 local programs. The EPA has already approved the majority of operating permits programs, including 42 State

and 56 local programs. As a result, EPA expects that the impact of the Federal operating permits rule will be minimal, affecting only a few States that do not yet have approved programs in place. Moreover, EPA expects that several of the States identified in this notice will have their programs approved before significant resources would need to be expended in implementing Federal programs in those States.

The EPA has worked closely with stakeholders, including representatives from industry and environmental groups, and State and local agencies, over the past 2 years to streamline and improve the title V operating permits program. The EPA has proposed a series of initiatives, including revisions to its part 70 operating permits rule and two important guidance documents (''White Papers''), that EPA expects will significantly streamline and simplify the process for revising operating permits and other provisions of the program, and reduce recordkeeping and reporting requirements.

The Federal operating permits rule also provides a mechanism for improving air quality management in areas in Indian Country under the jurisdiction of EPA or Indian Tribes, where tribal resources may be unavailable to implement operating permits programs.

Section 71.5(b)(1) of part 71 provides that a timely application is one that is submitted within 12 months or an earlier date after the source becomes subject to the part 71 program. Because part 71 is effective on July 31, 1996, sources are required to submit part 71 permit applications no later than July 31, 1997. Sources required to submit applications earlier than 12 months will be notified in advance by the permitting authority (whether it is EPA or a State in the case of a delegated part 71 program) and given a reasonable time to submit their applications. In no case will this notice be given less than 180 days in advance of the deadline for submittal of the application.

III. List of States and Local Jurisdictions

Connecticut—Connecticut submitted a complete program implementing part 70 on September 28, 1995. The EPA's Region I is currently reviewing the State's program and expects to propose approval of the State's program in the near future. The reason for the delay in proposing approval of Connecticut's title V program is due to the State's innovative approach toward addressing some of the core areas of a part 70 program. Until Connecticut's program receives EPA approval, part 71 is effective in the State. Sources should continue to work with the State in developing their title V applications. Although part 71 applications are due to be submitted to the permitting authority by July 31, 1997 (and some may be due earlier if sources are informed of such by EPA, or by Connecticut if EPA delegates administration of part 71 to the State), the part 71 application deadline will be superceded by the State's part 70 application deadline if EPA finalizes approval of Connecticut's part 70 program prior to the part 71 application deadline. For further information on application due dates and details about how to obtain and submit part 71 applications, contact Mr. Donald Dahl, U.S. Environmental Protection Agency, Air Permits Unit, Mail Code: CAP, J.F.K. Federal Building, Boston, MA 02203. Telephone: (617) 565–4298.

Maine—Maine submitted a complete program implementing part 70 on October 23, 1995. The EPA's Region I is currently reviewing the State's program and expects to propose approval in the near future. The reason for the delay in proposing approval of Maine's title V program is due to the State's implementing regulations which merge the part 70 program, new source review program, and an existing state licensing program, together into one regulation. Until Maine's program receives EPA approval, part 71 is effective in the State. If EPA is unable to approve Maine's program within a reasonable time, EPA expects that the part 71 Federal operating permits program will be delegated to Maine for implementation. Once a delegation agreement is signed, a notice announcing the delegation of a part 71 program to Maine will be published in the Federal Register and widely-circulated newspapers in the State of Maine. Under a delegation, the State will be able to use its own application forms provided EPA finds that the State's application form substantially meets the application information requirements of part 71. Sources should continue to develop and submit their completed applications to the Maine Department of Environmental Protection.

Similarly, sources should continue to expect to pay permit fees to Maine according to the State statute. Although part 71 applications are due to be submitted to the permitting authority by July 31, 1997 (and some may be due earlier if sources are informed of such by EPA, or by Maine if EPA delegates administration of part 71 to the State), the part 71 application deadline will be superceded by the State's part 70 application deadline if EPA finalizes approval of Maine's part 70 program prior to the part 71 application deadline. For further details about how to obtain and submit Maine permit applications, contact Mr. Marc Cone, Bureau of Air Quality Control, Maine Department of Environmental Protection, 17 State House Station, Augusta, Maine, 04333–0017. Telephone: (207) 287–2437. For general information regarding approval of Maine's part 70 program and the applicability and implementation of part 71 in the State, contact Mr. Donald Dahl, U.S. Environmental Protection Agency, Air Permits Unit, Mail Code: CAP, J.F.K. Federal Building, Boston, MA 02203. Telephone: (617) 565–4298.

New Hampshire—New Hampshire submitted a complete program implementing part 70 on October 26, 1995. The EPA's Region I is currently reviewing the State's program and expects to propose approval in the near future. The reason for the delay in proposing approval of New Hampshire's part 70 program is due to determining the impact on the State's part 70 program from the recently adopted State legislation regarding audits. Until New Hampshire's program receives EPA approval, part 71 is effective in the State. If EPA's Region I is unable to approve New Hampshire's program within a reasonable time, EPA expects that the part 71 Federal operating permits program will be delegated to New Hampshire for implementation. Once a delegation agreement is signed, a notice announcing the delegation of a part 71 program to New Hampshire will be published in the Federal Register and widely-circulated newspapers in the State of New Hampshire. Under a delegation, the State will be able to use its own application forms provided EPA finds that the State's application form substantially meets the application information requirements of part 71. Sources should continue to submit their applications to New Hampshire and should continue to expect to pay permit fees according to the State requirements. Although part 71 applications are due to be submitted to the permitting authority by July 31, 1997 (and some may be due earlier if sources are informed of such by EPA, or by New Hampshire if EPA delegates administration of part 71 to the State), the part 71 application deadline will be superceded by the State's part 70 application deadline if EPA finalizes approval of New Hampshire's part 70 program prior to the part 71 application deadline. For further information on New Hampshire permit applications, contact Mr.

Andrew Bodnarik, New Hampshire Air Resources Division, Department of Environmental Services, 64 North Maine Street, Concord, New Hampshire 03302–2033. Telephone: (603) 271–1370. For general information regarding approval of New Hampshire's part 70 program and the applicability and implementation of part 71 in the State, contact Ms. Ida Gagnon, U.S. Environmental Protection Agency, One Congress Street, John F. Kennedy Federal Building, Boston, MA 02203–0001. Telephone: (617) 565–3500.

Vermont—Vermont submitted a complete program implementing part 70 on April 28, 1995. The EPA's Region I proposed to grant interim approval of Vermont's title V program on May 24, 1996 (See 61 FR 26145) and expects to grant final interim approval of Vermont's program within a reasonable time. However, until Vermont's program receives EPA approval, part 71 is effective in the State. The part 71 Federal operating permits program is expected to be delegated to Vermont for implementation. Once a delegation agreement is signed, a notice announcing the delegation of a part 71 program to Vermont will be published in the Federal Register and widely-circulated newspapers in the State of Vermont. Under a delegation, the State will be able to use its own application forms provided EPA finds that the State's application form substantially meets the application information requirements of part 71. Sources should continue to submit their title V applications to the State and continue to pay permit fees to Vermont according to the State statute. Although part 71 applications are due to be submitted to the permitting authority by July 31, 1997 (and some may be due earlier if sources are informed of such by EPA, or by Vermont if EPA delegates administration of part 71 to the State), the part 71 application deadline will be superceded by the State's application deadline if EPA finalizes approval of Vermont's part 70 program prior to the part 71 application deadline. For further information on Vermont permit applications contact Mr. Brian Fitzgerald, Air Pollution Control Division, Agency of Natural Resources, Building 3 South, 103 South Main Street, Waterbury, VT 05676–1596. Telephone: (802) 241–3840. For general information regarding approval of Vermont's part 70 program and the applicability and implementation of part 71 in the State, contact Mr. Donald Dahl, U.S. Environmental Protection Agency, Air Permits Unit, Mail Code: CAP, J.F.K. Federal Building, Boston, MA 02203. Telephone: (617) 565–4298.

New York—New York submitted its complete part 70 permit program on June 17, 1996 and the Attorney General's Opinion on June 27, 1996. The EPA's Region II currently expects to propose approval of New York's part 70 program submittal in July 1996 and grant a final approval in October 1996. However, until New York's program receives EPA approval, part 71 is effective in the State. If EPA's Region II is unable to approve New York's program consistent with this time schedule, EPA expects that the part 71 Federal operating permits program will be delegated to New York for implementation. Once a delegation agreement is signed, a notice announcing the delegation of a part 71 program to New York will be published in the Federal Register and widely-circulated newspapers around New York State. Sources will then utilize New York's application form (using the two-phase application approach developed by New York) and submit completed applications to the New York State Department of Environmental Conservation. Similarly, sources should continue to expect to pay permit fees to New York under the New York State Clean Air Compliance Act signed into law by the Governor on August 19, 1993. Although part 71 applications are due to be submitted to the permitting authority by July 31, 1997 (and some may be due earlier if sources are informed of such by EPA, or by New York if EPA delegates administration of part 71 to the State), the part 71 application deadline will be superceded by the State's application deadline if EPA finalizes approval of New York's part 70 program prior to the part 71 application deadline. For further details about how to obtain and submit New York permit applications, contact Mr. John Higgins, New York State Department of Environmental Conservation, 50 Wolf Road, Albany, New York, 12233. Telephone: (518) 457–7688. For general information regarding approval of New York's part 70 program and the applicability and implementation of part 71 in the State, contact Ms. Christine Fazio, U.S. Environmental Protection Agency, 290 Broadway, 25th Floor, New York, NY 10007–1866. Telephone: (212) 637–4015.

Virginia—Virginia submitted its initial part 70 program to EPA on November 12, 1993, which it later supplemented. In a Federal Register notice published December 5, 1994 (59 Fed. Reg. 62324), EPA disapproved this program due in part to the issue of standing to challenge final permits in state court and several other issues. In early 1995 Virginia submitted amendments to its original part 70 submittal which did not address the standing issue, but which did address the other disapproval issues. Virginia argued that its standing provisions were adequate and that it had adequately addressed all other issues, and it asked EPA to approve its amended submittal. In a Federal Register notice published on September 19, 1995 (60 FR 48435), EPA again proposed to disapprove Virginia's submittal, again because of the issue of standing, and also because of certain additional new issues. Virginia has informed EPA that it will revise its standing provisions to meet EPA's requirements if the Federal Courts rule that Virginia's current standing provisions are inadequate, and that it will be submitting additional amendments to its part 70 program in an attempt to correct the program's other deficiencies.

Until EPA approves a part 70 program for Virginia, part 71 is effective in the State. Virginia has informed EPA that it will be requesting that EPA delegate to it the authority to implement the required part 71 program. Virginia's proposal will be that EPA adopt as part 71 regulations for Virginia all those portions of Virginia's part 70 regulations that meet applicable requirements, and that EPA then delegate to Virginia the authority to implement those regulations. The EPA will consider this proposal and expects to grant it if EPA finds that it is appropriate to adopt Virginia's regulation as a part 71 program for the State and that Virginia is eligible to receive such a delegation. If EPA adopts Virginia's regulations as the part 71 program for Virginia, it will do so through notice and comment rulemaking in the Federal Register. Similarly, if EPA delegates the authority to implement the part 71 program to Virginia, EPA will announce the delegation in a Federal Register notice and in newspapers widely circulated in Virginia. If EPA delegates to Virginia the authority to implement a part 71 program, Virginia's sources would be required to submit their permit applications to the Virginia Department of Environmental Quality (VADEQ). In addition, sources would be required to pay title V permit fees to Virginia. Sources would submit their applications using forms supplied by the VADEQ, provided EPA finds these forms substantially meet the application information requirements of part 71. Sources are required to submit their part 71 applications to the permitting

authority by July 31, 1997 (though sources may be required to submit their applications earlier if they are informed of such by EPA, or by Virginia if EPA delegates administration of part 71 to the State). Sources should note that the part 71 application deadline will be superseded by the State's part 70 application deadline if EPA finalizes approval of Virginia's part 70 program prior to the part 71 application deadline. Those wishing to obtain copies of the VADEQ's title V application forms, to obtain information on application submittal deadlines, and/or to obtain information on permit fees may contact Mr. Robert Beasley, Virginia Department of Environmental Quality, P.O. Box 10009, Richmond, Virginia 23240–0009, telephone number (804) 698–4115. For general information regarding approval of Virginia's part 70 program and the applicability and implementation of part 71 in the State, contact Mr. Ray Chalmers, U.S. Environmental Protection Agency, 841 Chestnut Building, Philadelphia, PA 19107, telephone number (215) 566–2061.

Michigan—Michigan submitted a complete operating permits program to EPA on July 20, 1995. The EPA proposed interim approval of Michigan's part 70 program on June 24, 1996, and expects to finalize the approval as soon as possible. Several programmatic and regulatory issues have delayed EPA's rulemaking action on Michigan's program, including issues related to the State's startup, shutdown, and malfunction regulations, environmental audit privilege and immunity law, and potential to emit exemptions. See 61 FR 32391–32398. However, until Michigan's program receives EPA approval, part 71 is effective in the State.

If EPA encounters significant delays in finalizing approval of Michigan's part 70 program, EPA intends to work with the State to delegate the part 71 program to Michigan. Such a delegation would mitigate any transition issues, such as duplicate permit application submittals and payment of fees, arising between the State permit program and the Federal part 71 program. Although part 71 applications are due to be submitted to the permitting authority by July 31, 1997 (and some may be due earlier if sources are informed of such by EPA, or by Michigan if EPA delegates administration of part 71 to the State), the part 71 application deadline will be superceded by the State's part 70 application deadline if EPA finalizes approval of Michigan's part 70 program prior to the part 71 application deadline. Any such delegation to the State will be noticed in the Federal Register, along with additional details regarding permit application and permit fee requirements. For information regarding the status of Michigan's part 70 program approval, and the part 71 program in Michigan, contact Ms. Beth Valenziano, EPA Region 5, 77 West Jackson Boulevard (AR–18J), Chicago, IL 60604. Telephone: (312) 886–2703. E-mail: valenziano.beth@epamail.epa.gov.

Territory of American Samoa—In response to a petition from the governor of American Samoa, the EPA's Region IX expects to conditionally exempt the requirement for a title V operating permits program under section 325(a) of the Act for American Samoa. In addition, EPA expects to grant a conditional exemption from the requirement to apply for a Federal title V operating permit under part 71, except for major sources of HAP under 112 and solid waste incinerators under section 129(e), by August, 1996. The EPA proposed the conditional exemption on September 13, 1995 (60 FR 47515) in response to a claim of economic hardship and pristine air quality on the island. It contains the condition that American Samoa adopt and implement an EPA approved alternate program to permit major stationary sources and protect the National Ambient Air Quality Standards (NAAQS). Applications for major sources of HAP and solid waste incinerators under part 71 are due to be submitted to the permitting authority by July 31, 1997. The EPA intends to use part 71 application forms for major sources of HAP and solid waste incinerators. Permit fees will be paid to the U.S. Treasury. For further information, contact Ms. Sara Bartholomew at (415) 744–1250, Operating Permits Section (A–5–2), Air and Toxics Division, U.S. EPA-Region IX, 75 Hawthorne Street, San Francisco, California 94105.

Arizona (all Agencies)—The State of Arizona (all agencies) submitted complete operating permits programs to EPA in November 1993. The EPA's Region IX proposed interim approval of the part 70 program submitted by the State of Arizona which comprises programs from the Arizona Department of Environmental Quality, the Maricopa County Environmental Services Department, the Pima County Department of Environmental Quality, and the Pinal County Air Quality Control District on July 13, 1995. See 60 FR 36083. The EPA has not yet taken final action to approve the Arizona program because of outstanding issues related to provisions for excess emissions during startups, shutdowns, malfunctions, and scheduled maintenance. In addition, the Arizona Attorney General's Office is to submit additional information to resolve other issues identified in the proposal before EPA finalizes approval of the program. The excess emissions issue has been resolved sufficiently to move forward with final action and EPA expects to receive an addendum to the Attorney General's statement shortly. The EPA's Region IX therefore expects to finalize interim approval of the Arizona part 70 program submittal by September, 1996. Until EPA acts to approve Arizona's program, part 71 is effective in the State. Sources should continue to work with the State and its local agencies in developing their title V applications and pay permit fees to Arizona according to State requirements. Although part 71 applications are due to be submitted to the permitting authority by July 31, 1997 (and some may be due earlier if sources are informed of such by EPA, or by Arizona if EPA delegates administration of part 71 to the State), the part 71 application deadline will be superceded by the State's part 70 application deadline if EPA finalizes approval of Arizona's part 70 program prior to the part 71 application deadline. For further information regarding approval of Arizona's part 70 program and the implementation of part 71 in the State, contact Ms. Regina Spindler at (415) 744–1251, Operating Permits Section (A–5–2), Air and Toxics Division, U.S. EPA-Region IX, 75 Hawthorne Street, San Francisco, California 94105.

Commonwealth of the Northern Mariana Islands (CNMI)—In response to a petition from the governor of CNMI, the EPA's Region IX expects to conditionally exempt the requirement for a title V operating permits program under section 325(a) of the Act for CNMI. In addition, EPA expects to grant a conditional exemption from the requirement to apply for a Federal title V operating permit under part 71, except for major sources of HAP under 112 and solid waste incinerators under 129(e), by August, 1996. The EPA proposed the conditional exemption on September 13, 1995 (60 FR 47515) in response to a claim of economic hardship and pristine air quality on the islands. It contains the condition that CNMI adopt and implement an EPA approved alternate program to permit major stationary sources and protect the National Ambient Air Quality Standards (NAAQS). Applications for major sources of HAP and solid waste incinerators under part 71 are due to be submitted to the permitting authority by

July 31, 1997. The EPA intends to use part 71 application forms for major sources of HAP and solid waste incinerators. Permit fees will be paid to the U.S. Treasury. For further information, contact Ms. Sara Bartholomew at (415) 744–1250, Operating Permits Section (A–5–2), Air and Toxics Division, U.S. EPA-Region IX, 75 Hawthorne Street, San Francisco, California 94105.

Territory of Guam—In response to a petition from the governor of Guam, the EPA's Region IX expects to conditionally exempt the requirement for a title V operating permits program under section 325(a) of the Act for Guam. In addition, EPA expects to grant a conditional exemption from the requirement to apply for a Federal title V operating permit under part 71, except for major sources of HAP under 112 and solid waste incinerators under 129(e), by August, 1996. The EPA proposed the conditional exemption on September 13, 1995 (60 FR 47515) in response to a claim of economic hardship and pristine air quality on the island. It contains the condition that Guam adopt and implement an EPA approved alternate program to permit major stationary sources and protect the National Ambient Air Quality Standards (NAAQS). Applications for major sources of HAP and solid waste incinerators under part 71 are due to be submitted to the permitting authority by July 31, 1997, except for major perchloroethylene dry cleaning facilities, which are due by April 1, 1997. The EPA intends to use part 71 application forms for major sources of HAP and solid waste incinerators. Permit fees will be paid to the U.S. Treasury. For further information, contact Ms. Sara Bartholomew at (415) 744–1250, Operating Permits Section (A–5–2), Air and Toxics Division, U.S. EPA-Region IX, 75 Hawthorne Street, San Francisco, California 94105.

South Coast Air Quality Management District—The South Coast Air Quality Management District's (SCAQMD or District) part 70 regulation was adopted by the District's Governing Board on August 11, 1995. The EPA has not yet taken action on the South Coast program in part because the District has not submitted acceptable permit application forms. The EPA and the District have been working together to resolve issues concerning the application forms and it appears approvable forms will be submitted in the very near future. The EPA therefore expects to propose interim approval of the District's part 70 program submittal in August, 1996 and grant final interim approval as early as October, but no later than December, 1996. However, until EPA approves the District's program, part 71 is effective in the District. If EPA is unable to approve the SCAQMD's program consistent with this time schedule, EPA expects that part 71 will be delegated to the District. Once a delegation agreement is signed, a notice announcing the delegation of a part 71 program will be published in the Federal Register and widely circulated newspapers around the District. Provided acceptable forms are developed, sources will then utilize the SCAQMD's application forms, otherwise, EPA intends to use the part 71 application form. Sources will then submit completed applications to the SCAQMD. Similarly, sources should continue to pay permit fees to the SCAQMD under the District's Regulation III—Permit Fees. Although part 71 applications are due to be submitted to the permitting authority by July 31, 1997 (and some may be due earlier if sources are informed of such by EPA, or by SCAQMD if EPA delegates administration of part 71 to the State), the part 71 application deadline will be superceded by the State's part 70 application deadline if EPA finalizes approval of SCAQMD's part 70 program prior to the part 71 application deadline. For further information on application due dates and details about how to pick up and submit applications, contact Ms. Pang Mueller, South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, California 91765–4182. Telephone: (909) 396–2433. For general information regarding approval of South Coast's part 70 program and the applicability and implementation of part 71 in the District, contact Ms. Ginger Vagenas, U.S. Environmental Protection Agency, 75 Hawthorne Street, A–5–2, San Francisco, CA 94105. Telephone: (415) 744–1252.

Alaska—The EPA received a complete permit program from Alaska on June 5, 1995. The program has not yet been granted final approval because the State requested that EPA delay action until permit program revisions could be submitted to EPA. These revisions were formally submitted to EPA on July 5, 1996 and EPA is currently reviewing them. The Agency expects to propose interim program approval in August 1996, with a final interim approval in September 1996. However, until Alaska's program receives EPA approval, part 71 is effective in the State. Although part 71 applications are due to the permitting authority by July 31, 1997 (and some may be due earlier if sources are informed of such by EPA, or by Alaska if EPA delegates administration of part 71 to the State), the part 71 application deadline will be superceded by the State's part 70 application deadline if EPA finalizes approval of Alaska's part 70 program prior to the part 71 application deadline. For further information on application due dates and details on obtaining and submitting applications, contact Ms. Joan Cabreza, U.S. Environmental Protection Agency, Office of Air Quality, OAQ–108, 1200 Sixth Avenue, Seattle, WA 98101. Telephone: (206) 553–8505.

Idaho—The EPA received a complete permit program from Idaho on January 20, 1995. On October 27, 1995, the Agency proposed disapproval of Idaho's program and, in the alternative, interim approval if Idaho were to correct the proposed disapproval issues before EPA takes final action on Idaho's submittal. See 60 FR 54990. The State has resubmitted portions of its program in response to the proposed disapproval issues. On June 17, 1996, the Agency published a supplemental notice identifying additional audit and immunity provisions as interim approval issues and also proposed approval of the State's air toxics program under section 112(l) of the Act and delegation of the existing National Emission Standards for Hazardous Air Pollutants. See 61 FR 30570. The Agency expects to take final action on the Idaho program as soon as possible after the end of the 30 day public comment period on the supplemental proposal. However, until Idaho's program receives approval, part 71 is effective in the State. Sources should continue to work directly with the State in submitting applications and paying fees according to State requirements. Although part 71 applications are due to the permitting authority by July 31, 1997 (and some may be due earlier if sources are informed of such by EPA, or by Idaho if EPA delegates administration of part 71 to the State), the part 71 application deadline will be superceded by the State's part 70 application deadline if EPA finalizes approval of Idaho's part 70 program prior to the part 71 application deadline. For further information, contact Ms. Joan Cabreza, U.S. Environmental Protection Agency, Office of Air Quality, OAQ–108, 1200 Sixth Avenue, Seattle, WA 98101. Telephone: (206) 553–8505.

Dated: July 29, 1996.

Richard Wilson,

Acting Assistant Administrator.

[FR Doc. 96–19420 Filed 7–30–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 70

[VI001; FRL–5544–8]

Clean Air Act Final Interim Approval Of Operating Permits Program: The U.S. Virgin Islands

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final interim approval.

SUMMARY: The EPA is promulgating interim approval of the operating permits program submitted by the U.S. Virgin Islands for the purpose of complying with Federal requirements which mandate that States develop, and submit to EPA, programs for issuing operating permits to all major stationary sources, and to certain other sources.

EFFECTIVE DATE: This program will be effective August 30, 1996.

ADDRESSES: Copies of the State's submittal and other supporting information used in developing the final interim approval as well as the Technical Support Document are available for inspection during normal business hours at the following locations:

EPA Region II, 290 Broadway, 25th Floor, New York, New York 10007–1866, Attention: Steven C. Riva.

EPA Region II, Caribbean Field Office, Centro Europa Building, Suite 417, 1492 Ponce de Leon Avenue, Stop 22, San Juan, Puerto Rico 00907–4127, Attention: Jose Ivan Guzman.

The U.S. Virgin Islands Department of Planning and Natural Resources (VIDPNR), Division of Environmental Protection, Building 111, Apartment 14A, Water Gut Homes, Christainsted, St. Croix, U.S. Virgin Islands 00820, Attention: Leonard Reed.

FOR FURTHER INFORMATION CONTACT: Umesh Dholakia, Permitting and Toxics Support Section, at the above EPA office in New York or at telephone number (212) 637–4023. Jose Ivan Guzman of the Caribbean Field Office can be reached at (809) 729–6951, extension 223.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

Title V of the Clean Air Act (''the Act''), and implementing regulations at 40 Code of Federal Regulations (CFR) part 70 require that States develop and submit operating permits programs to the EPA by November 15, 1993, and that the EPA act to approve or disapprove each program within one year after receiving the submittal. The EPA's program review occurs pursuant to section 502 of the Act and the part 70 regulations, which together outline criteria for approval or disapproval. If a state does not have an approved program by two years after the November 15, 1993 date, EPA must establish and implement a Federal program.

On January 25, 1996, the EPA proposed approval of the Operating Permits Program submitted for the Virgin Islands. (See 61 FR 2216). No comment was received on the Proposed Approval Notice. In this notice, the EPA is taking final action to promulgate interim approval of the Operating Permits Program for the Virgin Islands.

II. Final Action and Implications

A. Analysis of State Submission

On January 25, 1996, the EPA proposed full approval of VIDPNR's Title V Operating Permits Program. The proposed approval required that the VIDPNR correct the wording errors in its legislation prior to receiving final full approval. The Virgin Islands has not corrected those errors. However, EPA believes that these wording errors were accidental and do not reflect the intent of the legislation. The Virgin Islands' Rules and Regulations, Air Pollution Control, Title 12, Chapter 9, Subchapters 204 and 206, are based on the intent reflected in the legislation and in accordance with part 70. In addition, the program elements discussed in the proposal notice are unchanged from the analysis in the Final Interim Approval Notice and continue to fully meet the requirements of 40 CFR part 70.

B. Options for Approval/Disapproval

1. Title V Operating Permit Program

The EPA is promulgating interim approval of the Operating Permits Program submitted to the EPA by the VIDPNR on November 18, 1993 with supplemental packages through June 9, 1995. Among other things, the VIDPNR has demonstrated that the program substantially meets the minimum requirements for a state operating permit program as specified in 40 CFR part 70. This interim approval extends until August 31, 1998. Under the approved interim operating permit program, VIDPNR is allowed to issue federally enforceable operating permits to all major stationary sources and to certain other sources for the duration of this approval. During this interim approval period, the Virgin Islands is protected from sanctions, and EPA is not obligated to promulgate, administer and enforce a federal operating permit program in Virgin Islands. Permits issued under a program with interim approval have full standing with respect to part 70, and the 1-year time period for submittal of permit applications by subject sources begins upon the effective date of this interim approval, as does the 3-year time period for processing the initial permit applications. In order to ensure that a fully approved program will be in place by the expiration date of the interim approval, Virgin Islands must submit a modified program to EPA by February 27, 1998 that addresses the following wording errors in the Virgin Islands' legislation (Act No. 6011 signed into law September 2, 1994):

(1) Section 212(a) states that ''No rule or regulation and no amendment * * * shall take effect AFTER public comment and/or hearing on due notice as provided herein''. The word ''after'' should be replaced by the word ''without''.

(2) Section 205 (a), (b)(1) and (2)—replace ''chapter'' with ''with respect to Part 70 permit program''.

(3) Section 215 (a)—delete ''compliance order'' and replace with ''notice of violation'' after ''Commissioner is authorized to issue..''

(4) Section 215 (b)(3)—There should be an additional sentence following ''$250,000''. ''The assessment of any administrative fine in excess of $250,000 may be enforced by the commencement of a civil action by the Attorney General pursuant to the Virgin Islands Law''.

If Virgin Islands (VI) fails to submit a complete corrective program for full approval by February 27, 1998, EPA will start an 18-month clock for mandatory sanctions. If VI then fails to submit a complete corrective program before the expiration of that 18-month period, EPA will apply sanctions as required by Section 502(d)(2) of the Act, which will remain in effect until EPA determines that VI has corrected the deficiencies by submitting a complete corrective program.

If EPA disapproves VI's complete corrected program, EPA will apply sanctions as required by Section 502(d)(2) on the date 18 months after the effective date of the disapproval, unless prior to that date, VI has submitted a revised program and EPA has determined that it corrected the deficiencies that prompted the disapproval.

In addition, discretionary sanctions may be applied where warranted any time after the expiration of an interim approval period if VI has not timely submitted a complete corrective program or EPA has disapproved its submitted corrective program. Moreover, if EPA has not granted full approval to the VI program by the

expiration of this interim approval, EPA must promulgate, administer and enforce a federal operating permit program for the Virgin Islands upon interim approval expiration.

2. Program for Delegation of Section 112 Standards as Promulgated

The requirements for approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) requirements for approval of a program for delegation of section 112 standards as promulgated by the EPA as they apply to part 70 sources. Section 112(l)(5) requires that the State's program contain adequate authorities, adequate resources for implementation, an expeditious compliance schedule, and adequate enforcement ability, which are also requirements under part 70. In a letter dated May 30, 1995, VIDPNR requested delegation through 112(l) of all existing 112 standards and all future 112 standards for both part 70 and non-part 70 sources and infrastructure programs. In the letter, VIDPNR demonstrated that they have sufficient legal authorities, adequate resources, the capability for automatic delegation of future standards, and adequate enforcement ability for implementation of section 112 of the Act for both part 70 sources and non-part 70 sources. Therefore, the EPA is also promulgating approval under section 112(l)(5) and 40 CFR 63.91 to Virgin Islands for its program mechanism for receiving delegation of all existing and future section 112(d) standards for both part 70 and non-part 70 sources, and section 112 infrastructure programs that are unchanged from Federal rules as promulgated.

III. Administrative Requirements

A. Docket

Copies of the State's submittal and other information relied upon for the final interim approval are contained in the docket maintained at the EPA Regional Offices in New York and Puerto Rico and at VIDPNR. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this final interim approval. The docket is available for public inspection at the location listed under the **ADDRESSES** section of this document.

B. Executive Order 12866

The Office of Management and Budget has exempted this action from Executive Order 12866 review.

C. Regulatory Flexibility Act

The EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permits programs submitted to satisfy the requirements of 40 CFR part 70. Because this action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

D. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, the EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in annual estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under Section 205, the 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 of the Unfunded Mandates Act requires the EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

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

E. Submission to Congress and the General Accounting Office

Under section 801(a)(1)(A) of the Administrative Procedure 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 this rule in today's Federal Register. This rule is not a ''major rule'' as defined by section 804(2) of the APA as amended.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: July 16, 1996.

Jeanne M. Fox,

Regional Administrator.

40 CFR part 70 is amended as follows:

PART 70—[AMENDED]

1. The authority citation for part 70 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

2. Appendix A to part 70 is amended by adding the entry for Virgin Islands in alphabetical order to read as follows:

Appendix A to part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

Virgin Islands

(a) The Virgin Islands Department of Natural Resources submitted an operating permits program on November 18, 1993 with supplements through June 9, 1995; interim approval effective on August 30, 1996.

(b) (Reserved)

* * * * * *

[FR Doc. 96–19440 Filed 7–30–96; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 180

[PP 2F4137/R2259; FRL–5387–2]

RIN 2070–AB78

Cyfluthrin; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Rule.

SUMMARY: This document establishes time-limited tolerances with an expiration date of November 15, 1997, for residues of the insecticide cyfluthrin, a synthetic pyrethroid, in or on the raw agricultural commodities (RAC's) sorghum, fodder, forage and grain; aspirated grain fractions; the fat of cattle, goats, horses, hogs, and sheep; and milkfat. The regulation to establish a maximum permissible level for residues of the insecticide cyfluthrin was requested in a petition submitted by Bayer Corporation.

EFFECTIVE DATE: This regulation becomes effective July 31, 1996.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [PP 2F4137/R2259], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any

objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled ''Tolerance Petition Fees'' and forwarded: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. An electronic copy of objections and hearing requests filed with the Hearing Clerk may be submitted to OPP by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov

Copies of electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All copies of electronic objections and hearing requests must be identified by the docket number [PP 2F4137/R2259] . No Confidential Business Information (CBI) should be submitted through e-mail. Copies of electronic objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

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 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: George T. 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.

SUPPLEMENTARY INFORMATION: EPA issued a public notice, published in the Federal Register of December 30, 1992 (57 FR 62334), which announced that Bayer Corp. (formerly Miles, Inc.) had submitted pesticide petition (PP) 2F4137 to EPA. Pesticide petition (PP) 2F4137 requests that the Administrator, pursuant to sections 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d) and 348(b), amend 40 CFR 180.436 by establishing tolerances for residues of the insecticide cyfluthrin, [cyano[4-fluoro-3-phenoxyphenyl]-methyl-3-[2,2-dicloroethenyl]-2,2-dimethylcyclopropanecarboxylate] in or on the raw agricultural commodities (RACs) sorghum, forage at 2.0 parts per million (ppm); sorghum, grain at 4.00 ppm; sorghum, fodder, silage and hay at 5.00 ppm.

In a letter dated October 16, 1995, Bayer Corp. (61 FR 26904, May 29, 1996) requested that the pesticide petition (2F4137) be amended by increasing the existing tolerances in or on the fat of cattle, goats, hogs, horses and sheep to 5.00 ppm; milkfat to 15.00 ppm (reflecting 0.50 ppm in whole milk) and establishing a tolerance for aspriated grain fraction at 300 ppm. This amendment also addressed EPA's preference for the sorghum, fodder, silage and hay tolerances to be expressed in terms of sorghum, fodder. There were no comments or requests to the advisory committee received in response to the initial and amended notices of filing.

The data base for cyfluthrin is essentially complete. Data lacking but desirable are a new 21–day subchronic dermal study, an acute neurotoxicity study in rats, a 90–day neurotoxicity study in rats, and a dermal sensitization study on the end-use product, Baythroid 2. Although these data are lacking, the Agency believes it has sufficient toxicity data to support the proposed tolerance and these missing data will not significantly change its risk assessment. In a letter dated November 2, 1995, Bayer Corp. has committed to submit the 21–day subchronic dermal study by June 1996, the acute neurotoxicity study by December 1996 and the 90–day neurotoxicity study by May 1997. On October 12, 1995, Bayer Corp submitted to the Agency a dermal sensitization study on Baythroid 2. On July 11, 1996, Bayer Corporation submitted a 21–day subchronic dermal study on Baythroid 2 to the Agency.

The scientific data submitted in the petition and other relevant material have been evaluated. The toxicology data submitted in support of the tolerance include:

1. A 12–month chronic feeding study in dogs with a no-observed-effect level (NOEL) of 4 mg/kg/day. The lowest effect level (LEL) for this study is established at 16 mg/kg/day, based on slight ataxia, increased vomiting, diarrhea and decreased body weight.

2. A 24–month chronic feeding/carcinogenicity study in rats with a NOEL of 2.5 mg/kg/day and LEL of 6.2 mg/kg/day, based on decreased body weights in males, decreased food consumption in males, and inflammatory foci in the kidneys in females. There were no carcinogenic effects observed under the conditions of the study.

3. A 24–month carcinogenicity study in mice. There were no carcinogenic effects observed under the conditions of the study.

4. An oral developmental toxicity study in rats with a maternal and fetal NOEL of 10 mg/kg/day (highest dose tested). An oral developmental toxicity study in rabbits with a maternal NOEL of 20 mg/kg/day and a maternal LEL of 60 mg/kg/day, based on decreased body weight gain and decreased food consumption during the dosing period. A fetal NOEL of 20 mg/kg/day and a fetal LEL of 60 mg/kg/day were also observed in this study. The LEL was based on increased resorptions and increased postimplantation loss.

5. A developmental toxicity study in rats by the inhalation route of administration with a maternal NOEL of 0.0011 mg/l and a LEL of 0.0047 mg/l, based on reduced mobility, dyspnea, piloerection, ungroomed coats and eye irritation. The fetal NOEL is 0.00059 mg/l and the fetal LEL is 0.0011 mg/l, based on sternal anomalies and increased incidence of runts. A second developmental toxicity study in rats by the inhalation route of administration is currently under review. The issue of whether cyfluthrin directly induces fetotoxicity under these conditions is unresolved at this time.

6. A three-generation reproduction study in rats with a systemic NOEL of 2.5 mg/kg/day and a systemic LEL of 7.5 mg/kg/day due to decreased parent and pup body weights. The reproductive NOEL and LEL are 7.5 mg/kg/day and 22.5 mg/kg/day respectively.

7. Mutagenicity tests, including several gene mutation assays (reverse mutation and recombination assays in bacteria and a Chinese hamster ovary(CHO)/HGPRT assay); a structural chromosome aberration assay (CHO/

sister chromatid exchange assay); and an unscheduled DNA synthesis assay in rat hepatocytes. All tests were negative for genotoxicity.

8. A metabolism study in rats showing that cyfluthrin is rapidly absorbed and excreted, mostly as conjugated metabolites in the urine, within 48 hours. An enterohepatic circulation was observed.

A chronic dietary exposure/risk assessment was performed for cyfluthrin using a Reference Dose (RfD) of 0.025 mg/kg bwt/day, based on a NOEL of 50 ppm (2.5 mg/kg bwt/day) and an uncertainty factor of 100. The NOEL was determined in a 2–year rat feeding study. The endpoint effects of concern were decreased body weights in males and inflammation of the kidneys in females at the LEL of 6.2 mg/kg/day. For purposes of this dietary exposure/risk assessment tolerance level residues were used and percent crop treated assumption made for some of the commodities. The current estimated dietary exposure for the overall U.S. population resulting from established tolerances is 0.001221 mg/kg/bwt day, which represents 4.8 percent of the RfD. The current action will increase exposure to 0.009420 mg/kg/bwt/day or 37.6 percent of the RfD. The current estimated dietary exposure for the subgroup population exposed to the highest risk, non-nursing infants less than 1 year old, is 0.002081 mg/kg bwt/day, which represents 8.3 percent of the RfD. The current action will increase exposure to 0.025266 mg/kg bwt/day or 101 percent of the RfD. Although the estimate of dietary exposure for the subgroup, non-nursing infants less than 1 year old, is slightly higher than the Agency's level of concern, i.e., greater than 100 percent of the RfD, the Agency believes that actual exposure and risk would be lower. The basis for this is that the risk reflects a higher than actual dietary exposure because it assumes that 100 percent of the U.S. sorghum crop is treated with cyfluthrin and that all quantities of the feed consumed will bear residue levels as high as the proposed tolerance. In reality, the Agency knows that all sorghum will not be treated with this pesticide and that actual levels on meat and milk will be lower than tolerance levels. In addition the food commodity that contributes the most to this slight risk exceedence is milk at 88.2 percent of the RfD; 71.2 percent from milk fat and 17 percent from whole milk and milk sugars. Metabolism data indicates that most of the cyfluthrin will concentrate in milk fat and very little in the other components, whole milk and milk sugar. Thus the 17 percent contribution is an overestimate of actual exposure. Thus, EPA concludes that the chronic dietary risk of cyfluthrin, as estimated by the dietary risk assessment, does not appear to be of concern.

Because there was a sign of developmental effects seen in animal studies, the Agency used the rabbit developmental toxicity study with a maternal NOEL of 20 mg/kg/day 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 concern for this analysis is women aged 13 and above, the subgroup which most closely approximates women of child-bearing age. The MOE is calculated as the ratio of the NOEL to the exposure. For this analysis the Agency calculated the MOE for women ages 13 and above to be 2,500. Generally speaking, MOE's greater than 100 for data derived from animal studies are regarded as showing no appreciable risk.

The metabolism of cyfluthrin in plants and livestock for this use is adequately understood. The residues of concern is cyfluthrin per se. Current established tolerances for cyfluthrin in poultry meat, fat and meat-by-products are adequate. An adequate analytical method, gas-liquid chromatography, is available for enforcement purposes. The enforcement methodology has been submitted to the Food and Drug Administration for publication in the Pesticide Analytical Manual Vol. II (PAM II). Because of the long lead time for publication of the method in PAM II, the analytical methodology is being made available in the interim to anyone interested in pesticide enforcement when requested from: Calvin Furlow, Public Response and Program Resources Branch, Field Operations Divisions (7506C), Office of Pesticide Programs, 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.

On August 5, 1988, EPA issued a conditional registration and time-limited tolerance for cyfluthrin for use on cottonseed with an expiration date of October 31, 1991 (see the Federal Register of August 15 ,1988 (53 FR 30676)). On November 12, 1992, the conditional registration was amended and extended to November 15, 1993 and the tolerance on cottonseed extended to November 15, 1994 (see Federal Registers October 20, 1993 (58 FR 54094) and February 22, 1994 (54 FR 9411)). On November 15, 1993, EPA amended the conditional registration on cottonseed by extending the expiration date to November 15, 1996 and extending the time-limited tolerance to November 15, 1997. The conditional registration was amended and extended to allow time for submission and evaluation of additional environmental effects data. In order to evaluate the effects of cyfluthrin on fish and aquatic organisms and its fate in the environment, additional data were required to be collected and submitted during the period of conditional registration. Such requirements included a sediment bioavailability and toxicity study and a small-plot runoff study that must be submitted to the Agency by July 1, 1996. To be consistent with the conditional registration and extension on cottonseed, the Agency is issuing a conditional registration with an expiration date of November 15, 1996 and establishing a time-limited tolerance on sorghum (fodder, forage and grain), aspirated grain fractions and livestock animal commodities with an expiration date of November 15, 1997, to cover residues expected to result from use during the period of conditional registration.

Residues remaining in or on the above commodities after expiration of these tolerances will not be considered actionable if the pesticide is legally applied during the term and in accordance with provisions of the conditional registration.

There are presently no actions pending against the continued registration of this chemical.

The pesticide is considered useful for the purposes for which it is sought. Based on the information and data considered, the Agency has determined that the tolerances established by amending 40 CFR 180.436 would protect the public health. Therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections to the regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by

40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

A record has been established for this rulemaking under docket number [PP 2F4137/R2259] (including objections and hearing requests submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

A copy of electronic objections and hearing request filed with the Hearing Clerk can be sent directly to EPA at:

opp-Docket@epamail.epa.gov

A copy of electronic objections and hearing requests filed with the Hearing Clerk must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record of this rulemaking, as well as the public eversion, as described above will be kept in paper form. Accordingly, EPA will transfer any objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all objections and hearing requests submitted directly in writing. The official rulemaking record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to 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 (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).

Under 5 U.S.C. 801(a)(1)(A) of the Administrative Procedure Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Title II of Pub. L. 104–121, 110 Stat. 847), 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 5 U.S.C. 804(2) of the APA as amended.

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 19, 1996.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

Therefore, chapter I of title 40 Code of Federal Regulations is 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 § 180.436, the table in paragraph (a) is amended by adding alphabetically entries for the commodities ''aspriated grain fractions'' and ''sorghum fodder,'' ''sorghum forage'' and ''sorghum grain;'' and by revising the entries for cattle, fat; goats, fat; hogs, fat; horses, fat; milkfat; and sheep, fat; to read as follows:

§ 180.436 Cyfluthrin: tolerances for residues.

(a) * * *

Commodity	Parts per million	Expiration date
* * * * * *		*
Aspirated Grain Fractions	300.00	Nov. 15, 1997.
Cattle, fat	5.00	Do.
* * * * * *		*
Goats, fat	5.00	Do.
* * * * * *		*
Hogs, fat	5.00	Do.

Commodity	Parts per million	Expiration date
* * * * * *		*
Horses, fat	5.00	Do.
Milkfat (reflecting 0.5 ppm in whole milk)	15.00	Do.
* * * * * *		*
Sheep, fat	5.00	Do.
* * * * * *		*
Sorghum, fodder	5.00	Do.
Sorghum, forage	2.00	Do.
Sorghum, grain	4.00	Do.
* * * * * *		*

[FR Doc. 96–19085 Filed 7–30–96; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Parts 180

[PP 4F4327/R2253; FRL–5385–1]

RIN 2070–AB78

Fenpropathrin; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Rule.

SUMMARY: This rule establishes tolerances for residues of the insecticide/miticide fenpropathrin, a synthetic pyrethroid, in or on the raw agricultural commodities (RACs) peanuts and peanut hay, and increases tolerances in meat, meat byproduct and fat of cattle, goats, hogs, horses and sheep and poultry; eggs; and milkfat. Valent U.S.A submitted petitions under the Federal Food, Drug and Cosmetic Act (FFDCA) that requested a regulation to establish these maximum permissible levels for residues of the insecticide.

EFFECTIVE DATE: This regulation becomes effective July 31, 1996.

ADDRESSES: Written objections and hearing requests, identified by the docket number [PP 4F4327/R2253], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the docket number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. Comments and data may also be submitted to OPP 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 4F4327/R2253]. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found in the ''SUPPLEMENTARY INFORMATION'' section of this document.

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.

FOR FURTHER INFORMATION CONTACT: By mail: George T. 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: Second Floor, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202. (703) 305-6100, e-mail: larocca.george@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued notices, published in the Federal Register of July 13, 1994 (59 FR 35719), which announced that Valent U.S.A. Corporation, 1333 N. California Blvd., Suite 600, Walnut Creek, CA 94596 had submitted pesticide petition (PP) 4F4327 and food/feed additive petition (FAP) 4H5690 to EPA. Pesticide petition 4F4327 requested that the Administrator, pursuant to section 408(d)of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), amend 40 CFR 180.466 by establishing tolerances for residues of the insecticide fenpropathrin (alpha-cyano-3-phenoxybenzyl 2,2,3,3-tetramethylcyclopropanecarboxylate) in or on the raw agricultural commodities (RACs) peanuts, vines and peanuts, hay (dried) at 20 parts per million (ppm); milkfat at 2.0 ppm (reflecting 0.08 ppm in whole milk); fat (cattle, goats, hogs, horses, and sheep) at 1.0 ppm; peanut hulls at 0.3 ppm; meat and meat byproducts (cattle, goats, horses, and sheep) at 0.1 ppm; poultry meat, fat, meat byproducts and eggs at 0.05 ppm; and peanut nut meat at 0.01 ppm. Food/feed additive petition (FAP) 4H5690 requested that the Administrator pursuant to section 409(b) of the FFDCA (21 U.S.C. 348(b)) amend 40 CFR 185.3325 and 186.3225 by establishing a food/feed additive regulation for fenpropathrin in and on peanut oil at 0.05 ppm and peanut soapstock at 0.02 ppm.

In a letter dated January 5, 1996, Valent U.S.A. requested withdrawal of the food/feed additive petition (FAP 4H5690) in or on peanut oil and peanut soapstock and amended PP 4F4327 by deletion of the proposed tolerances in/on peanut hulls and peanut vines. The notice withdrawing FAP 4H5690 was published in the Federal Register July 24, 1996 (61 FR 38447). Valent U.S.A.'s withdrawal of the food/feed additive petition was in response to EPA's determination that residues of fenpropathrin in processed commodities will not exceed the tolerances in the RAC. Although a processing study showed some concentration in peanut meal and refined oil, EPA has determined that a section 409 tolerance is unnecessary because it is unlikely

that the fenpropathrin residues in peanut meal and refined oil will exceed the limit of quantification (LOQ) tolerance that is being established on peanut nut meat. Valent's deletions of the proposed tolerances in/on peanut hulls and peanut vines were submitted in response to EPA's September 1995 revision to Table II of the Pesticide Assessment Guidelines, Subdivision O (Residue Chemistry) Raw Agricultural and Processed Commodities and Livestock Feeds Derived from Field Crops. This document states that peanut soapstock and peanut hulls are no longer considered significant livestock feed items, thus tolerances are not required. This amendment also addressed EPA's preference for peanut, dried hay to be expressed in term of peanuts, hay.

The scientific data submitted in this petition and other relevant material have been evaluated. The toxicological and metabolism data and analytical methods for enforcement purposes considered in support of these tolerances are discussed in detail in related documents published in the Federal Register of April 14, 1993 (58 FR 19357).

A dietary exposure/risk assessment was performed for fenpropathrin using a Reference Dose (RfD) of 0.025 mg/kg/day. The RfD is based on a no-observable-effect Level (NOEL) of 2.5 mg/kg/body weight/day (100 ppm) and an uncertainty factor of 100 from a 1–year dog feeding study that demonstrated tremors in test animals at the lowest effect level. The current estimated dietary exposure for the overall U.S. population and non-nursing infants (less than 1 year), the subgroup population exposed to the highest risk, is 0.365% and 0.475% of the RfD, respectively. The current action will increase exposure to 0.437% and 0.704% respectively. Generally speaking, the Agency has no cause for concern if total residue contribution for published and proposed tolerances is less than 100 percent of the RfD.

The metabolism of the chemical in plants and livestock is adequately understood for this use. Any secondary residues occurring in meat, fat, meat by products of cattle, goats, hogs, horses, poultry, sheep; milkfat and eggs will be covered by the tolerances outlined above.

An adequate analytical method (gas liquid chromatography with an electron capture detector) is available for enforcement purposes. The enforcement methodology has been submitted to the Food and Drug Administration, and published in the Pesticide Analytical Manual Vol. I (PAM I).

There are presently no actions pending against the continued registration of this chemical. The pesticide is considered useful for the purposes which it is sought. Based on the information and data considered, the Agency has determined that the tolerances established by amending 40 CFR part 180 will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections to the regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

A record has been established for this rulemaking under docket number [PP 4F4327/R2253](including objections and hearing requests submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

An electronic copy of objections and hearing requests filed with the Hearing Clerk can be sent directly to OPP at:

opp-Docket@epamail.epa.gov

An electronic copy of objections and hearing requests filed with the Hearing Clerk must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above, will be kept in paper form. Accordingly, EPA will transfer any objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all objections and hearing requests submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in ''ADDRESSES'' at the beginning of this document.

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to 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).

Under 5 U.S.C. 801(a)(1)(A) of the Administrative Procedure Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Title II of Pub. L. 104–121, 110 Stat. 847), 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 5 U.S.C. 804(2) of the APA as amended.

Pursuant to the requirements of the Regulatory Flexibility Act (U.S.C. 601–612), the Administrator has determined that regulation 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 recordkeeping requirements.

Dated: July 23, 1996.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is 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 § 180.466 the table is amended by adding alphabetically an entry for the commodities peanut, nutmeat; peanut, hay, and poultry, meat; and by revising the tolerances in meat, meat byproduct and fat of cattle, goats, hogs, horses and sheep; milkfat; poultry fat and meat byproduct; and eggs to read as follows:

§ 180.466 Fenpropathrin, tolerances for residues,

* * * * *

Commodity	Parts per million	Expiration date
* * * *	* *	*
Cattle, fat	1.0	None
Cattle, mbyp	0.1	Do.
Cattle, meat	0.1	Do.
Eggs	0.05	Do.
Goats, fat	1.0	Do.
Goats, mbyp	0.1	Do.
Goats, meat	0.1	Do.
Hogs, fat	1.0	Do.
Hogs, mbyp	0.1	Do.
Hogs, meat	0.1	Do.
Horses, fat	1.0	Do.
Horses, mbyp	0.1	Do.
Horses, meat	0.1	Do.
Milkfat (reflecting 0.08 in whole milk)	2.0	Do.
Peanut, hay	20.0	Do.
Peanut, nutmeat	0.01	Do.
Poultry, fat	0.05	Do.
Poultry, meat	0.05	Do.
Poultry, mbyp	0.05	Do.
* * * *	* *	*

[FR Doc. 96–19330 Filed 7–30–96; 8:45 am]

BILLING CODE 6560–50–F

40 CFR PART 180

[PP 4F4291/R2265; FRL–5387–5]
RIN 2070-AB78

Cypermethrin; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a time limited tolerance for residues of the insecticide Cypermethrin[(±)-alpha-cyano-(3 phenoxyphenyl)methyl (±)cis,trans-3-(2,2-dichloroethyenyl)-2,2-dimethylcyclopropane carboxylate] in or on the brassica crop groups, head and stem brassica at 2.0 parts per million (ppm) and leafy brassicas at 14.0 ppm. The regulation to establish a maximum permissible level for residues of the insectide was requested in a petition submitted by FMC Corp., Agricultural Chemicals Group, 1735 Market St., Philadelphia, PA 19103.

EFFECTIVE DATE: This regulation became effective July 25, 1996.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [PP 4F4291/R2265], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. An electronic copy of objections and hearing requests filed with the Hearing Clerk may be submitted to OPP by sending electronic mail(e-mail) to: opp-docket@epamail.epa.gov.

Copies of electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All copies of electronic objections and hearing requests must be identified by the docket number [PP4F4291/R2265]. No Confidential Business Information (CBI) should be submitted through e-mail. Copies of electronic objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: 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, telephone number, and e-mail address: Rm. 204, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305-6100, e-mail: larocca.george@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a notice published in the Federal Register of July 13, 1994 (59 FR 35717), which announced that FMC Corp., Agricultural Chemicals Group, 1735 Market St., Philadelphia, PA 19103, had submitted pesticide petition (PP) 4F4291 to EPA 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 tolerances for the residues of the insecticide cypermethrin [(±)alpha-cyano-(3-phenoxyphenyl) methyl(±)cis,trans-3-(2,2-dichloroethenenyl)-2,2 dimethylcyclopropanecarboxylate], in or on the brassica crop groups, head and stem brassicas at 2.0 parts per million (ppm) and leafy brassicas at 14.0 ppm.

No comments were received in response to the notice of filing.

The data submitted in the petition and other relevant material have been evaluated. The toxicological data considered in support of tolerance for cypermethrin (PP 4F3011) are discussed in detail in the Federal Register publication of October 20, 1993 (58 FR 54092).

A chronic dietary exposure analysis was performed using a Reference Dose (RfD) of 0.01 mg/kg body weight/day based on a no-observed-effect-level (NOEL) of 1.0 mg/kg body weight/day from an oral dosing study in dogs and a 100-fold uncertainty factor. The endpoint of concern in this study was gastrointestinal tract disturbance. Using tolerance level residues and 100% crop treatment information, the Theoretical Maximum Residue Contribution (TMRC) from established tolerances and the current action is estimated at 3.7 x 10^{-3} mg/kg body weight/day and utilizes 37% of the RfD for the US population. The TMRC for non-hispanic others, the subgroup population most highly exposed, is estimated at 7.2 x 10^{-3} mg/kg body weight/day and utilizes 72% of the RfD. In general, EPA has no cause for concern if total chronic dietary exposure for established and new tolerances is less than the RfD.

The nature of cypermethrin residue in plants and animals for this use is adequately understood. Since the available field residue studies indicate that there will be low to non-detectable levels of the metabolite DCVA (3-(2,2-dichloroethyenyl)-2,2 dimethyl-cyclopropane carboxylic acid) in the terminal residues of some crops and the toxicity of this metabolite is comparable to the parent compound, the Agency has concluded that the tolerance expression regulate only the parent compound cypermethrin and not the metabolite. This determination is consistent with the International Codex Maximum Residue Limits for cypermethrin, which includes only the parent compound and will facilitate enforcement of the tolerance since the current FDA Multiresidue Methods I and II can detect the parent compound but not the metabolite. However, since there is a potential for low levels of this metabolite in some crops, new crop field trials will be required to include analyses for residues of the parent compound cypermethrin and metabolite DCVA. The dietary risk assesment will be based on residues of cypermethrin plus metabolite DCVA for crops with quantifiable residues of the metabolite DCVA.

There is no reasonable expectation of secondary residues in animal tissues and milk from this use, since no animal feed items are associated with the brassica crop group. An adequate analytical method, gas liquid chromatography with an electron capture detector, is available for enforcement purposes. The enforcement methodology has been submitted to the Food and Drug Administration and is published in the *Pesticide Analytical Manual Vol. II* (PAM II).

There currently exists a separate tolerance in 40 CFR 180.418 for cypermethrin on cabbage at 2.0 ppm. Since the current action is establishing tolerances on the brassica crop group which includes cabbage under the head and stem subgroup, the seperate cabbage tolerance is being deleted.

The Agency issued a conditional registration for cypermethrin for use on cotton with an expiration date of December 1, 1988 (see the Federal Register of June 15, 1984 (49 FR 24684), January 9, 1985 (50 FR 1112), and September 27, 1985 (50 FR 39100)). This conditional registration was subsequently amended to include pecans, lettuce, cabbage and onions and extended to November 15, 1996. The conditional registration was amended and extended to allow time for submission and evaluation of additional environmental effects data. Due to the conditional status of the registration, tolerances have been established for cypermethrin on a temporary basis (until November 15, 1997) on cottonseed, pecans, lettuce, cabbage, onions, meat, fat and meat byproducts of hogs, horses, cattle, goats, sheep and milk to cover residues expected to be present from use during the period of conditional registration. To be consistent with the current conditional registration status for cypermethrin, the Agency is establishing tolerances for the brassica crop groups with an expiration date of November 15, 1997, to cover residues expected to be present during the period of conditional registration.

Residues remaining in or on the above commodities after expiration of these tolerances will not be considered actionable if the pesticide is legally applied during the term of and in accordance with provisions of the conditional registration.

There are presently no actions pending against the continued registration of this chemical.

This pesticide is considered useful for the purposes for which the tolerance is sought. Based on the information and data considered, the Agency has determined that the tolerances established by amending 40 CFR part 180 will protect the public health. Therefore, these tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections to the regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40

CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

A record has been established for this rulemaking under the docket number [PP4F4291/R2265] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed paper form as they are received and will place the paper copies in the official 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.

Under Executive Order 12866 (58 FR 51735, October 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.

Pursuant to the requirements of the Regulatory Flexibility Act, under section 801(a) (1) (A) of the Administrative Procedure Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, (Pub. L. 104-121, 110 Stat. 847), 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 (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 statement explaining the factual basis for this certification was published in the Federal Register of May 4, 1981 (46 FR 24950).

In addition, this action does not impose any enforceable duty, or contain any ''unfunded mandates'' as described in Title II of the Unfunded 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 considerations as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

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 25, 1996.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is 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. By amending § 180.418 in the table therein, by removing the entry for cabbage and by adding and alphabetically inserting the following raw agricultural commodities to read as follows:

§ 180.418 Cypermethrin; tolerances for residues.

* * * * *

Commodities	Parts per million
Brassica head and stem	2.0
* * * * *	
Leafy brassica	14.0
* * * * *	

[FR Doc. 96–19458 Filed 7–30–96; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 372

[OPPTS–400095A; FRL–5389–6]

Di-(2-ethylhexyl) Adipate; Toxic Chemical Release Reporting; Community Right-to-Know

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is deleting di-(2-ethylhexyl) adipate (DEHA) (CAS No. 103-23-1), also known as bis(2-ethylhexyl) adipate, from the list of chemicals subject to reporting requirements under section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) and section 6607 of the Pollution Prevention Act of 1990 (PPA). Specifically, EPA is deleting DEHA because the Agency has concluded that DEHA meets the deletion criteria of EPCRA section 313(d)(3). By promulgating this rule, EPA is relieving facilities of their obligation to report releases of and other waste management information on DEHA that occurred during the 1995 reporting year, and for activities in the future.

EFFECTIVE DATE: This rule is effective July 31, 1996.

FOR FURTHER INFORMATION CONTACT: Daniel R. Bushman, Acting Petitions Coordinator, 202-260-3882, e-mail: bushman.daniel@epamail.epa.gov, for specific information on this final rule, or for more information on EPCRA section 313, the Emergency Planning and Community Right-to-Know Information Hotline, Environmental Protection Agency, Mail Stop 5101, 401 M St., SW., Washington, DC 20460, Toll free: 1-800-535-0202, in Virginia and Alaska: 703-412-9877, or Toll free TDD: 1-800-553-7672.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Affected Entities

Entities potentially affected by this action are those which manufacture, process, or otherwise use di-(2-ethylhexyl) adipate (DEHA) and which are subject to the reporting requirements of section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. 11023 and section 6607 of the Pollution Prevention Act of 1990 (PPA), 42 U.S.C. 13106. Some of the affected categories and entities include:

Category	Examples of affected entities
Industry	Facilities that compound, shape, or manufacture plastic and rubber products. Metal working industries including foundries, automotive plants, coating and engraving shops, and metal products companies. Firms that formulate or produce adhesives and sealants; lubricants for jet engines; pharmaceuticals, perfumes, and cosmetics; and other organic chemicals.
Federal Government	Federal Agencies that manufacture, process, or otherwise use DEHA.

This table is not meant to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. This table lists the types of entities that EPA is now aware could potentially be affected by this action. Other types of entities not listed in the table could also be affected. To determine whether your facility is affected by this action, you should carefully examine the applicability criteria in part 372 subpart B of Title 40 of the Code of Federal Regulations.

B. Statutory Authority

This action is taken under sections 313(d) and (e)(1) of EPCRA. EPCRA is also referred to as Title III of the Superfund Amendments and Reauthorization Act (SARA) of 1986 (Pub. L. 9909-499).

C. Background

Section 313 of EPCRA requires certain facilities manufacturing, processing, or otherwise using listed toxic chemicals to report their environmental releases of such chemicals annually. Beginning with the 1991 reporting year, such facilities must also report pollution prevention and recycling data for such chemicals, pursuant to section 6607 of PPA. Section 313 of EPCRA established an initial list of toxic chemicals that was comprised of more than 300 chemicals and 20 chemical categories. DEHA was included in the initial list of chemicals and chemical categories. Section 313(d) authorizes EPA to add chemicals to or delete chemicals from the list, and sets forth criteria for these actions. Under section 313(e)(1), any person may petition EPA to add chemicals to or delete chemicals from the original statutory list. Pursuant to EPCRA section 313(e)(1), EPA must respond to petitions within 180 days either by initiating a rulemaking or by publishing an explanation of why the petition has been denied.

EPA issued a statement of petition policy and guidance in the Federal Register of February 4, 1987 (52 FR 3479), to provide guidance regarding the recommended content and format for petitions. On May 23, 1991 (56 FR 23703), EPA issued a statement of policy and guidance regarding the recommended content of petitions to delete individual members of the section 313 metal compounds category. EPA has published a statement clarifying its interpretation of the section 313(d)(2) and (3) criteria for adding and deleting chemicals from the section 313 toxic chemical list (59 FR 61439, November 30, 1994) (FRL-4922-2).

II. Description of Petition and Proposed Action

On January 18, 1995, EPA received a petition from the Chemical Manufacturers Association (CMA) to exclude DEHA from the EPCRA section 313 list of toxic chemicals. Specifically, the petition requests that DEHA be deleted from the list of reportable chemicals and not be subject to the annual reporting requirements under EPCRA section 313 and section 6607 of PPA. The petitioner contends that DEHA should be deleted from the EPCRA section 313 list because it does not meet any of the EPCRA section 313(d)(2) criteria.

Following a review of the petition, EPA granted the petition and issued a proposed rule in the Federal Register of August 1, 1995 (60 FR 39132) (FRL-4958-8), proposing to delete DEHA from the list of toxic chemicals subject to the reporting requirements under EPCRA section 313. EPA's proposal was based on its preliminary conclusion that DEHA meets the EPCRA section 313(d)(3) criteria for deletion from the list. With respect to deletions, EPCRA provides at section 313(d)(3) that ''[a] chemical may be deleted if the Administrator determines there is not sufficient evidence to establish any of the criteria described in paragraph [(d)(2)(A)-(C)].'' In the proposed rule, EPA preliminarily concluded that the available toxicological data indicates that DEHA does not cause adverse acute human health effects at concentration levels that are reasonably likely to exist beyond facility site boundaries, and causes systemic, developmental, and reproductive toxicities only at relatively high doses and thus has low chronic toxicity. Furthermore, EPA preliminarily concluded that DEHA does not pose a significant hazard to the environment. EPA also preliminarily concluded that releases of DEHA will not result in exposures of concern. Therefore, EPA preliminarily concluded that based on the total weight of available data, DEHA cannot reasonably be anticipated to cause a significant adverse effect on human health or the environment.

III. Final Rule and Rationale for Delisting

In response to the petition from CMA, EPA is deleting DEHA from the list of chemicals for which reporting is required under section 313 of EPCRA and PPA section 6607. EPA is delisting this chemical because the Agency has determined that DEHA satisfies the delisting criteria of EPCRA section 313(d)(3).

A. Response to Comments

EPA received three comments in response to the proposed rule. All three of the commenters noted their support for the deletion of DEHA from the EPCRA section 313 list. EPA agrees with the commenters that DEHA satisfies the criterion for delisting.

B. Rationale for Delisting and Conclusions

EPA has concluded that the assessment set out in the proposed rule should be affirmed. Because of questions raised recently about the ability of DEHA to produce hormone disruption, EPA has looked at this issue. EPA is aware of limited and preliminary *in vitro* data indicating that DEHA reduced the binding of the tritiated natural estrogen, 17β-estradiol, to the rainbow trout estrogen receptor (Ref. 1). However, these results were obtained only at high concentrations and indicated that DEHA's potential binding activity is very weak compared to the estradiol. In addition, EPA is not aware of any data that demonstrate that DEHA produces estrogenic effects *in vivo*. The *in vivo* toxicity data on DEHA, discussed below, also indicate that DEHA is a weak developmental and reproductive toxicant. However, at this time, there is no indication that these effects are due to binding to the estrogen receptor. Accordingly, EPA has determined that there is insufficient evidence, at this time, to demonstrate that DEHA causes hormone disruption. In summary, based on the total weight of available data, EPA has concluded that DEHA cannot reasonably be anticipated to cause a significant adverse effect on human health or the environment, and therefore DEHA meets the delisting criterion of section 313(d)(3). A more detailed discussion of the rationale for delisting is given in the proposed rule (August 1, 1995, 60 FR 39134) (FRL-4958-8).

Based on current data, EPA concludes that DEHA does not meet the toxicity criterion of EPCRA section 313(d)(2)(A) because DEHA exhibits acute oral toxicity only at levels that greatly exceed estimated exposures outside the facility. Specifically, DEHA cannot reasonably be anticipated to cause ''. . . significant adverse acute human health effects at concentration levels that are reasonably likely to exist beyond facility site boundaries as a result of continuous, or frequently recurring, releases.''

EPA has concluded that there is not sufficient evidence to establish that DEHA meets the criterion of EPCRA section 313(d)(2)(B). The lowest-observed-adverse-effect-level (LOAEL) for systemic toxicity, in rats, is 1,125 milligrams/kilogram/day (mg/kg/day) for both chronic and 13-week studies. In mice, the LOAELs ranged from 2,800 mg/kg/day (chronic study) to 900 mg/kg/day (13-week study). Also, based on limited data, the LOAEL for developmental toxicity is 1,080 mg/kg/day and the no-observed-adverse-effect-level (NOAEL) is 170 mg/kg/day. Based on limited data, the LOAEL and NOAEL for reproductive toxicity are 1,080 and 170 mg/kg/day. EPA has no information indicating that DEHA causes any other section 313(d)(2)(B) effects. EPA considers the above doses where DEHA caused adverse effects to be relatively high and concludes that DEHA has low chronic toxicity. Therefore, EPA conducted an exposure assessment for chronic human exposure and found that exposures at the estimate levels are not likely to result in adverse health risks in humans. EPA has estimated that releases of DEHA will not result in exposures of concern. Therefore, EPA has concluded that DEHA does not meet the EPCRA section 313(d)(2)(B) listing criterion.

EPA has also concluded that DEHA does not meet the toxicity criterion of EPCRA section 313(d)(2)(C) because it cannot reasonably be anticipated to cause adverse effects on the environment of sufficient seriousness to warrant continued reporting. EPA considers DEHA to exhibit low toxicity to aquatic organisms. Based on structure activity relationships (SARs), no toxic effects are anticipated for both freshwater and saltwater species at saturation. For sediment species, acute and chronic toxicity are expected to occur only at high concentrations: 1,000 and 100 mg/kg (dry weight), respectively. Therefore, DEHA is not expected to pose a significant hazard to the environment.

Thus, in accordance with EPCRA section 313(d)(3), EPA is deleting DEHA from the section 313 list of toxic chemicals. Today's action is not intended, and should not be inferred, to affect the status of DEHA under any other statute or program other than the reporting requirements under EPCRA section 313 and PPA section 6607.

IV. Effective Date

This action becomes effective July 31, 1996. Thus, the last year in which facilities had to file a Toxics Release Inventory (TRI) report for DEHA was 1995, covering releases and other activities that occurred in 1994.

EPCRA section 313(d)(4) provides that ''[a]ny revision'' to the section 313 list of toxic chemicals shall take effect on a delayed basis. EPA interprets this delayed effective date provision to apply only to actions that add chemicals to the section 313 list. For deletions, EPA may, in its discretion, make such actions immediately effective. An immediate effective date is authorized, in these circumstances, under 5 U.S.C. section 553(d)(1) because a deletion from the section 313 list relieves a regulatory restriction.

EPA believes that where the Agency had determined, as it has with this chemical, that a chemical does not satisfy any of the criteria of section 313(d)(2)(A)-(C), no purpose is served by requiring facilities to collect data or file TRI reports for that chemical, or, therefore, by leaving that chemical on the section 313 list for any additional period of time. This construction of section 313(d)(4) is consistent with previous rules deleting chemicals from the section 313 list. For further discussion of the rationale for immediate effective dates for EPCRA section 313 delistings, see 59 FR 33205 (June 28, 1994).

V. Rulemaking Record

The record supporting this final rule is contained in docket control number OPPTS-400095A. All documents, including an index of the docket and the reference listed in Unit VI. of this preamble, are available in the TSCA Nonconfidential Information Center (NCIC), also known as, TSCA Public Docket Office, from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. TSCA NCIC is located at EPA Headquarters, Rm. NE-B607, 401 M St., SW., Washington, DC 20460.

VI. References

1. Jobling, S., Reynolds, T., White, R., Parker, M. G., Sumpter, J. P., ''A Variety of Environmentally Persistent Chemicals, Including Some Phthalate Plasticizers Are Weakly Estrogenic,'' *Environmental Health Perspectives*, 103, (1995), pp. 582-587.

VII. Regulatory Assessment Requirements

It has been determined that this action is not a ''significant regulatory action'' within the meaning of Executive Order 12866 (58 FR 51735, October 4, 1993), because this action eliminates an existing regulatory requirement. The Agency estimates the total cost savings to industry from this action to be approximately $322,620 and the savings to EPA would be approximately $8,664.

This action does not impose any Federal mandate on State, local or tribal governments or the private sector within the meaning of the Unfunded Mandates Reform Act of 1995 (Pub. L. 1041). Also, given its deregulatory nature, I hereby certify pursuant to the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this action does not have a significant economic impact on a substantial number of small entities. As required, information to this effect has been

forwarded to the Small Business Administration.

This action does not have any information collection requirements subject to the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* The elimination of the information collection components for this action is expected to result in the elimination of 6,383 paperwork reduction hours.

In addition, pursuant to Executive Order 12898 (59 FR 7629, February 16, 1994), entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,'' the Agency has determined that there are no environmental justice-related issues with regard to this action since this final rule simply eliminates reporting requirements for a chemical that, under the criteria of EPCRA section 313, does not pose a concern for human health or the environment.

Under 5 U.S.C. 801(a)(1)(A) of the Administrative Procedure Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Title II of Pub. L. 104-121, 110 Stat. 847), 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 5 U.S.C. 804(2) of the APA as amended.

List of Subjects in 40 CFR Part 372

Environmental protection, Community right-to-know, Reporting and recordkeeping requirements, and Toxic chemicals.

Dated: July 25, 1996.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, 40 CFR part 372 is amended as follows:

1. The authority citation for part 372 continues to read as follows:

Authority: 42 U.S.C. 11023 and 11048.

§ 372.65 [Amended]

2. Sections 372.65(a) and (b) are amended by removing the entry for bis(2-ethylhexyl) adipate under paragraph (a) and the entire CAS number entry for 103-23-1 under paragraph (b).

[FR Doc. 96–19452 Filed 7–31–96; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 95

RIN 0970–AB46

Reduction of Reporting Requirements for the State Systems Advance Planning Document (APD) Process

AGENCY: Administration for Children and Families, HHS.

ACTION: Final rule.

SUMMARY: This final rule decreases the reporting burden on States relative to the State systems advance planning document (APD) process by increasing the threshold amounts above which APDs and related procurement documents need to be submitted for Federal approval. The APD process is the procedure by which States obtain approval for Federal financial participation in the cost of acquiring automatic data processing equipment and services. Additionally, this rule eliminates the requirement for State submittal of biennial security plans for Federal review.

EFFECTIVE DATE: July 31, 1996.

FOR FURTHER INFORMATION CONTACT: Bill Davis, State Systems Policy Staff, 370 L'Enfant Promenade SW., Washington, DC 20447, telephone (202) 401–6404.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (44 U.S.C. 3507), information collection requirements relating to automated data processing and information retrieval systems have been approved by OMB Approval No. 0992–0005. The provisions of this rule do not contain any additional reporting and/or recordkeeping requirements subject to OMB approval.

Statutory Authority

These regulations are published under the general authority of sections 402(a)(5), 452(a)(1), 1902(a)(4), and 1102 of the Social Security Act (the Act).

Background and Description of Regulatory Provisions

State public assistance agencies acquire automatic data processing (ADP) equipment and services for computer operations which support the Aid to Families with Dependent Children, Adult Assistance, Child Support Enforcement, Medicaid, Child Welfare, Foster Care and Adoption Assistance, Job Opportunities and Basic Skills Training (JOBS), and Refugee Resettlement programs. Conditions and procedures for acquiring such systems are found at 45 CFR part 95. To reduce the reporting burden on States and to provide better use of Federal resources, we issued a notice of proposed rulemaking revising these requirements which was published in the Federal Register July 24, 1995 (60 FR 37858). We received 23 letters of public comment regarding the proposed rule from State agencies and other interested parties. Specific comments and responses follow the discussion of regulatory provisions. These comments did not generate any changes to the regulatory provisions outlined in the proposed rule.

Currently any competitive acquisition over $500,000 or any sole source acquisition over $100,000 in total State and Federal costs which will be matched at the regular Federal financial participation (FFP) rate, as defined in Section 95.605 of these rules, requires written prior approval of an APD. Project cost increases of more than $300,000 require the submission of an APD Update. Also, most procurement documents (Request for Proposals (RFPs) and contracts) over $300,000, and contract amendments over $100,000 must be approved by the Federal funding agencies.

As a first step toward reducing the reporting burden on States and improving the use of Federal resources, we are raising the threshold amounts for regular match acquisitions. We will continue to require written prior approval for all equipment and services acquired at an enhanced matching rate.

Accordingly, these rules revise 45 CFR 95.611(a)(1), which provides that States must obtain prior written approval for ADP equipment or services anticipated to have total acquisition costs of $500,000 or more in Federal and State funds, to increase the $500,000 threshold amount to $5 million or more. Similarly, paragraph (a)(4), which requires prior written approval with respect to State plans to acquire noncompetitively from a non-government source, ADP equipment and services, with a total acquisition cost of greater than $100,000, is revised to require that a State obtain prior written approval of its justification for a sole source acquisition with total State and Federal costs of more than $1 million but no more than $5 million and to provide that noncompetitive acquisitions of greater than $5 million continue to be subject to the requirements of paragraph (b), which

provides specific prior written approval requirements.

We are also eliminating paragraph (a)(3), which provides a separate threshold amount for acquisitions in support of State Medicaid systems funded at the 75 percent FFP rate. The Health Care Financing Administration (HCFA) will apply the new thresholds to Title XIX funded projects. Additionally, we are modifying paragraph (a)(2) to delete a reference to paragraph (a)(3) and to redesignate paragraphs (a)(4) through (a)(7) as paragraphs (a)(3) through (a)(6). We are also revising paragraph (a)(4), as redesignated, to change the reference from (a)(6) to (a)(5) and to update the office names from Office of Information Management Systems to Office of State Systems and State Data Systems Staff to State Systems Policy Staff to reflect a recent organizational change. And we are correcting a typographical error in paragraph (a)(6) so that ''ADP'' now reads ''APD''.

Paragraph (b)(1)(iii), which provides that unless specifically exempted by the Department, written approval must be received prior to release of a Request for Proposal (RFP) or execution of a contract where costs are anticipated to exceed $300,000, is revised to increase the threshold to $5 million with respect to competitive procurements and $1 million for noncompetitive acquisitions from nongovernment sources.

With respect to contract amendments, 45 CFR 95.611(b)(1)(iv) is revised to provide that prior written approval is needed, unless specifically exempted by the Department, prior to execution of a contract amendment involving cost increases of greater than $1 million or time extensions of more than 120 calendar days. In addition, States will be required to submit for written approval contract amendments under these threshold amounts on an exception basis or if HHS determines that the contract amendment was not adequately described and justified in the APD.

As indicated, with respect to both changes to paragraph (b), HHS retains the right to review and prior approve all RFPs, contracts, and contract amendments, regardless of dollar amount, on an exception basis.

Paragraph (c)(1), which provides specific approval requirements with respect to regular FFP requests, is also revised to provide increased thresholds. First, under paragraph (c)(1)(i), the $1 million threshold with respect to the need for written approval from the Department of Annual Advanced Planning Document Updates (APDU) is increased to $5 million. In paragraph (c)(1)(ii)(A), the threshold with respect to the requirement for approval of an ''as needed'' APDU of projected cost increases is raised from the lesser of $300,000 or 10 percent of the project cost, to projected cost increases of $1 million or more.

We are also changing the rules to provide prompt Department action on State funding requests by providing that if the Department has not provided a State written approval, disapproval, or a request for information within 60 calendar days of issuing an acknowledgement of receipt of a State's request, the request is deemed to have provisionally met the prior approval requirements.

Accordingly, 45 CFR 95.611(d) is revised to provide that, if the Department has not provided written approval, disapproval, or a request for information within 60 calendar days of issuing an acknowledgement of receipt of a State's request, the request will be provisionally deemed to have met the prior approval requirements. As indicated in the proposed rule, provisional approval does not absolve a State from meeting all Federal requirements which pertain to the computer project or acquisition. Such projects continue to be subject to Departmental audit and review, and the determinations made from such audits and reviews.

Finally, to further the goal of reduced burden and increased efficiency, these rules amend 45 CFR 95.621(f)(6), by eliminating the requirement that States submit biennial security reports for Federal review and approval, to require simply that such reports be maintained by States for on-site review by HHS. As such, States must continue to perform security reviews and will be responsible for maintaining review reports for inspection by HHS staff during on-site reviews.

Response to Comments

We received a total of 23 comments on the proposed rule published in the Federal Register July 24, 1995 (60 FR 37858) from State agencies and other interested parties. Specific comments and our responses follow.

General Comments

1. *Comment:* Two commenters felt that the changes provided by the proposed rule did not go far enough to provide significant relief from the existing burden associated with the APD process. However, the majority of commenters voiced support for the rule. In fact, 13 of the respondents offered no other comment than to provide their support.

Response: We disagree. With this rule we are providing a ten-fold increase in the prior approval threshold for APDs, an even greater increase for RFPs and contracts, and other significant changes. This rule will greatly reduce the State burden associated with the APD process.

Increased Thresholds

1. *Comment:* Two commenters asked that the increased thresholds also apply to systems funded at enhanced rates, or at a minimum to Request for Proposals (RFPs) and contracts after approval of APDs for enhanced funded projects.

Response: We do not agree with these suggestions. We are convinced that enhanced funded projects, where the Federal Government pays up to 90 percent of costs, should be given greater attention and scrutiny than regular match projects. HHS reviews RFPs and contracts to ensure State plans as expressed in related APDs, and Federal requirements are being met. Accordingly, thresholds for APDs, RFPs, and contracts for enhanced funded projects will remain at current levels, even in cases where enhanced funding becomes available after the beginning of the project.

2. *Comment:* One commenter was concerned that the allowance for review of documents by ''exception'' as stated in the proposed rule, should truly be used on an exception basis and not become the norm. The commenter suggested that criteria be developed for exercising the option and be disseminated to States. The commenter also asked that when the exception option is used, adequate notice be given to States.

Response: We would like to assure the commenter that we fully intend that this option will only be exercised on an exception basis. While we have not developed an exhaustive list of criteria for use of the exception, as provided in the preamble to the proposed rule, the criteria ''* * * could include instances where new program requirements or technology are involved, as in electronic benefits transfer, or when adequate description and justification has not been provided in the APD.'' However, States will always receive written notification when documents must be submitted for review.

3. *Comment:* One commenter suggested that after Federal review of an APD, the RFPs and contracts should not be reviewed by HHS.

Response: We do not agree with this suggestion. We will continue to review RFPs and contracts, in accordance with revised thresholds, to ensure that State

plans as expressed in related APDs, and Federal requirements are being met.

4. *Comment:* One commenter suggested that HHS should limit its review of State ADP acquisitions to new development efforts. This commenter stated that ongoing operations, equipment upgrades, and systems enhancements should be exempt from Federal review.

Response: We do not agree with this recommendation. Equipment upgrades and systems enhancements, above the threshold limits, will continue to be subject to prior approval.

5. *Comment:* Three commenters recommended that large States should have higher thresholds than other States. The commenters believe that because the systems activities of large States are proportionally larger and more costly than those of other States, large States should have proportionally more of their systems expenditures exempt from HHS prior approval.

Response: In establishing the dollar thresholds under which a State need not obtain HHS' prior approval for an ADP acquisition, HHS sought to achieve a balance between exercising its responsibility and providing States a measure of flexibility. HHS is responsible under Federal law and regulation for ensuring that it provides Federal matching funds for purposes which are necessary for effective and efficient program operations. At the same time, however, HHS seeks to provide flexibility to States who manage and carry-out these ADP projects.

In establishing a $5,000,000 threshold, HHS is making a ten-fold increase to the current threshold. We believe that at this time the increased threshold provides an appropriate balance between its responsibility for assuring the effective use of Federal dollars and providing States flexibility of action.

While it is true that large States have commensurately large systems expenditures, such large expenditures should appropriately receive a higher level of review to reduce the risk to taxpayers.

6. *Comment:* One State commenter suggested that HHS should not review any RFPs, contracts and contract amendments, asserting that Federal agencies micro-manage State projects and cause delays in nearly every case where approval is requested. The commenter included a list of State procedures and approvals required for ADP acquisitions, which the commenter believes makes Federal approval procedures redundant. The commenter asserts that Federal review causes delays in nearly every case.

On the other hand, a commenter from another State could not recall ever having been delayed by the Federal review process.

Response: As these comments indicate, States are not of a single mind as to whether the requirement for prior Federal approval delays States in developing ADP projects. Underlying the first commenter's assertion is the suggestion that HHS rely on State procedures and officials to meet its responsibilities for assuring that the expenditure of Federal funds on State systems is necessary for effective and efficient operation of the programs.

With the information received through the APD procedures, accountable HHS officials are able to meet their responsibilities for assuring that the expenditure of Federal funds on State systems is necessary for the effective and efficient operation of the programs. As stated in response to another commenter, HHS intends to continue to review RFPs, contracts and contract amendments, subject to applicable dollar thresholds, to ensure that programmatic requirements are being met.

7. *Comment:* One commenter noted that the regulation now includes the Medicaid 75 percent match rate in the regular match category and noted that now all Medicaid 75 percent acquisitions will require prior approval.

Response: We believe the commenter misunderstood this provision of the regulation. The revision now puts Medicaid 75 percent funding in the $5 million threshold category. HCFA will further clarify this in a revision to Chapter 11 of the Medicaid Management Manual, which deals with Medicaid Management Information System requirements.

8. *Comment:* One State was confused by our statement that some RFPs and contracts under the threshold amounts would require prior approval. The commenter was concerned as to how they would know if approval was required.

Response: Approval of RFPs, contracts, and contract amendments will be required, on an exception basis, for projects utilizing new technology, such as Electronic Benefits Transfer (EBT), and in those cases in which the procurement is not well defined in the approved APD. States will know when approval of these documents is required because HHS will inform them, in writing, when these documents must be submitted for approval.

9. *Comment:* One commenter noted that contract amendments that are funded at the regular FFP rate and exceed the $1 million threshold, or contract time extensions of more than 120 days require prior approval. The commenter suggested that since a project that costs $1 million will usually have a duration of more than one year, the number of days should be changed to 365.

Response: The commenter implies a necessary connection, with which we do not agree, between increased project cost and the duration of a project. There are two different issues here. A contract amendment which exceeds $1 million in cost requires prior approval. Additionally, a contract amendment for a time extension of more than 120 days requires prior approval. For example, the cost of a project may increase with no change in project time frame. Similarly, the time frame for a project may increase with no increase in project cost.

Federal Response Deadline

1. *Comment:* One commenter expressed concern that the definition and use of ''provisional approval'' in the proposed rule was unclear. Specifically, the commenter noted that the phrases ''deemed to have provisionally met the prior approval requirements'' and ''provisionally met the prior approval requirements'' were used interchangeably, but was concerned that they may in fact have different meanings.

Response: These phrases were not intended to have different meanings. We use the term ''provisional approval'' rather than ''approval'' to make it clear that States are still subject to all Federal requirements (other than prior approval). These are the same requirements, such as those listed in 45 CFR part 74, which States must comply with for any acquisition in which Federal financial participation is requested. As stated in the preamble to the proposed rule, ''Even written prior approval by the Department does not guarantee absolutely that there will be no subsequent determination of violation of the pertinent Federal statutes and regulations.''

The proposed rule preamble further states that ''States which are confident that their project is in compliance would be able, however, to proceed after the 60-day period has expired without further delay awaiting Federal approval.'' However, if it is subsequently determined that the State's project does not meet Federal requirements, appropriate changes will be necessary.

2. *Comment:* One commenter suggested that establishing 60 days as the standard response time may have the effect of lengthening the response

time in all situations to a full 60 days. This commenter suggested that the standard be between 30 and 40 days.

Response: We are not establishing 60 days as the standard response time. In fact, the Department of Health and Human Services considers responses to State requests to be ''overdue'' in 30 days. Sixty days is the outside time period at which point a request will be considered ''provisionally approved.'' If the State has not received a response within 60 days and is confident that a request meets Federal requirements, this provision permits the State to proceed as if it had prior written approval.

3. *Comment:* One commenter was concerned that we might delay sending out an acknowledgement letter to effectively increase the 60-day response time limit.

Response: We would like to assure the commenter that this will not happen. We will continue our policy of promptly acknowledging State requests.

Security Review Reports

1. *Comment:* One commenter suggested that the requirement for biennial security reports be eliminated.

Response: This regulation eliminates the requirement for States to submit the biennial security reports to HHS for review. However, the requirement to conduct the bi-annual reviews and maintain the reports will remain in place as a minimal requirement to assist States in assuring the security of their data processing assets and systems. These reports must be available for review by HHS staff during site visits to States to assist in assessing the security status of Federally funded data processing activities.

Other

1. *Comment:* One commenter stated that the Federal depreciation requirements should be changed.

Response: Federal depreciation requirements are not set by the Department of Health and Human Services but by the Office of Management and Budget under OMB Circular A–87 and thus are not within the purview of this final rule. However, the Department of Health and Human Services previously agreed to exempt data processing equipment costing no more than $5,000 from the depreciation requirements.

Regulatory Impact Analysis

Executive Order 12866 requires that regulations be reviewed to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that this rule is consistent with these priorities and principles. No costs are associated with this rule as it merely decreases reporting burden on States.

Regulatory Flexibility Act

Consistent with the Regulatory Flexibility Act (Pub. L. 96–354), which requires the Federal Government to anticipate and reduce the impact of rules and paperwork requirements on small businesses and other small entities, the Secretary certifies that this rule has no significant effect on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required.

List of Subjects in 45 CFR Part 95

Claims, Computer technology, Grant programs—health, Grant programs, Social programs, Social Security.

(Catalog of Federal Domestic Assistance Program 93.645 Child Welfare Services—State Grants; 93.658, Foster Care Maintenance; 93.659, Adoption Assistance; 93.563, Child Support Enforcement Program; 93.174, Medical Assistance Program; 93.570, Assistance Payments—Maintenance Assistance)

Dated: January 23, 1996.

Mary Jo Bane,

Assistant Secretary for Children and Families.

Approved: April 18, 1996.

Donna E. Shalala,

Secretary.

For the reasons set forth in the preamble, 45 CFR Part 95 is amended as follows:

PART 95—GENERAL ADMINISTRATION—GRANT PROGRAMS (PUBLIC ASSISTANCE AND MEDICAL ASSISTANCE)

1. The authority citation for Part 95, Subpart F continues to read as follows:

Authority: Secs. 402(a)(5), 452(a)(1), 1102, and 1902(a)(4) of the Social Security Act, 42 U.S.C. 602(a)(5), 652(a)(1), 1302, 1396a(a)(4); 5 U.S.C. 301 and 8 U.S.C. 1521.

2. Section 95.611 is amended by removing paragraph (a)(3); redesignating paragraphs (a)(4) through (a)(7) as (a)(3) through (a)(6); revising paragraphs (a)(1), (a)(2), newly redesignated paragraphs (a)(3), (a)(4) and (a)(6); paragraphs (b)(1)(iii), (b)(1)(iv), (c)(1)(i), (c)(1)(ii)(A) and (d); and republishing newly redesignated paragraph (a)(5) to read as follows:

§ 95.611 Specific Conditions for FFP.

(a) * * *

(1) A State shall obtain prior written approval from the Department as specified in paragraph (b) of this section, when the State plans to acquire ADP equipment or services with proposed FFP at the regular matching rate that it anticipates will have total acquisition costs of $5,000,000 or more in Federal and State funds.

(2) A State shall obtain prior written approval from the Department as specified in paragraph (b) of this section, when the State plans to acquire ADP equipment or services with proposed FFP at the enhanced matching rate authorized by 45 CFR 205.35, 45 CFR part 307 or 42 CFR part 433, subpart C, regardless of the acquisition cost.

(3) A State shall obtain prior written approval from the Department of its justification for a sole source acquisition, when it plans to acquire noncompetitively from a nongovernmental source ADP equipment or services, with proposed FFP at the regular matching rate, that has a total State and Federal acquisition cost of more than $1,000,000 but no more than $5,000,000. Noncompetitive acquisitions of more than $5,000,000 are subject to the provisions of paragraph (b) of this section.

(4) Except as provided for in paragraph (a)(5) of this section, the State shall submit requests for Department approval, signed by the appropriate State official, to the Director, Administration for Children and Families, Office of State Systems. The State shall send to ACF one copy of the request for each HHS component, from which the State is requesting funding, and one for the State Systems Policy Staff, the coordinating staff for these requests. The State must also send one copy of the request directly to each Regional program component and one copy to the Regional Director.

(5) States shall submit requests for approval which involve solely Title XIX funding (i.e., State Medicaid Systems), to HCFA for action.

(6) The Department will not approve any Planning or Implementation APD that does not include all information required as defined in § 95.605.

(b) * * *

(1) * * *

(iii) For the Request for Proposal and Contract, unless specifically exempted by the Department, prior to release of the RFP or prior to the execution of the contract when the contract is anticipated to or will exceed $5,000,000 for competitive procurement and $1,000,000 for noncompetitive acquisitions from nongovernmental sources. States will be required to submit RFPs and contracts under these threshold amounts on an exception basis or if the procurement strategy is not adequately described and justified in an APD.

(iv) For contract amendments, unless specifically exempted by the Department, prior to execution of the contract amendment involving contract cost increases exceeding $1,000,000 or contract time extensions of more than 120 days. States will be required to submit contract amendments under these threshold amounts on an exception basis or if the contract amendment is not adequately described and justified in an APD.

* * * * *

(c) * * *

(1) * * *

(i) For an annual APDU for projects with a total acquisition cost of more than $5,000,000, when specifically required by the Department.

(ii) For an ''As Needed APDU'' when changes cause any of the following:

(A) A projected cost increase of $1,000,000 or more.

* * * * *

(d) *Prompt action on requests for prior approval.* The ACF will promptly send to the approving components the items specified in paragraph (b) of this section. If the Department has not provided written approval, disapproval, or a request for information within 60 days of the date of the Departmental letter acknowledging receipt of a State's request, the request will automatically be deemed to have provisionally met the prior approval conditions of paragraph (b) of this section.

3. Section 95.621 is amended by revising paragraph (f)(6) to read as follows:

§ 95.621 APD reviews.

* * * * *

(f) * * *

(6) The State agency shall maintain reports of their biennial ADP system security reviews, together with pertinent supporting documentation, for HHS on-site review.

[FR Doc. 96–19488 Filed 7–30–96; 8:45 am]

BILLING CODE 4184–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[FCC 96–306]

Implementation of the Equal Acess to Justice Act in Agency Proceedings

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has amended its rules implementing the Equal Access to Justice Act to conform to and carry out the intent of recent amendments of that Act to permit recovery, in conjunction with adversary adjudications commenced on or after March 29, 1996, of attorney fees, not exceeding $125.00 per hour, and other expenses. In addition, such an award is permitted when the demand of the Commission for relief is substantially in excess of the decision in an adversary adjudication and is unreasonable when compared with such decision, under the facts and circumstances of the case, unless the party has committed a willful violation of law or otherwise acted in bad faith, or special circumstances make an award unjust. Finally, a small entity as defined in 5 U.S.C. 601 is declared to be an eligible party for such relief.

EFFECTIVE DATE: July 31, 1996.

FOR FURTHER INFORMATION CONTACT: John I. Riffer, Office of General Counsel, (202) 418–1756.

SUPPLEMENTARY INFORMATION:

Adopted: July 15, 1996.
Released: July 18, 1996.

1. By this Order, we amend our rules implementing the Equal Access to Justice Act (EAJA) for Commission proceedings in conformance with recent amendments of that Act adopted as part of the Contract with America Advancement Act of 1996, Pub. L. 104–121, 110 Stat. 847 (1996).

2. The pertinent provisions of the Contract with America Advancement Act of 1996 amend the EAJA to permit recovery, in conjunction with adversary adjudications commenced on or after March 29, 1996, of attorney fees, not exceeding $125.00 per hour, and other expenses. In addition, the legislation provides for such an award when the demand of the Commission for relief is substantially in excess of the decision in an adversary adjudication and is unreasonable when compared with such decision, under the facts and circumstances of the case, unless the party has committed a willful violation of law or otherwise acted in bad faith, or special circumstances make an award unjust. Finally, the statute establishes that a small entity as defined in 5 U.S.C. 601 is an eligible party for such relief. The revised rules, as set forth below, simply incorporate the changes in the EAJA and make those changes applicable to Commission proceedings. These changes merely reiterate the specific terms of the statute and do not involve any discretionary action. Under these circumstances, this action comes within the ''good cause'' exemptions of the Administrative Procedure Act, 5 U.S.C. 553(b)(B) and 553(d), and the notice and comment and effective date provisions of the Administrative Procedure Act are inapplicable.

3. Accordingly, it is ordered, That, effective July 31, 1996, part 1 is amended as set forth below.

List of Subjects in 47 CFR Part 1

Administrative practice and procedure, Federal Communications Commission.

Federal Communications Commission.

William F. Caton,
Acting Secretary.

Rule Changes

Part 1 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 47 U.S.C. 151, 154, 303, and 309(j) unless otherwise noted.

2. The second sentence of § 1.1501 is revised to read as follows:

§ 1.1501 Purpose of these rules.

* * * An eligible party may receive an award when it prevails over the Commission, unless the Commission's position in the proceeding was substantially justified or special circumstances make an award unjust, or when the demand of the Commission is substantially in excess of the decision in the adversary adjudication and is unreasonable when compared with such decision, under the facts and circumstances of the case, unless the party has committed a willful violation of law or otherwise acted in bad faith, or special circumstances make an award unjust. * * *

3. Section 1.1502 is revised to read as follows:

§ 1.1502 When the EAJA applies.

The EAJA applies to any adversary adjudication pending or commenced before the Commission on or after August 5, 1985. The provisions of § 1.1505(b) apply to any adversary adjudications commenced on or after March 29, 1996.

4. Section 1.1504 is amended by removing the period at the end of paragraph (b)(5), adding in its place a semicolon, and adding a new paragraph (b)(6) to read as follows:

§ 1.1504 Eligibility of applicants.

* * * * *

(6) For purposes of § 1.1505(b), a small entity as defined in 5 U.S.C. 601.

* * * * *

5. Section 1.1505 is revised to read as follows:

§ 1.1505 Standards for awards.

(a) A prevailing party may receive an award for fees and expenses incurred in connection either with an adversary adjudication, or with a significant and discrete substantive portion of an adversary adjudication in which the party has prevailed over the position of the Commission.

(1) The position of the Commission includes, in addition to the position taken by the Commission in the adversary adjudication, the action or failure to act by the agency upon which the adversary adjudication is based.

(2) An award will be reduced or denied if the Commission's position was substantially justified in law and fact, if special circumstances make an award unjust, or if the prevailing party unduly or unreasonably protracted the adversary adjudication.

(b) If, in an adversary adjudication arising from a Commission action to enforce a party's compliance with a statutory or regulatory requirement, the demand of the Commission is substantially in excess of the decision in the adversary adjudication and is unreasonable when compared with that decision, under the facts and circumstances of the case, the party shall be awarded the fees and other expenses related to defending against the excessive demand, unless the party has committed a willful violation of law or otherwise acted in bad faith, or special circumstances make an award unjust. The ''demand'' of the Commission means the express demand which led to the adversary adjudication, but it does not include a recitation by the Commission of the maximum statutory penalty in the administrative complaint, or elsewhere when accompanied by an express demand for a lesser amount.

(c) The burden of proof that an award should not be made is on the appropriate Bureau (see § 1.21) whose representative shall be called ''Bureau counsel'' in this subpart K.

6. The first sentence of § 1.1506(b) is revised to read as follows:

§ 1.1506 Allowable fees and expenses.

* * * * *

(b) No award for the fee of an attorney or agent under these rules may exceed $75.00, or for adversary adjudications commenced on or after March 29, 1996, $125.00, per hour. * * *

* * * * *

§ 1.1507 [Amended]

7. The first sentence of § 1.1507(a) is amended by removing the word ''attorney's'' and adding in its place the word ''attorneys'' and by removing ''$75'' and adding in its place ''$125.00.''

§ 1.1508 [Amended]

8. The first sentence of § 1.1508 is revised by removing the word ''for'' and adding in its place the word ''or.''

9. Section 1.1511 is amended by revising paragraph (a) and the introductory text of paragraph (b) to read as follows:

§ 1.1511 Contents of application.

(a) An application for an award of fees and expenses under EAJA shall identify the applicant and the proceeding for which an award is sought. Unless the applicant is an individual, the application shall state the number of employees of the applicant and describe briefly the type and purpose of its organization or business. The application shall also:

(1) Show that the applicant has prevailed and identify the position of an agency or agencies in the proceeding that the applicant alleges was not substantially justified; or

(2) Show that the demand by the agency or agencies in the proceeding was substantially in excess of, and was unreasonable when compared with, the decision in the proceeding.

(b) The application shall also include a declaration that the applicant is a small entity as defined in 5 U.S.C. 601 or a statement that the applicant's net worth does not exceed $2 million (if an individual) or $7 million (for all other applicants, including their affiliates). However, an applicant may omit the statement concerning its net worth if:

* * * * *

10. The first and second sentence of § 1.1513 are revised to read as follows:

§ 1.1513 Documentation of fees and expenses.

The application shall be accompanied by full documentation of the fees and expenses, including the cost of any study, analysis, engineering report, test, project or similar matter, for which an award is sought. A separate itemized statement shall be submitted for each professional firm or individual whose services are covered by the application, showing hours spent in connection with the proceeding by each individual, a description of the specific services performed, the rate at which each fee has been computed, any expenses for which reimbursement is sought, the total amount claimed, and the total amount paid or payable by the applicant or by any other person or entity for the services provided. * * *

11. Section 1.1514 is amended by revising paragraphs (a) and (c) to read as follows:

§ 1.1514 When an application may be filed.

(a) An application may be filed whenever the applicant has prevailed in the proceeding or in a significant and discrete substantive portion of the proceeding, or when the demand of the Commission is substantially in excess of the decision in the proceeding, but in no case later than 30 days after the Commission's final disposition of the proceeding.

* * * * *

(c) For purposes of this rule, *final disposition* means the later of

(1) The date on which an initial decision or other recommended disposition of the merits of the proceeding by an Administrative Law Judge becomes administratively final;

(2) Issuance of an order disposing of any petitions for reconsideration of the Commission's order in the proceeding;

(3) If no petition for reconsideration is filed, the last date on which such petition could have been filed;

(4) Issuance of a final order by the Commission or any other final resolution of a proceeding, such as settlement or voluntary dismissal, which is not subject to a petition for reconsideration, or to a petition for judicial review; or

(5) Completion of judicial action on the underlying controversy and any subsequent Commission action pursuant to judicial mandate.

§ 1.1524 [Amended]

12. The first sentence of § 1.1524 is amended by removing the word ''often'' and adding in its place the word ''after.''

13. Section 1.1526(a) is revised to read as follows:

§ 1.1526 Further proceedings.

(a) Ordinarily, the determination of an award will be made on the basis of the written record. However, on request of either the applicant or Bureau counsel, or on his or her own initiative, the Administrative Law Judge may order further proceedings, such as an informal conference, oral argument, additional written submissions or, as to issues other than excessive demand or substantial justification, an evidentiary hearing. Such further proceedings shall be held only when necessary for full and fair resolution of the issues arising from the application, and shall be conducted as promptly as possible. Whether or not the position of the

agency embodied an excessive demand or was substantially justified shall be determined on the basis of the administrative record, as a whole, which is made in the adversary adjudication for which fees and other expenses are sought.

* * * * *

14. Section 1.1527 is revised to read as follows:

§ 1.1527 Decision.

The Administrative Law Judge shall issue an initial decision on the application as soon as possible after completion of proceedings on the application. The decision shall include written findings and conclusions regarding the applicant's eligibility and whether the applicant was a prevailing party or whether the demand by the agency or agencies in the proceeding was substantially in excess of, and was unreasonable when compared with, the decision in the adversary adjudication, and an explanation of the reasons for any difference between the amount requested and the amount awarded. The decision shall also include, if at issue, findings on whether the Commission's position substantially justified, whether the applicant unduly protracted the proceedings, committed a willful violation of law, or otherwise acted in bad faith, or whether special circumstances make an award unjust. If the applicant has sought an award against more than one agency, the decision shall allocate responsibility for payment of any award made among the agencies, and shall explain the reasons for the allocation made.

§ 1.1528 [Amended]

15. The first sentence of § 1.1528 is amended by removing the word ''fee.''

[FR Doc. 96–19500 Filed 7–30–96; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

48 CFR Parts 219 and 252

[DFARS Case 96–D304]

Defense Federal Acquisition Regulation Supplement; Comprehensive Subcontracting Plans

AGENCY: Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: The Director of Defense Procurement has amended the Defense Federal Acquisition Regulation Supplement (DFARS) to reflect revisions made to the DoD Test Program for Negotiation of Comprehensive Small Business Subcontracting Plans. This action was subject to Office of Management and Budget review under Executive Order 12866.

DATES: Effective Date: July 31, 1996.

Comment date: Comments on the interim rule should be submitted in writing to the address shown below on or before September 30, 1996, to be considered in the formulation of the final rule.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, Attn: Ms. Susan L. Schneider, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax number (703) 602–0350. Please cite DFARS Case 96–D304 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Susan L. Schneider, (703) 602–0131.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule amends DFARS Subpart 219.7 and the clause at 252.219–7004 to reflect revisions made to the DoD Test Program for Negotiation of Comprehensive Small Business Subcontracting Plans. The revisions to the test program implement Section 811 of the National Defense Authorization Act for Fiscal Year 1996 (Pub. L. 104–106). The revised test plan is published elsewhere in this issue of the Federal Register.

This rule also contains editorial revisions to reflect changes to Part 19 of the Federal Acquisition Regulation, published as Item V of Federal Acquisition Circular 90–32 on September 18, 1995 (60 FR 48206).

B. Regulatory Flexibility Act

The interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., because small businesses are exempt from subcontracting plan requirements, and the rule does not change the contractor's obligation to maximize subcontracting opportunities for small business concerns. An initial regulatory flexibility analysis has therefore not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS subparts will also be considered in accordance with Section 610 of the Act. Such comments must be submitted separately and cite DFARS Case 96–D304 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this interim rule does not impose any information collection requirements which require approval of the Office of Management and Budget under 44 U.S.C. 3501, et seq.

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense to issue this rule as an interim rule. Compelling reasons exist to promulgate this rule without prior opportunity for public comment. This interim DFARS rule reflects changes to the Test Program for Negotiation of Comprehensive Small Business Subcontracting Plans, as required by Section 811 of the National Defense Authorization Act for Fiscal Year 1996 (Pub. L. 104–106). Section 811, which amends requirements that contractors must meet to participate in the test program, was effective upon enactment on February 10, 1996. However, comments received in response to the publication of this interim rule will be considered in formulating the final rule.

List of Subjects in 48 CFR Parts 219 and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulation Council.

Therefore, 48 CFR Parts 219 and 252 are amended as follows:

1. The authority citation for 48 CFR Parts 219 and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

2. Part 219 heading is revised to read as follows:

PART 219—SMALL BUSINESS PROGRAMS

3. Section 219.702 is amended by revising the introductory text of paragraph (a) to read as follows:

219.702 Statutory and requirements.

(a) Section 834 of Public Law 101–189, as amended, requires the DoD to establish a test program to determine whether comprehensive subcontracting plans on a corporate, division, or plant-wide basis will reduce administrative burdens while enhancing subcontracting opportunities for small and small disadvantaged business concerns.

* * * * *

4. Section 219.708 is amended by revising paragraphs (b)(1)(A), (b)(1)(B), and (c)(1)(A) to read as follows:

219.708 Solicitation provisions and contract clauses.

(b)(1) (A) Use the clause at 252.219–7003, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan (DoD Contracts), in solicitation and contracts that contain the clause at FAR 52.219–9, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan.

(B) In contracts with contractors which have comprehensive subcontracting plans approved under the test program described in 219.702(a), use the clause at 252.219–7004, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan (Test Program), instead of the clauses at 252.219–7003, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan (DoD Contracts), and FAR 52.219–9, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan.

* * * * *

(c)(1) * * *

(A) When contracting by negotiation, use the clause at 252.219–7005, Incentive for Subcontracting with Small Businesses, Small Disadvantaged Businesses, Historically Black Colleges and Universities, and Minority Institutions, in all solicitations and contracts that contain the clause at FAR 52.219–9, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan. Incentives for exceeding SDB subcontracting goals shall be paid only if an SDB subcontracting goal was exceeded as a result of actual subcontract awards to SDBs, and not as a result of developmental assistant credit under the Pilot Mentor-Protege Program (see subpart 219.71).

* * * * *

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. Section 252.219–7004 is amended by revising the section heading, the clause title and date and paragraph (b), (c), and (d) to read as follows:

252.219–7004 Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan (Test Program).

* * * * *

Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan (Test Program) (Jul 1996)

(a) * * *

(b) The Offeror's comprehensive small business subcontracting plan and its successors, which are authorized by and approved under the test program of Section 834 of Pub. L. 101–189, as amended, shall be included in and made a part of the resultant contract. Upon expulsion from the test program or expiration of the test program, the Contractor shall negotiate an individual subcontracting plan for all future contracts that meet the requirements of Section 211 of Pub. L. 95–507.

(c) The Contractor shall submit Standard Form 295, Summary Subcontract Report, in accordance with the instructions on the form, except Item 14, Remarks, shall be completed to include semi-annual cumulative (1) small business, small disadvantaged business, and women-owned small business goals, and (2) small business and small disadvantaged business goals, actual accomplishments, and percentages for each of the two designated industry categories.

(d) The failure of the Contractor or subcontractor to comply in good faith with (1) the clause of this contract entitled ''Utilization of Small, Small Disadvantaged and Women-Owned Small Business Concerns,'' or (2) an approved plan required by this clause, shall be a material breach of the contract.

(End of clause)

[FR Doc. 96–19413 Filed 7–30–96; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

5 CFR Chapter L

49 CFR Part 99

RIN 3209–AA15

Supplemental Standards of Ethical Conduct for Employees of the Department of Transportation

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: The Department of Transportation, with the concurrence of the Office of Government Ethics (OGE), is issuing regulations for DOT employees that supplement the Standards of Ethical Conduct for Employees of the Executive Branch (Standards) issued by OGE. These regulations are a necessary supplement to the executive branch-wide Standards because they address ethics matters unique to DOT. In particular, they specify agency designees authorized to make determinations and grant approvals under the Standards, designate DOT components as separate agencies for purposes, in part, of the gift rules contained in the Standards, and prohibit employees of the Federal Railroad Administration and the Federal Aviation Administration, which are two administrations within DOT, from having certain financial interests.

EFFECTIVE DATE: These rules become effective: August 30, 1996.

FOR FURTHER INFORMATION CONTACT: William R. Register, Office of the General Counsel (C–10), Department of Transportation, 400 7th Street, S.W., Room 10102, Washington, D.C. 20590, (202) 366–9154.

SUPPLEMENTARY INFORMATION:

I. Background

On August 7, 1992, OGE published the Standards of Ethical Conduct for Employees of the Executive Branch. See 57 FR 35006–35067, as corrected at 57 FR 48557, 57 FR 52583 and 60 FR 51667, with additional grace period extensions at 59 FR 4779–4780, 60 FR 6390–6391 and 60 FR 66857–66858. The executive branch-wide Standards are now codified at 5 CFR part 2635. Effective February 3, 1993, they established uniform ethical conduct standards applicable to all executive branch personnel.

Also, effective February 3, 1993, DOT canceled most of the regulations on Employee Responsibilities and Conduct in 49 CFR part 99 which apply to DOT employees. See 58 FR 7993–7995. The remaining DOT regulations, which include post-employment guidance and regulatory conflict of interest waivers under 18 U.S.C. 208(b)(2), continue in effect pending issuance of superseding OGE regulations.

With the concurrence of OGE, 5 CFR 2635.105 authorizes executive branch agencies to publish agency-specific supplemental regulations necessary to implement their respective ethics programs. The Department of Transportation, with OGE's concurrence, has determined that the supplemental regulations in this rulemaking are necessary to the ongoing implementation of DOT's ethics program.

II. Analysis of the Regulations

Section 6001.101 General

Section 6001.101 explains that the regulations contained in the final rules apply to DOT employees and are supplemental to the executive branch-wide standards. Employees of DOT are also subject to the Standards of Ethical Conduct for Employees of the Executive Branch at 5 CFR part 2635 and the executive branch financial disclosure regulations at 5 CFR part 2634.

Section 6001.102 Agency Designees

Section 6001.102 explains that, within DOT, the ''agency designees'' are the Department's Designated Agency Ethics Official, the Alternate Agency Ethics Official, the Deputy Ethics Officials, and legal counsel in regional and other offices as designated by Deputy Ethics Officials. As defined in 5 CFR 2635.102(b), ''agency designees'' are employees having delegated authority to make determinations, give approvals, and take other action required or permitted by 5 CFR part 2635.

Section 6001.103 Designation of Separate Agency Components

5 CFR 2035.202(a) prohibits, inter alia, an employee from soliciting or accepting a gift from a prohibited source. A prohibited source is defined by 5 CFR 2635.203(d) to include a person who has a specific relationship with an employee's agency. For purposes of identifying an employee's agency, 5 CFR 2635.203(a) authorizes an executive department, by supplemental regulation, to designate as a separate agency a component of the department that exercises distinct and separate functions. Designations made pursuant to § 2635.203(a) are used also for purposes of applying the prohibition in 5 CFR 2635.807(a) against the receipt of compensation for teaching, speaking, or writing related to an employee's duties.

Section 6001.103(a) designates eight administrations in the Department of Transportation as separate agency components. These designated agency components are the Federal Aviation Administration (FAA), Federal Highway Administration, Federal Railroad Administration (FRA), Federal Transit Administration, Maritime Administration, National Highway Traffic Safety Administration, Saint Lawrence Seaway Development Corporation, and United States Coast Guard. These designated agency components are generally recognized as separate agencies within DOT because they exercise separate and distinct functions. As further amplified in § 6001.103(b), DOT employees not employed in one of these eight designated agency components are deemed to be employees of an agency that consists of all parts of the Department, other than the eight designated agency components, and that is separate and distinct from each of those agency components.

Pursuant to the designations in § 6001.103, an aircraft manufacturer, for example, would be a prohibited source for employees of the Federal Aviation Administration, but not for employees of the National Highway Traffic Safety Administration. Neither would the aircraft manufacturer be a prohibited source for employees in the Office of the Secretary, the Research and Special Programs Administration, or the Bureau of Transportation Statistics unless the manufacturer was seeking official action by one of those components, or otherwise had a matter pending before those components or had interests substantially affected by official duties of employees of those components.

Section 6001.104 Prohibited Financial Interests

To assure public confidence in the integrity of the programs and operations of the FAA and FRA, both of these administrations have prohibited their employees, their spouses, and dependents, as matters of longstanding policy and practice, from having financial interests in entities subject to or substantially affected by regulations issued by those administrations. Pursuant to the Standards, at 5 CFR 2635.403(a), the supplemental regulations in § 6001.104 continue in effect these longstanding prohibitions.

The Standards, at 5 CFR 2635.403(a), provide that an individual agency may, by supplemental regulation, prohibit or restrict the acquisition or holding of a financial interest or a class of financial interests by its employees, and by the spouses and minor children of those employees, based on the agency's determination that the acquisition or holding of such financial interests would cause a reasonable person to question the impartiality and objectivity with which agency programs are administered. The FRA and FAA have made such determinations with respect to continuing in effect the above prohibitions. Also, determinations have been made, with respect to the spouses and minor children of FRA and FAA employees, that there continues to be a direct and appropriate nexus between the above prohibition as applied to spouses and minor children and the efficiency of the services provided by the FRA and FAA.

The above prohibitions, as codified in section 6001.104, provide as follows:

Section 6001.104(a)(1) prohibits FRA employees from owning stock or any other financial interest in a railroad company subject to FRA regulation.

Section 6001.104(a)(2) prohibits FRA employees hired after December 1991 from holding reemployment rights with a railroad company regulated by the FRA after their first year of employment. However, this prohibition does not extend to employees hired before January 1992. Most employees hired before January 1992 do not hold employment rights with former employers, except certain employees who have been allowed to retain those rights pursuant to judicial orders issued in *American Federation of Government Employees, Local 2814* v. *Andrew Card, Secretary of Transportation and Gilbert Carmichael, Administrator, Federal Railroad Administration,* Civil Action No. 92–1853 (D.D.C. Oct. 1, 1992).

Section 6001.104(a)(3) prohibits the spouse or minor children of an FRA employee from holding stock or other securities interest in a railroad company subject to FRA regulation.

Section 6001.104(b) prohibits FAA employees from holding stock or any other securities interest in an airline or aircraft manufacturing company, or in a supplier of components or parts to an airline or aircraft manufacturing company.

Prohibiting the financial interests described in sections 6001.104(a) and 6001.104(b) will maintain the FRA's and FAA's appearance of impartiality and objectivity in the execution of their regulatory functions; and will avoid inopportune disqualification of employees from official matters, resulting in an inability of the FRA and FAA to fulfill their regulatory functions.

Section 6001.104(c) provides that the prohibitions in § 6001.104 (a)(1) and (b) against holding certain financial interests do not apply to financial interests held in a publicly traded or publicly available investment fund provided that, at the time of the employee's appointment or upon initial investment in the fund, whichever occurs later, the fund does not have invested more than 30 percent of its assets in a particular transportation or geographic sector and the employee neither exercises control or has the ability to exercise control over the financial interests held in the fund.

Section 6001.104(d) provides that an employee, spouse, or minor child who acquires a financial interest that is subject to § 6001.104, through gift, marriage, or inheritance, must divest the interest within a period set by the agency designee.

III. Amendment of Employee Responsibilities and Conduct Regulations

To ensure that employees are on notice of the ethical standards to which they are subject, DOT is amending its remaining standards of conduct regulations at 49 CFR part 99 to include a provision that cross references 5 CFR parts 2634 and 2635 and the Department

of Transportation supplemental regulations at 5 CFR part 6001.

IV. Matters of Regulatory Procedure

Administrative Procedure Act

The Department of Transportation has found that good cause exists under 5 U.S.C. 553 for waiving, as unnecessary and contrary to the public interest, the general requirements for a general notice of proposed rulemaking. As noted above, these supplemental rules are a restatement of current and longstanding policy and practices, and their continued effectiveness under OGE's rules is essential to the effectiveness of DOT's ethics program. In addition, these rules relate to agency organization, procedure, and practice, and to matters of agency management and personnel.

Executive Order 12866

In promulgating this final regulation, the Department of Transportation has adhered to the regulatory philosophy and the applicable principles of regulation set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. This final rule has not been reviewed by the Office of Management and Budget under that Executive order.

Regulatory Flexibility Act

The Department of Transportation has determined under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that these regulations will not have a significant economic impact on a substantial number of small entities because they effect only DOT employees.

Paperwork Reduction Act

These supplemental rules do not contain any information collection requirements that require the approval of the Office of Management and Budget pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 *et. seq.*).

DOT Regulatory Policies and Procedures

These supplemental rules are not significant under DOT Regulatory Policy and Procedures, 44 FR 11040, and their economic impact will be minimal. For this reason, further regulatory evaluation is not necessary.

Federalism Assessment: Executive Order 12012

These rules have been analyzed in accordance with the principles and criteria contained in Executive Order 12012, and it has been determined that they do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. This is because the rules have no effect on State and local governments since they only apply to Federal employees. Furthermore, there are no reporting or recordkeeping requirements associated with this rulemaking.

List of Subjects

5 CFR Part 6001

Conflict of interests, Government employees.

49 CFR Part 99

Conflict of interests.

Dated: July 8, 1996.

Federico Peña,

Secretary of Transportation.

Approved: July 16, 1996.

Stephen D. Potts,

Director, Office of Government Ethics.

For the reasons set forth in the preamble, the Department of Transportation, with the concurrence of the Office of Government Ethics, is amending title 5 of the Code of Federal Regulations and title 49, subtitle A, of the Code of Federal Regulations as follows:

TITLE 5—[AMENDED]

1. A new Chapter L, consisting of part 6001, is added to title 5 of the Code of Federal Regulations to read as follows:

Chapter L—Department of Transportation

PART 6001—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE DEPARTMENT OF TRANSPORTATION

6001.101 General.
6001.102 Agency designees.
6001.103 Designation of separate agency components.
6001.104 Prohibited financial interests.

Authority: 5 U.S.C. 301, 7301; 5 U.S.C. App. (Ethics in Government Act of 1978); 49 U.S.C. 322; E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306; 5 CFR 2635.105, 2635.203(a), 2635.403(a), 2635.807.

§ 6001.101 General.

In accordance with 5 CFR 2635.105, the regulations in this part apply to employees of the Department of Transportation and supplement the Standards of Ethical Conduct for Employees of the Executive Branch contained in 5 CFR part 2635. In addition to the standards in 5 CFR part 2635, employees are subject to the executive branch financial disclosure regulations contained in 5 CFR part 2634.

§ 6001.102 Agency designees.

For purposes of 5 CFR part 2635, the following Department of Transportation officials are agency designees within the meaning of 5 CFR 2635.102(b):

(a) The Designated Agency Ethics Official;

(b) The Alternate Agency Ethics Official;

(c) The Deputy Ethics Officials; and

(d) As designated by Deputy Ethics Officials, legal counsel in regional and other offices.

§ 6001.103 Designation of separate agency components.

(a) Pursuant to 5 CFR 2635.203(a), each of the following components of the Department of Transportation is designated as a separate agency for purpose of the regulations in subpart B of 5 CFR part 2635 governing gifts from outside sources and § 2635.807 of this title governing teaching, speaking, or writing:

(1) Federal Aviation Administration;

(2) Federal Highway Administration;

(3) Federal Railroad Administration;

(4) Federal Transit Administration;

(5) Maritime Administration;

(6) National Highway Traffic Safety Administration;

(7) Saint Lawrence Seaway Development Corporation; and

(8) United States Coast Guard.

(b) Employees of Department of Transportation components not designated as separate agencies, including employees of the Office of the Secretary of Transportation, the Research and Special Programs Administration, and the Bureau of Transportation Statistics, will be treated as employees of DOT which shall be treated as a single agency that is separate from the above listed agencies for purposes of determining whether the donor of a gift is a prohibited source under 5 CFR 2635.203(d) and for identifying the DOT employee's agency under 5 CFR 2635.807 governing teaching, speaking, and writing.

§ 6001.104 Prohibited financial interests.

(a) *Federal Railroad Administration (FRA).* (1) Except as provided in paragraph (c) of this section, no FRA employee shall hold stock or have any other financial interest, including outside employment, in a railroad company subject to FRA regulation.

(2) No FRA employee appointed after December 1991 shall hold reemployment rights with a railroad company subject to FRA regulation after his or her first year of employment.

(3) No spouse or minor child of an FRA employee shall hold stock or any other securities interest in a railroad company subject to FRA regulation.

(b) *Federal Aviation Administration (FAA).* Except as provided in paragraph (c) of this section, no FAA employee, or spouse or minor child of the employee, may hold stock or have any other securities interest in an airline or aircraft manufacturing company, or in a supplier of components or parts to an airline or aircraft manufacturing company.

(c) *Exception.* The prohibitions in paragraphs (a)(1) and (b) of this section do not apply to a financial interest in a publicly traded or publicly available investment fund, provided that, at the time of the employee's appointment or upon initial investment in the fund, whichever occurs later, the fund does not have invested, or indicate in its prospectus the intent to invest more than 30 percent of its assets in a particular transportation or geographic sector and the employee neither exercises control nor has the ability to exercise control over the financial interests held in the fund.

(d) *Period to divest.* An individual subject to this section who acquires a financial interest subject to this section, as a result of gift, inheritance, or marriage, shall divest the interest within a period set by the agency designee. Until divestiture, the disqualification requirements of 5 CFR 2635.402 and 2635.502 remain in effect.

TITLE 49—[AMENDED]

Subtitle A—Office of the Secretary of Transportation

PART 99—EMPLOYEE RESPONSIBILITIES AND CONDUCT

2. The authority citation for part 99 is revised to read as follows:

Authority: 49 U.S.C. 322; E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

3. A new subpart A, consisting of § 99.735–1, is added to read as follows:

Subpart A—General

§ 99.735–1 Cross-reference to ethical conduct standards and financial disclosure regulations.

Employees of the Department of Transportation are subject to the executive branch-wide Standards of Ethical Conduct at 5 CFR part 2635, the Department of Transportation regulations at 5 CFR part 6001 which supplement the executive branch-wide standards and the executive branch-wide financial disclosure regulations at 5 CFR part 2634.

[FR Doc. 96–19493 Filed 7–30–96; 8:45 am]

BILLING CODE 4910–62–P

National Highway Traffic Safety Administration

49 CFR Part 571 and 590

[Docket No. 94–70, Notice 4]

RIN 2127–AF35

Federal Motor Vehicle Safety Standards; Door Locks and Door Retention Components

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Final rule; response to petitions for reconsideration.

SUMMARY: This document grants in part and denies in part petitions for reconsideration of a final rule of this agency that extended the performance requirements applicable to vehicle side door latches, hinges, and locks to the back doors of passenger cars and multipurpose passenger vehicles with a gross vehicle weight rating (GVWR) of 4,536 kilograms (10,000 pounds) or less.

The agency is granting two of the requests in the petitions. First, the agency is granting a request for a phase-in of the compliance date of the new requirements and establishing the usual reporting and recordkeeping requirements necessary for enforcement of a phase-in. Secondly, the agency is clarifying the definition of ''trunk lid'' with respect to vehicles in which the seatbacks of rear seats fold down to provide additional cargo space. NHTSA is denying the other two requests in the petitions.

DATES: This final rule is effective September 2, 1997.

Any petition for reconsideration of this rule must be received by NHTSA not later than September 16, 1996.

ADDRESSES: Petitions for reconsideration should refer to the docket and notice numbers noted above for this rule and be submitted to the Docket Section, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Room 5109, Washington, DC 20590; telephone (202) 366–4949. Docket room hours are from 9:30 a.m. to 4:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: For technical issues: Dr. William Fan, Light Duty Vehicle Division, Office of Crashworthiness Standards, National Highway Traffic Safety Administration, 400 Seventh Street SW, Washington, DC 20590; telephone (202) 366–4922; FAX (202) 366–4329. For legal issues: Walter Myers, Office of the Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street SW, Washington, DC 20590; telephone (202) 366–2992; FAX (202) 366–3820.

SUPPLEMENTARY INFORMATION:

Background

Federal motor vehicle safety standard (Standard) No. 206, Door locks and door retention components (49 CFR 571.206), specifies performance requirements for side door latches, hinges, locks, and other supporting means. The requirements of the standard, applicable to all passenger cars, multipurpose passenger vehicles (MPV), and trucks, are intended to minimize occupant ejection from the vehicle in the event of a crash.

On September 28, 1995, NHTSA published a final rule in the Federal Register (60 FR 50124) extending the requirements of the standard to the back doors of passenger cars and MPVs that are so equipped and that have a GVWR of 4,536 kilograms (10,000 pounds) or less, including hatchbacks, station wagons, sport utility vehicles, and passenger vans. The effective date of the new requirements was specified in the rule as September 1, 1997.

The final rule defined ''back door'' as follows:

> [A] door or door system on the back end of a vehicle through which passengers can enter of depart the vehicle, or cargo can be loaded or unloaded, except—
>
> (1) The trunk lid of a passenger car whose trunk is separated from the passenger compartment by a partition; and
>
> (2) a door or window composed entirely of glazing material whose latches and/or hinges are attached directly onto the glazing material.

The rule required that each back door system have at least one primary latch and that each primary latch not separate when a load of 11,000 Newtons (2,500 pounds) is applied perpendicular to the face of the latch (Load Test One); when a load of 8,900 Newtons (2,000 pounds) is applied in the direction of fork-bolt opening parallel to the face of the latch (Load Test Two); and when a load of 8,900 Newtons (2,000 pounds) is applied in a direction orthogonal to the other two directions (Load Test Three). The rule further specified that auxiliary latches in multiple-latch back door systems must meet the same strength requirements as primary latches on those doors.

The primary latches of the back doors are required by the rule to have both the fully latched and the secondary latched positions. Auxiliary latches are not required to have a secondary latched position.

The Petitions

(a) The American Automobile Manufacturers Association (AAMA) submitted a petition for reconsideration on behalf of its members, Chrysler Corporation (Chrysler), Ford Motor Company (Ford), and General Motors (GM), urging the deletion of ''unnecessary and design restrictive requirements'' and extension of the effective date. Specifically, the AAMA requested reconsideration of the following requirements:

(1) *Auxiliary latch performance requirements.* AAMA asserted that auxiliary latches should not be required to meet the same strength requirements as primary latches. AAMA argued that since the standard does not require auxiliary latches, a door equipped with only a primary latch that met requirements would comply with the standard, while a door with a complying primary latch and an auxiliary latch that did not meet the primary latch strength requirements would not. The AAMA stated that such a situation is neither reasonable nor appropriate since the addition of an auxiliary latch, whatever its performance level, would provide a level of security over and above that required by the standard. In addition, the current requirement could result in a reduction in door system performance if it causes manufacturers not to add auxiliary latches to doors because of the additional costs involved. Finally, AAMA argued that auxiliary latches are often added to prevent water leaks, wind noise, squeaks, and rattles, and the deletion of such latches could cause customer dissatisfaction. Accordingly, when a door system contains multiple latches, only one should be required to meet the requirements of the standard.

(2) *Secondary latching position for hatches.* AAMA stated that requiring a secondary latching position for the hatches of hatchback cars is unnecessary and provides no benefit to customers. AAMA asserted that the benefits of a secondary latching position for side doors are derived from the presence of a seated occupant near those doors. Thus, in the event of occupant misuse, such as a door not fully closed by the occupant, the secondary latch position can retain a door in a closed position until it can be secured in the fully latched position. AAMA stated that in addition to forcing redesign of the latch, requiring a secondary latching position on the back doors of hatchback cars will require redesign of the latch release mechanism because hatch release mechanisms may be key-controlled only. Further, ergonomics may require installation of an exterior release handle where one does not presently exist, thus further increasing resource expenditure with no commensurate safety benefit. Thus, AAMA asked that the latch releases on hatchback cars be required to meet requirements prohibiting component separation in the fully latched position only.

(3) *Lead time.* In the Notice of Proposed Rulemaking (NPRM) of August 30, 1994 (59 FR 44691) in which NHTSA proposed extending the side door requirements to back doors, the proposed effective date was ''the first September 1 that occurs following a two year period beginning with the publication of a final rule.'' AAMA stated that that proposed lead time would have provided a lead time of slightly less than 3 years to slightly more than 2 years, but that the lead time specified in the final rule was less than that proposed in the NPRM. Since some AAMA members' back door and hatch systems do not comply with the new requirements, new latches and locks may have to be designed, tested and validated, then production tooling must be designed and built, all requiring approximately 2 to 3 years lead time. In addition, some members are planning certain phase-outs in model year (MY) 1997 and introduction of new models in MY 1998. Thus, phasing-in the new requirements would allow manufacturers the flexibility to direct resources to products which offer long term impact and be more in accordance with the lead time proposed in the NPRM. AAMA therefore requested a phase-in of 60 percent of production by MY 1998 (September 1, 1997) and 100 percent by MY 1999 (September 1, 1998).

(b) General Motors. GM stated that it participated in and supported the petition of AAMA. GM further commented that a lead time of less than 2 years is unreasonable and requested a 2-model year phasing-in of the new requirements commencing September 1, 1997.

(c) Chrysler Corporation. Chrysler also stated that it participated in and supported the petition of AAMA, and reiterated AAMA's request for a 2-model year phase-in of the new requirements.

(d) Ford Motor Company. Ford stated that it, too, participated in and supported the petition of the AAMA. In addition, Ford stated that the definition of ''back door'' in the rule (quoted above) is ambiguous in that passenger sedans equipped with fold-down rear seats could be construed as not having a trunk ''separated from the passenger compartment by a partition'' since there would be no partition when the seats are folded down.

Agency Analysis and Decision

(a) *Clarifying the definition of ''back door.''* NHTSA recognizes that certain models of passenger sedans are equipped with rear seats on which the seatbacks fold down to provide additional cargo space. Thus, to eliminate any possibility that the exclusion of trunk lids from the definition of ''back door'' might be misapplied with respect to vehicles with fold-down rear seats, the agency is clarifying the exclusion by adding a definition of ''trunk lid.''

(b) *Phase-in of requirements.* The petitioners were unanimous in their assertions that an effective date of September 1, 1997 did not provide sufficient lead time to design, test, and produce new latch systems and to accommodate planned business cycles. Accordingly, to provide manufacturers sufficient time to redesign, build, test, and validate latches that may need to be changed to meet the new requirements, petitioners requested a phase-in of the new requirements so that compliance of 60 percent of production is required beginning September 1, 1997 (MY 1998) and 100 percent beginning September 1, 1998 (MY 1999).

NHTSA proposed an effective date of the first September 1 following 2 years after publication of the final rule in the Federal Register. NHTSA believed that a lead time of 2 to 3 years would be needed by manufacturers to make necessary latch design and tooling changes for some of their vehicles. In addition, the agency was aware of the ability of manufacturers to replace certain add-on components with upgraded parts without having to change existing vehicle body structures. Thus, the agency did not believe it likely that a latch upgrade operation would involve significant vehicle sheet metal or body structure changes. NHTSA believed that the lead time provided in the final rule, a period that is 4 weeks short of 2 years, would be adequate.

As noted above, the petitioners reiterated the arguments they made in response to the NPRM that 2 years was insufficient lead time for certifying the compliance of all vehicles. They also alleged that the agency failed to provide even the minimum lead time (2 years) that it had proposed in the NPRM. Further, some petitioners provided confidential information concerning the time necessary to design new latches, build and test prototypes, assure quality and durability, and conduct certification tests. Based on this new information, as

well as other confidential data submitted regarding product plans, NHTSA has concluded that the short phase-in requested by the petitioners would provide manufacturers with the necessary time needed to comply with the new requirements, while minimizing compliance costs. Compared with requiring 100 percent compliance beginning September 1, 1997, as specified in the final rule, adopting the petitioners' request would result in a compliance delay of a maximum of 40 percent of production for a 1-year period. In view of the agency's belief that many back door latch, hinge, and lock assemblies already comply with the new requirements and that many more manufacturers will comply with the new requirements by the original effective date, the agency believes that the actual difference in the implementation delay between the original effective date and the petitioners' requested phase-in of the effective date would be less than 40 percent of total vehicle production. Accordingly, the effective date of the requirements of the final rule will be phased-in to require 60 percent of affected vehicles to comply with the new requirements by September 1, 1997 (MY 1998), and to require all such vehicles manufactured after September 1, 1998 (MY 1999) to comply with the new requirements.

NHTSA is also establishing the usual reporting and recordkeeping requirements necessary for agency enforcement of a phase-in. These requirements are necessary to enable the agency to identify which vehicles are certified to be in compliance with the new back door requirements. In general, each manufacturer must submit a report to NHTSA within 60 days after the end of the production year ending August 31, 1998 detailing its 60 percent compliance with the back door latch, hinge, and lock requirements of its passenger cars and MPVs produced that production year. The information required for each report is also specified. Finally, each manufacturer must maintain records of the vehicle identification numbers of each passenger car and MPV for which information is reported under this standard until December 31, 1999.

(c) *Auxiliary Latch Performance Requirements.* For the first time, ''auxiliary latch'' was defined in the standard as a latch or latches other than the primary latch (which was also defined in the standard for the first time) installed on a door equipped with more than one latch. The final rule specified that the primary latch is required to have both fully latched and secondary latched positions, while auxiliary latches are required to have only a fully latched position.

Although the amendments to the standard specifically address auxiliary latches, they did not require installation of auxiliary latches on back door systems. There is too much variation in the configurations and designs of those door systems for the agency to be able to specify a practicable and broadly-worded requirement for auxiliary latches that would appropriately distinguish between those door systems needing auxiliary latches and those that do not. More importantly, adopting such a requirement is not necessary to ensure that auxiliary latches are provided on multiple door systems since the vehicle manufacturers already do so. The agency believes, however, that if auxiliary latches are installed, there is a need to ensure that they perform properly.

The agency believes that, in the interest of motor vehicle safety, auxiliary latches on back doors must meet the same strength requirements that primary latches must meet in the fully latched position. While primary and auxiliary latches serve a common purpose in holding the door system closed, they are usually in different locations, oriented in different directions, and subjected to different loading conditions in a crash. In a typical double cargo door system, for example, if the auxiliary latch that attaches a door part to the vehicle floor fails in a crash, the door parts would tend to rotate outward, creating a pulling and twisting loading on the primary latch. Since the primary latch is not required to meet such a rotational load requirement, it may not perform well in such a loading condition. In fact, NHTSA data show that in a rotational load test, many production door latches, whether primary or auxiliary, fail at a much lower load level than the load limits specified in S4.1.1.1 and S4.1.1.2 of the standard. If auxiliary latches meet the same strength requirements as primary latches, however, such additional strength would reduce the likelihood of primary latch failure due to the rotational loading of a crash, thereby reducing the risk of unintentional door opening and consequent occupant ejection.

NHTSA does not agree with AAMA's argument that applying strength requirements to auxiliary latches could cause manufacturers to delete auxiliary latches, thus resulting in reductions in door system performance. As AAMA pointed out in its petition, manufacturers add auxiliary latches for purposes related to consumer satisfaction, such as prevention of water leaks, wind noise, squeaks, rattles, and the like. NHTSA believes that vehicle manufacturers will remain responsive to motor vehicle safety and consumer satisfaction, and that the number of latches fitted to a door system will continue to reflect the manufacturer's assessment of the actual safety needs of the system. Further, the technology of door latch design is well established and commonly used throughout the auto industry. Thus, NHTSA is confident that manufacturers will not delete auxiliary latches merely to avoid making some minor modifications to some latch designs, assuming that any are in fact necessary.

For the reasons discussed above, the agency is convinced that in order to reduce the safety risk of inadvertent door openings in crashes and potential occupant ejection as a result of those openings, all door latches, whether primary or auxiliary, must meet the strength requirements of the standard. Accordingly, this request of the petitioners is denied.

(d) *Secondary latching position requirement for hatchbacks.* AAMA suggested that the secondary latching position is not necessary for the back door latches of hatchback cars since such doors are designed solely for loading and unloading cargo. AAMA contended that the secondary latching requirement for such doors serves no safety purpose and provides no benefits to occupants. AAMA further contended that such a requirement will require redesign of the latch release mechanisms since hatch release mechanisms may be key-controlled only. AAMA stated that ergonomics may require the addition of an outside door handle where one does not now exist, thus increasing costs without any commensurate safety benefit.

NHTSA disagrees with AAMA on this issue. The purpose of the secondary latching position requirement is to prevent door opening in the event that the fully latched position fails, for whatever reason, to retain the door in the closed position. Latch disengagement from the fully latched position can occur from many dynamic factors, notably impact or inertia forces generated in a crash. Although the hatches of hatchback cars are typically designed for the loading and unloading of cargo and have no interior door handle that can inadvertently cause the door to open, they are particularly susceptible to opening in crashes. NHTSA pointed out in the final rule that agency data show that hatches on hatchback cars have a significantly

higher opening rate in crashes than back doors in other types of vehicles, making them a major source of occupant ejections. Accordingly, requiring a secondary latching position on these latches is an added element of security in preventing door opening and consequent occupant ejection in crashes.

The agency also does not agree that requiring a secondary latching position for latches on hatchbacks will necessitate extensive redesign of those latches. The agency believes that key-controlled latches can be designed to have secondary latching positions, with perhaps only very minor modifications. Further, the agency continues to believe that a large variety of such latches, whether key-controlled or otherwise, already comply with the requirements of the standard. The agency pointed out in the final rule that the production cost of a latch is nearly the same with or without the secondary latching position, and that the incremental cost for latch improvement, if needed, is not more than $1.00 per latch. The final rule referred to a 1994 engineering evaluation of the back door latches of 8 minivans conducted by the agency in which it was found that 7 of those vehicles already had 2 latching positions on their back door latches. The agency also considers it likely that many existing side or back door latch systems that now comply with the standard can be used for hatch doors. Accordingly, this request in the AAMA petition for reconsideration is denied.

Rulemaking Analyses and Notices

(a) *Executive Order No. 12866 and DOT Regulatory Policies and Procedures.*

This rulemaking document was not reviewed under E.O. 12866, *Regulatory Planning and Review*. NHTSA has considered the impact of this rulemaking action under the DOT's regulatory policies and procedures and has determined that it is not ''significant'' within the meaning of those policies and procedures.

The amendments promulgated by this document are intended to clarify the applicability of Standard No. 206 in terms of what latches, hinges and locks are not covered by the requirements of the standard (trunk lids), and to permit a phase-in of the effective date of the amendments to the standard published in the final rule of September 28, 1995 (60 FR 50124). The cost impacts of the amendments to the standard were analyzed at length in the 1995 final rule and determined to be so minor as not to require a final regulatory evaluation. The petitioners submitted no data or information showing any cost impacts not considered in the 1995 final rule. Further, slight delay in the implementation of the 1995 final rule does not alter the agency's conclusions about the rule's cost impacts. Accordingly, NHTSA reaffirms the cost estimates discussed in the 1995 final rule and has not prepared a full regulatory evaluation for this response to the petitions for reconsideration.

(b) *Regulatory Flexibility Act.*

NHTSA has considered the effects of this rulemaking action under the Regulatory Flexibility Act. For the reasons explained above, I hereby certify that the amendments promulgated by this rule will not have a significant impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis was not prepared.

(c) *Executive Order 12612 (Federalism).*

NHTSA has analyzed this rulemaking action in accordance with the principles and criteria contained in E.O. 12612, Federalism, and has determined that this rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

(d) *National Environmental Policy Act.*

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act and has determined that implementation of this rulemaking action will not have any significant impact on the quality of the human environment.

(e) *Paperwork Reduction Act.*

The reporting requirements associated with this rule will be submitted to the Office of Management and Budget for approval in accordance with Chapter 35 of Title 44, United States Code, prior to the effective date of such reporting requirements. *Administration:* National Highway Traffic Safety Administration; *Title:* Back Door Latch, Hinge, and Lock Phase- in Reporting Requirements; *Need for Information:* To report manufacturers' production for the first year of the phase-in period; *Proposed Use of Information:* To determine compliance with 'phase-in requirements; *Frequency:* One report; *Burden Estimate:* 1,260 hours; *Respondents:* 35; *Forms*(s): Written reports; *Average Burden Hours Per Respondent:* 24.

(f) *Executive Order 12778 (Civil Justice Reform).*

This final rule does not have any retroactive effect. Under 49 U.S.C. 30103(b), whenever a Federal motor vehicle safety standard is in effect, a state or political subdivision thereof may prescribe or continue in effect a standard applicable to the same aspect of performance of a motor vehicle only if such standard is identical to the Federal standard. A state may, however, prescribe a standard for a motor vehicle or item of equipment obtained for its own use that imposes a higher performance requirement than the Federal standard. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. A petition for reconsideration or other administrative proceeding is not required before parties may file suit in court.

List of Subjects

49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

49 CFR Part 590

Reporting and recordkeeping requirements.

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

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

Authority: 49 U.S.C. sec. 322, 30111, 30115, 30117, and 30166; delegations of authority at 49 CFR 1.50.

2. Section 571.206 is amended in S.3 by revising the definition of ''back door'' first published at 60 FR 50124, September 28, 1995, to become effective September 1, 1997; by adding the definition of ''trunk lid;'' and by revising S4 to read as follows:

§ 571.206 Standard No. 206, Door locks and door retention components.

* * * * *

S3. * * *

Back door means a door or door system on the back end of a motor vehicle through which passengers can enter or depart the vehicle, or cargo can be loaded or unloaded; but does not include:

(a) A trunk lid; or

(b) A door or window that is composed entirely of glazing material and whose latches and/or hinges are attached directly to the glazing material.

* * * * *

Trunk lid means a movable body panel that provides access from outside the vehicle to a space wholly partitioned from the occupant compartment by a permanently attached partition or a fixed or fold-down seat back.

* * * * *

S4. *Requirements.*

(a) *Components on side doors.* Components on any side door that leads directly into a compartment that contains one or more seating accommodations shall conform to this standard.

(b) *Components on back doors.* Components on any back door of a passenger car or multipurpose passenger vehicle with a gross vehicle weight rating (GVWR) of 4,536 kilograms (10,000 pounds) or less that leads directly into a compartment that contains one or more seating accommodations shall conform to this standard, subject to the following compliance schedule:

(1)(i) For those affected passenger cars and multipurpose passenger vehicles manufactured on or after September 1, 1997, and before September 1, 1998, the amount of such vehicles complying with this standard shall be not less than 60 percent of the combined total production of passenger cars and multipurpose passenger vehicles, based on:

(A) The manufacturer's average annual production of such vehicles manufactured on or after September 1, 1996 and before September 1, 1998; or

(B) The manufacturer's production of such vehicles on or after September 1, 1997 and before September 1, 1998.

(ii) For calculating average annual production of affected passenger cars and multipurpose passenger vehicles for each manufacturer and the number of such vehicles manufactured by each manufacturer, a vehicle produced by more than one manufacturer shall be attributed to a single manufacturer as follows:

(A) A vehicle that is imported shall be attributed to the importer;

(B) A vehicle manufactured in the United States by more than one manufacturer, one of which also markets the vehicle, shall be attributed to the manufacturer that markets the vehicle.

(C) A vehicle produced by more than one manufacturer shall be attributed to any one of the vehicle's manufacturers specified by an express written contract between the manufacturer so specified and the manufacturer to which the vehicle would otherwise be attributed under paragraph (b)(1)(ii) (A) or (B) of this section.

(2) Components on the back doors of affected passenger cars and multipurpose passenger vehicles manufactured on and after September 1, 1998 shall conform to all applicable requirements of this standard.

(c) Components on folding doors, roll-up doors, doors that are designed to be easily attached to or detached from motor vehicles manufactured for operation without doors, and doors that are equipped with wheelchair lifts and that are linked to an alarm system consisting of either a flashing visible signal located in the driver's compartment or an alarm audible to the driver that is activated when the door is open, need not conform to this standard.

(d) A particular latch or hinge assembly utilized as a test specimen need not meet further requirements after having been subjected to and having met any one of the requirements of S4 or S5.1 through S5.4.

* * * * *

1. Part 590 is added to read as follows:

PART 590—BACK DOOR LATCH, HINGE, AND LOCK PHASE-IN REPORTING REQUIREMENTS

Sec.
590.1 Scope.
590.2 Purpose.
590.3 Applicability.
590.4 Definitions.
590.5 Response to inquiries.
590.6 Reporting Requirements.
590.7 Records.
590.8 Petition to extend period to file report.

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

§ 590.1 Scope.

This part establishes requirements for manufacturers of passenger cars and multipurpose passenger vehicles with a gross vehicle weight rating of 4,536 kilograms (10,000 pounds) or less to respond to NHTSA inquiries, to submit reports, and maintain records related to such reports, concerning the number of such vehicles that meet the back door latch, hinge, and lock requirements of Standard No. 206, *Door locks and door retention components* (49 CFR 571.206).

§ 590.2 Purpose.

The purpose of these reporting requirements is to aid the NHTSA in determining whether a manufacturer of passenger cars and multipurpose passenger vehicles with a gross vehicle weight rating of 4,536 kilograms (10,000 pounds) or less has complied with the back door latch, hinge, and lock requirements of Standard No. 206.

§ 590.3 Applicability.

This part applies to manufacturers of passenger cars and multipurpose passenger vehicles with a gross vehicle weight rating of 4,536 kilograms (10,000 pounds) or less. However, this part does not apply to those motor vehicles excluded from the requirements of Standard No. 206.

§ 590.4 Definitions.

(a) All terms defined in 49 U.S.C. 30102 are used in their statutory meanings.

(b) Gross vehicle weight rating, multipurpose passenger vehicle, and passenger car are used as defined in § 571.3 of this chapter.

(c) *Production year* means the 12-month period between September 1 of one year and August 31 of the following year, inclusive.

§ 590.5 Response to inquiries.

During the production year ending August 31, 1998, each manufacturer shall, upon request from the Office of Vehicle Safety Compliance, this agency, provide information regarding which vehicle makes/models are certified as complying with the provisions of S4 and S5, Standard No. 206.

§ 590.6 Reporting requirements.

(a) *General reporting requirements.* Within 60 days after the end of the production year ending August 31, 1998, each manufacturer shall submit a report to NHTSA concerning the manufacturer's compliance with the latch, hinge, and lock requirements of this standard for the back doors of its passenger cars and multipurpose passenger vehicles with a gross vehicle weight rating of 4,536 kilograms (10,000 pounds or less) produced in that year. Each report shall:

(1) Identify the manufacturer;

(2) State the full name, title, and address of the official responsible for preparation of the report;

(3) Identify the production year being reported on;

(4) Contain a statement regarding whether or not the manufacturer complied with the back door latch, hinge, and lock requirements of this standard in the percentages specified in S4 for the period covered by the report and the basis for that statement;

(5) Provide the information specified in § 590.7;

(6) Be written in the English language; and

(7) Be submitted to: Administrator, National Highway Traffic Safety Administration, ATTN: NSA–01, 400 Seventh Street, SW., Washington, DC 20590.

(b) *Report content.*—(1) *Basis for phase-in production goals.* Each manufacturer shall provide the number of passenger cars and multipurpose passenger vehicles with a GVWR of 4,536 kilograms (10,000 pounds) or less manufactured for sale in the United States for each of the two previous production years or, at the manufacturer's option, for the current

production year. A new manufacturer that has not previously manufactured passenger cars and multipurpose passenger vehicles with a GVWR of 4,536 kilograms (10,000 pounds) or less for sale in the United States must report the number of such vehicles manufactured during the current production year.

(2) *Production*. Each manufacturer shall report for the production year for which the report is filed the number of passenger cars and multipurpose passenger vehicles with a gross vehicle weight rating of 4,536 kilograms (10,000 pounds) or less that meet the back door latch, hinge, and lock requirements of this standard.

§ 590.7 Records.

Each manufacturer shall maintain records of the vehicle identification number of each passenger car and multipurpose passenger vehicle for which information is reported in accordance with § 590.6 until December 31, 1999.

§ 590.8 Petition to extend period to file reports.

A petition for extension of time to file a report required by S6.1 must be received not later than 15 days before expiration of the time specified in § 590.5(a). The petition must be submitted to: Administrator, National Highway Traffic Safety Administration, ATTN: NSA–01, 400 Seventh Street, SW., Washington, DC 20590. The filing of a petition does not automatically extend the time for filing a report. A petition will be granted only if the petitioner shows good cause for the extension and the extension is consistent with motor vehicle safety.

Issued on July 23, 1996.

Ricardo Martinez,

Administrator.

[FR Doc. 96–19354 Filed 7–30–96; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 960216032–6197–06; I.D. 052196A]

RIN 0648–AH70

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Amendment 7; Open Access Nonregulated Multispecies Permit

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement a measure that was disapproved in the preliminary evaluation of Amendment 7 to the Northeast Multispecies Fishery Management Plan (FMP) and has been revised and resubmitted by the New England Fishery Management Council (Council). This revision recreates and renames the possession limit permit under Amendment 5 to the FMP and allows certain fisheries to continue under this permit category that would otherwise be prohibited by Amendment 7. The intended effect of this action is to continue to allow fishing for nonregulated multispecies (silver hake, red hake and ocean pout) by vessels that do not qualify for a limited access multispecies permit.

EFFECTIVE DATE: July 31, 1996.

ADDRESSES: Copies of Amendment 7, its regulatory impact review (RIR) and the initial regulatory flexibility analysis contained within the RIR, the Final Supplemental Environmental Impact Statement, and copies of the resubmitted measure and its supporting documents, are available from Douglas Marshall, Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway (US Rte. 1), Saugus, MA 01906–1097.

FOR FURTHER INFORMATION CONTACT: Peter W. Christopher, Fishery Management Specialist, 508–281–9288.

SUPPLEMENTARY INFORMATION: The Council submitted Amendment 7 to the FMP on February 5, 1996. After a preliminary evaluation, three measures in the amendment were disapproved on February 14, 1996, including the establishment of a limited access category for qualified vessels that fished in the open access possession limit category under Amendment 5. The remainder of Amendment 7, including the other two previously disapproved measures, were resubmitted to NMFS and implemented, pursuant to the Magnuson Fishery Conservation and Management Act (Magnuson Act), by a final rule published on May 31, 1996 (61 FR 27710).

Pursuant to section 304(b)(3)(A) of the Magnuson Act, the Council resubmitted the measure that would implement a possession limit permit category by revising it to allow any vessel of the United States to obtain the permit and fish for and possess nonregulated multispecies, defined to be silver hake, red hake, and ocean pout.

Details of the resubmission are described in the proposed rule, published on June 13, 1996 (61 FR 30029), and will not be repeated here.

This final rule implements an open access permit category that is now named the ''open access nonregulated multispecies permit.'' The new permit category allows fishing for nonregulated multispecies by vessels that do not qualify for a limited access multispecies permit and eliminates any inequity or administrative burden associated with the need to qualify for a limited access permit.

Comments and Responses

Written comments were submitted by two individuals. While both individuals opposed the elimination of the Amendment 5 possession limit permit category and/or the 500–lb (226.8–kg) allowance of regulated species associated with this permit, they did support the implementation of a nonregulated multispecies permit category.

Comment: Two individuals supported the implementation of a nonregulated multispecies permit that would allow them to fish for, possess, and land nonregulated multispecies on their vessels. One individual requested immediate implementation of this rule, or an extension of the possession limit permit, to prevent fish from being discarded. Both individuals opposed elimination of the 500–lb (226.8–kg) possession limit allowance of regulated species.

Response: This rule implements the nonregulated multispecies permit that will allow these types of fishing operations to continue. In order to implement this rule, NMFS must follow regulated rulemaking procedures, including prior notice and an opportunity for public comment. For this reason, the implementation of this resubmitted measure could not have been implemented with the remainder of Amendment 7. Further, the possession limit permit could not have been extended because of its explicit elimination under Amendment 7. However, to relieve a restriction, the required 30-day delayed effectiveness period has been waived and the new permit category is effective with today's publication in the Federal Register.

The 500–lb (226.8–kg) regulated species possession allowance was eliminated by the rule implementing Amendment 7. The control date for entry into the multispecies fishery was February 21, 1991, at which time the public was put on notice that future entry into the fishery could be limited and that those investing in the fishery

after that date were doing so at risk. The condition of the stock complex has continued to decline since that time and more restrictive measures have been implemented in Amendments 5 and 6 to the FMP. Amendment 7 eliminated the possession allowance in part because of its open-access nature. While Amendment 7 imposed significant restrictions on the directed multispecies fleet through days-at-sea reductions, allowing a potentially unlimited number of vessels to land 500 lb (226.8 kg) of regulated species per trip would be inconsistent with the goals of the FMP.

Changes in the Final Rule from the Proposed Rule

The proposed rule would have amended the Amendment 7 final rule published on May 31, 1996 (61 FR 27710). The provisions of the Amendment 7 final rule have since been incorporated into consolidated regulations for Fisheries of the Northeastern United States (50 CFR part 648) published on July 3, 1996 (61 FR 34966). A prohibition necessary to implement the management measures contained in this rule inadvertently omitted from the proposed rule is added. The following citations that had been in 50 CFR part 651 of the proposed rule are now in 50 CFR part 648:

§ 651.2 *Definitions* is now § 648.2.

§ 651.4 *Vessel permits* is now § 648.4. Paragraph (c) in the proposed rule under § 651.4 is now paragraph (a)(1)(ii) under § 648.4.

§ 651.33 *Open access permit restrictions* is now § 648.88.

Classification

The Northeast Regional Director determined that the FMP final rule is necessary for the conservation and management of the Northeast multispecies fishery and that it is consistent with the Magnuson Act and other applicable laws.

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

The Assistant Administrator for Fisheries, NOAA (AA), finds that under 5 U.S.C. 553(d)(1), because immediate implementation of this rule relieves a restriction on fishing, there is no need to delay for 30 days the effectiveness of this regulation.

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 discussed in the proposed rule published in the Federal Register on June 13, 1996 (61 FR 30029). As a result, a regulatory flexibility analysis was not prepared.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: July 25, 1996.

Charles Karnella,

Acting Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is amended to read 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 § 648.2, the definition for ''nonregulated multispecies'' is added in alphabetical order to read as follows:

§ 648.2 Definitions.

* * * * *

Nonregulated multispecies means the subset of Northeast multispecies that includes silver hake, red hake and ocean pout.

* * * * *

3. In § 648.4, paragraph (a)(1)(ii) is revised to read as follows:

§ 648.4 Vessel permits.

* * * * *

(a) * * *

(1) * * *

(ii) *Open access permits.* A vessel of the United States that has not been issued a limited access multispecies permit is eligible for and may be issued an open access multispecies handgear, charter/party or nonregulated multispecies permit and may fish for, possess and land multispecies finfish subject to the restrictions in § 648.88. A vessel that has been issued a valid limited access scallop permit, but that has not been issued a limited access multispecies permit, is eligible for and may be issued an open access scallop multispecies possession limit permit and may fish for, possess and land multispecies finfish subject to the restrictions in § 648.88. The owner of a vessel issued an open access permit may request a different open access permit category by submitting an application to the Regional Director at any time.

* * * * *

4. In § 648.14, paragraph (t) is redesignated as paragraph (u) and a new paragraph (t) is added to read as follows:

§ 648.14 Prohibitions.

* * * * *

(t) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraphs (a) through (h) of this section, it is unlawful for any person owning or operating a vessel issued a nonregulated multispecies permit to possess or land any regulated species as defined in § 648.2, or violate any applicable provisions of § 648.88.

* * * * *

5. In § 648.88, paragraph (d) is added to read as follows:

§ 648.88 Open access permit restrictions.

* * * * *

(d) A vessel issued a valid open access nonregulated multispecies permit may possess and land nonregulated multispecies. The vessel is subject to restrictions on gear, area, and time of fishing specified in § 648.80 and any other applicable provisions of this part.

[FR Doc. 96–19465 Filed 7–30–96; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 61, No. 148
Wednesday, July 31, 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 983

[Docket No. FV96–983–1 PR; AO F&V–983–1]

Pistachios Grown in California, Arizona, Nevada, New Mexico, and Utah; Hearing on Proposed Marketing Agreement and Order No. 983

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of public hearing on proposed marketing agreement and order.

SUMMARY: Notice is hereby given of a public hearing to be held to consider a proposed marketing agreement and order to cover pistachios grown in California, Arizona, Nevada, New Mexico, and Utah. The proposed program would include authority for mandatory inspection, and grade, pack, container and labeling requirements. A proposal for a marketing order was submitted on behalf of the pistachio industry by the California Pistachio Commission (Commission) and the Western Pistachio Association (Association), which purport to represent nearly all of the industry. The program would be financed by assessments on handlers of pistachios grown in the production area. Assessment rates would be established by the Secretary of Agriculture (Secretary), based on the recommendations of a committee appointed by the Secretary to administer the program. The committee would consist of 10 members and their alternates.

DATES: The hearing will be held in Fresno, California, beginning on August 20, 1996, at 9:00 a.m. If necessary, additional sessions will be held in Fresno on August 21–23.

ADDRESSES: The hearing will be held in the State Building's room 1036, 2550 Mariposa Mall, at the corner of Tulare and ''O'' Street, Fresno, California, 93721.

FOR FURTHER INFORMATION CONTACT: Copies of this notice of hearing may be obtained from:

(1) Maureen T. Pello, Marketing Specialist, California Marketing Field Office, USDA, AMS, 2202 Monterey Street, suite 102B, Fresno, California 93721, telephone (209) 487–5901, Fax (209) 487–5906; or

(2) James B. Wendland, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone (202) 720–2170, Fax (202) 720–5698.

(3) Small businesses may request information on compliance with this proposal by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456; telephone (202) 720–2491; Fax # (202) 720–5698.

SUPPLEMENTARY INFORMATION: This action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and is therefore excluded from the requirements of Executive Order 12866. The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) seeks to ensure that within the statutory authority of a program, the regulatory and informational requirements are tailored to the size and nature of small businesses. Interested persons are invited to present evidence at the hearing on the possible regulatory and informational impacts of the proposal on small businesses.

The marketing agreement and order proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have retroactive effect. If issued, the proposed agreement and order would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

Over the last five years, the Commission and the Association have facilitated discussions within the pistachio industry regarding the merits of establishing a Federal marketing order program. Industry members have concluded that a marketing order program, with authority for mandatory inspection, and grade, pack, and container requirements, is needed to enable the pistachio industry to improve returns to growers. The industry believes that an effective quality control program can be implemented to expand its markets, improve grower returns, and increase consumer satisfaction.

The proposal for an order has been widely discussed within the pistachio industry for at least five years, but has not yet received the approval of the Secretary of Agriculture.

Testimony is invited at the hearing on the proposed marketing agreement and order (hereinafter referred to as the order) and on all the recommendations and proposals contained in this notice, as well as any appropriate modifications or alternatives.

The hearing will be held for the purposes of:

(a) Receiving evidence about the economic and marketing conditions which relate to the proposed marketing agreement and order and to any appropriate modifications thereof;

(b) Determining whether the handling of pistachios produced in the production area is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects interstate or foreign commerce;

(c) Determining whether there is a need for a marketing agreement and order for pistachios;

(d) Determining the economic impact of the proposed marketing agreement and order on the industry in the proposed production area and on the public affected by such a program; and

(e) Determining whether the proposed marketing agreement and order or any appropriate modification thereof would tend to effectuate the declared policy of the Act.

All persons wishing to submit written material as evidence at the hearing should be prepared to submit four copies of such material at the hearing and should have prepared testimony available for presentation at the hearing.

From the time this notice of hearing is issued and until the issuance of a final decision in this proceeding, U.S. Department of Agriculture (Department) employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an ex-parte basis with anyone having an interest in the proceeding. The prohibition applies to employees in the following organizational units: Office of the Secretary of Agriculture; Office of the Administrator, Agricultural Marketing Service; Office of the General Counsel; and the Fruit and Vegetable Division, Agricultural Marketing Service.

Procedural matters are not subject to the above prohibition and may be discussed at any time.

Provisions of the proposed marketing agreement and order follow. Those sections identified with an asterisk (*) apply only to the proposed marketing agreement and are proposed by the Agricultural Marketing Service.

List of Subjects in 7 CFR Part 983

Marketing agreements, Pistachios, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that Title 7 of the CFR, Chapter IX be amended as follows:

1. Part 983 is proposed to be added as follows:

PART 983—PISTACHIOS GROWN IN CALIFORNIA, ARIZONA, NEVADA, NEW MEXICO, AND UTAH

Subpart—Order Regulating Handling

Definitions

Sec.
983.1 Secretary.
983.2 Act.
983.3 Person.
983.4 Production area.
983.5 Pistachios.
983.6 Varieties.
983.7 Shelled pistachio.
983.8 Kernel weight.
983.9 Inshell pistachio.
983.10 Naturally opened pistachios.
983.11 Artificially opened pistachios.
983.12 Merchantable pistachios.
983.13 Substandard pistachios.
983.14 Bleaching.
983.15 Blending.
983.16 Grower.
983.17 To process.
983.18 Handler.
983.19 To handle.
983.20 Production year.
983.21 Committee.
983.22 District.
983.23 Books and records.
983.24 Pack.
983.25 Container.
983.26 Part and subpart.

Administrative Committee

983.30 Establishment and membership.
983.31 Term of office.
983.32 Nomination procedures.
983.33 Selection.
983.34 Failure to nominate.
983.35 Acceptance.
983.36 Vacancies.
983.37 Alternate members.
983.38 Procedure.
983.39 Powers.
983.40 Duties.
983.41 Compensation and expenses.
983.42 Annual report.

Expenses and Assessments

983.50 Expenses.
983.51 Assessments.
983.53 Accounting.

Regulations

983.60 Marketing policy.
983.61 Recommendation for regulations.
983.62 Issuance of regulations.
983.63 Modification, suspension, or termination of regulations.
983.64 Inspection and certification.
983.65 Substandard pistachios.
983.66 Exemptions.

Reports

983.70 Reports and recordkeeping.
983.71 Confidential information.
983.72 Other reports.

Miscellaneous Provisions

983.80 Compliance.
983.81 Right of the Secretary.
983.82 Termination or suspension of order.
983.83 Procedure upon termination.
983.84 Effect of termination or amendment.
983.85 Personal liability.
983.86 Separability.
983.87 Derogation.
983.88 Duration of immunities.
983.89 Agents.
983.90* Counterparts.
983.91* Additional parties.
983.92* Order with marketing agreement.

Authority: 7 U.S.C. 601–674.

Definitions

§ 983.1 Secretary.

Secretary means the Secretary of Agriculture of the United States or any officer or employee of the Department of Agriculture who has been delegated, or to whom authority may hereafter be delegated, the authority to act for the Secretary.

§ 983.2 Act.

Act means Public Act No. 10, 73d Congress (May 12, 1933), as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (48 Stat. 31, as amended; 7 U.S.C. 601 *et seq.*).

§ 983.3 Person.

Person means an individual, partnership, corporation, trust, association, or any other business unit.

§ 983.4 Production area.

Production area includes the following States: California, Arizona, Nevada, New Mexico, and Utah.

§ 983.5 Pistachios.

Pistachios means the nut of the pistachio tree of the genus *Pistacia vera* grown in the production area.

§ 983.6 Varieties.

Varieties means and includes all classifications, subdivisions, or other types of pistachios according to those definitive characteristics now or hereafter recognized by the United States Department of Agriculture or recommended by the Committee and approved by the Secretary. The Committee, with the approval of the Secretary, may exempt any individual variety from any or all regulations issued under this part.

§ 983.7 Shelled pistachio.

Shelled pistachio means a pistachio kernel, or portion of a kernel, after the pistachio shell has been removed.

§ 983.8 Kernel weight.

Kernel weight means the weight of the kernels, without shells, in a quantity or lot of pistachios. The term does not include inedible pieces or particles of pistachio kernels.

§ 983.9 Inshell pistachio.

Inshell pistachio means a pistachio that has a shell that has not been removed.

§ 983.10 Naturally opened pistachios.

Naturally opened pistachios means pistachios that are inshell and have opened naturally on the tree. This definition may be modified based on a recommendation made by the Committee and approved by the Secretary.

§ 983.11 Artificially opened pistachios.

Artificially opened pistachios means pistachios that are inshell and have not opened naturally on the tree but have

been opened by hand, mechanical, or other means. This definition may be modified based on a recommendation made by the Committee and approved by the Secretary.

§ 983.12 Merchantable pistachios.

Merchantable pistachios means inshell and shelled pistachios that meet the minimum grade regulations in effect pursuant to § 983.62.

§ 983.13 Substandard pistachios.

Substandard pistachios means pistachios, inshell or shelled, that do not meet the minimum grade regulations in effect pursuant to § 983.62.

§ 983.14 Bleaching.

Bleaching means to cause pistachios to be treated, directly or indirectly, with hydrogen peroxide, or other chemicals or products to remove shell stains.

§ 983.15 Blending.

Blending means to commingle or cause to be commingled, artificially opened pistachios with naturally opened pistachios.

§ 983.16 Grower.

Grower is synonymous with *producer* and means any person engaged in a proprietary capacity in the commercial production of pistachios.

§ 983.17 To process.

To process means to hull and dry, in preparation for market, pistachios from one's own production or pistachios received from another producer.

§ 983.18 Handler.

Handler means any person engaged in the activities defined in § 983.19. For purposes of this part, there are two types of handlers, processing and non-processing. A *processing handler* is a handler who engages in the activities defined in § 983.19(a). A *non-processing handler* is a handler who engages in the activities defined in § 983.19(b).

§ 983.19 To handle.

(a) *By a processing handler.*

(1) *To handle* means to process pistachios; or

(2) To process pistachios and further prepare them for market by sorting, sizing, shelling, roasting, cleaning, salting, packaging, or cause such pistachios to be placed in the current of commerce by marketing, distributing, selling, consigning or shipping.

(b) *By a non-processing handler.*

(1) *To handle* means to receive pistachios after they have been processed and further prepare them for market by sorting, sizing, shelling, roasting, cleaning, salting or packaging; or

(2) To receive pistachios after they have been processed and further prepare them for market as described in paragraph (b)(1) of this section and cause such pistachios to be placed in the current of commerce by marketing, distributing, selling, consigning or shipping.

(c) *To handle* shall not include the transportation of pistachios by a common or contract carrier owned by another person or the transportation of pistachios within the production area from the orchard to the processing facility.

§ 983.20 Production year.

Production year is synonymous with *fiscal period* and *marketing season* and means the period beginning on September 1 and ending on August 31 of each year or such other period as may be recommended by the Committee and approved by the Secretary.

§ 983.21 Committee.

Committee means the Pistachio Administrative Committee established pursuant to § 983.30.

§ 983.22 District.

District means any of the following geographical areas within the production area:

(a) *District 1* shall include the California counties of Tulare, Kern, San Bernardino, San Luis Obispo, Santa Barbara, Ventura, Los Angeles, Orange, Riverside, San Diego, and Imperial;

(b) *District 2* shall include the California counties of Kings, Fresno, Madera, and Merced;

(c) *District 3* shall consist of all counties in the State of California which are not included in Districts 1 and 2; and

(d) *District 4* shall consist of all counties in the States of Arizona, Nevada, New Mexico, and Utah.

§ 983.23 Books and records.

Books and records means books, papers, records, copies of income-tax reports, accounts, correspondence, contracts, documents, memoranda, or other data pertaining to matters relating to the activities subject to the provisions of this part.

§ 983.24 Pack.

Pack means the specific arrangement, weight, count, or grade of a quantity of pistachios in a particular type and size of container, or any combination thereof.

§ 983.25 Container.

Container means a jar, box, bag, bin, carton, case, package, or any other type of receptacle used in the packaging or handling of pistachios.

§ 983.26 Part and subpart.

Part means the order regulating the handling of pistachios grown in the States of California, Arizona, Nevada, New Mexico, and Utah, and all rules, regulations, and supplementary orders issued thereunder, and the aforesaid order shall be a *subpart* of such part.

Administrative Committee

§ 983.30 Establishment and membership.

A Pistachio Administrative Committee, consisting of 10 members and alternates, is hereby established. Each member shall have an alternate member who shall have the same qualifications as the member for whom he or she is an alternate. Seven grower members shall be from Districts 1, 2, and 3. An additional grower member shall be an at-large member and shall be the grower who has produced the largest quantity of pistachios from any district during the production year prior to nomination. Of the seven growers from Districts 1, 2, and 3, three members shall be from District 1, three shall be from District 2, and one shall be from District 3. One processing handler member shall be an at-large member and shall have processed the largest quantity of assessed pistachios from any district during the year prior to nomination. The tenth member shall be from District 4 and can be either a processing handler or grower.

§ 983.31 Term of office.

Elected grower members and grower alternate members of the Committee shall serve for terms of two years, but initial elected grower members and alternates shall, through a lottery, be seated for terms of 1 or 2 years so that approximately half of the memberships' terms expire each year. Initial terms for members and alternate members filling mandated seats shall be as follows: District 4 member—2 years, largest grower member—1 year, largest processing handler member—1 year. Each member and alternate member shall continue to serve until his or her successor is selected and has qualified. The term of office shall begin on July 1st of each year, or as soon thereafter as possible, or such other date as recommended by the Committee and approved by the Secretary. Committee members and alternates may serve up to four consecutive, two-year terms of office.

§ 983.32 Nomination procedures.

Nomination of Committee members and alternates shall follow the procedures set forth below:

(a) For purposes of nominating the members and alternates of the initial Committee, the Secretary shall conduct nominations by mail;

(b) Except as provided in paragraph (c) of this section, the Committee shall hold, or cause to be held, not later than March 1st of each year, or such other date as may be specified by the Secretary, a meeting or meetings of growers in each district for the purpose of designating nominees to serve as grower members and alternates on the Committee. Any such meetings shall be supervised by the Committee, which shall prescribe such procedures as shall be reasonable and fair to all persons concerned;

(c) Nominations in any or all districts may be conducted by mail in a manner recommended by the Committee and approved by the Secretary;

(d) If a nomination meeting is held, only persons present at nomination meetings may participate in nominations. Growers who commercially produce pistachios during the current production year will be eligible to vote. Any person nominated by growers shall certify that he or she is engaged in the business of producing pistachios for market as an owner, director or employee of a producing entity. Each grower shall be entitled to cast only one vote for each position to be filled in the district in which such grower produces. No grower shall participate in the nomination of members in more than one district. If a grower grows pistachios in more than one district, such grower shall select the district in which such grower will so participate and notify the Committee of such choice. Proxy voting shall not be permitted;

(e) Nominees shall provide background information for the purpose of informing voters about their qualifications. Candidates for nomination shall, upon the request of the Committee, submit all necessary documents in order to establish qualifications for nomination; and

(f) Not more than three members and three alternates on the Committee shall be persons employed by, or connected in a proprietary capacity with, the same corporation, firm, partnership, association, or business organization. In addition, only one elected member and one elected alternate in any one district shall be employed by, or connected in a proprietary capacity with, the same corporation, firm, partnership, association, or business organization, exclusive of the at-large members. Any alternate serving in the same district as a member where both are employed by, or connected in a proprietary capacity with the same corporation, firm, partnership, association, or business organization, shall serve as the alternate to that member. In the case of a producer cooperative, a person will not be deemed to be connected in a proprietary capacity with the cooperative, notwithstanding any outstanding retains, contributions, or other financial indebtedness owed by the cooperative to the person, if the person has not marketed pistachios through the cooperative pursuant to a membership agreement during the current and the preceding marketing season. The qualifications of a member or alternate must continue throughout the entire term of office.

(g) For the at-large grower member position, the Committee shall notify the grower who has produced the largest quantity of pistachios from any district during the production year prior to nomination. Such grower shall provide the Committee with the names of the member and alternate who he or she nominates to serve on the Committee. The Committee shall then provide those names to the Secretary.

(h) For the at-large handler member position, the Committee shall notify the processing handler who processed the largest quantity of assessed pistachios from any district during the year prior to nomination. Such handler shall provide the Committee with the names of the member and alternate who he or she nominates to serve on the Committee. The Committee shall then provide those names to the Secretary.

(i) For the District 4 position, which can be filled by a grower or handler, only growers will be eligible to nominate and vote for persons to fill that member and alternate position.

§ 983.33 Selection.

From the nominations made pursuant to § 983.32 or from other qualified persons, the Secretary shall select the 10 members of the Committee and an alternate for each such member.

§ 983.34 Failure to nominate.

If nominations are not made within the time and in the manner prescribed in § 983.32, the Secretary may, without regard to nominations, select the members and alternate members of the Committee on the basis of the representation provided for in § 983.30.

§ 983.35 Acceptance.

Each person to be selected by the Secretary as a member or as an alternate member of the Committee shall, prior to such selection, qualify by advising the Secretary that he/she agrees to serve in the position for which nominated for selection.

§ 983.36 Vacancies.

To fill any vacancy occasioned by the failure of any person selected as a member or as an alternate member of the Committee to qualify, or in the event of the death, removal, resignation, or disqualification of any member or alternate member of the Committee, a successor for the unexpired term of such member or alternate member of the Committee shall be nominated and selected, in the manner specified in §§ 983.32 and 983.33. If the names of nominees to fill any such vacancy are not made available to the Secretary within a reasonable time after such vacancy occurs, the Secretary may fill such vacancy without regard to nominations, which selection shall be made on the basis of representation provided for in § 983.30.

§ 983.37 Alternate members.

An alternate member of the Committee, during the absence of the member for whom that individual is an alternate, shall act in the place and stead of such member and perform such other duties as assigned. In the event of the death, removal, resignation, or disqualification of a member, the alternate of such member shall act for him or her until a successor for such member is selected and has qualified.

§ 983.38 Procedure.

(a) Six members of the Committee or alternate members acting for members, shall constitute a quorum at an assembled meeting of the Committee, and any action of the Committee shall require the concurring vote of at least six members: *Provided*, That actions of the Committee with respect to the following issues shall require at least eight concurring votes regarding any recommendation for adoption or change in:

(1) Minimum grade and quality regulations;

(2) Packaging regulations;

(3) Aflatoxin regulations;

(4) Either a food chemical regulation or a regulation regarding the blending of artificially and naturally opened pistachios;

(5) Any change caused by establishment or changes in inspection programs;

(6) Any change in bylaws, administrative or nomination procedures;

(7) Approval of an annual budget exceeding ½ of one percent (.5%) of the farm gate crop value; and

(8) Approval to borrow funds as necessary.

(b) The Committee may provide for meetings by telephone, telegraph, facsimile, or other means of communication, and any vote cast at such meetings shall be confirmed promptly in writing: *Provided:* That if an assembled meeting is held, all votes shall be cast in person.

§ 983.39 Powers.

The Committee shall have the following powers:

(a) To administer the provisions of this part in accordance with its terms;

(b) To make and adopt rules and regulations to effectuate the terms and provisions of this part;

(c) To receive, investigate, and report to the Secretary complaints of violations of this part; and

(d) To recommend to the Secretary amendments to this part.

§ 983.40 Duties.

The Committee shall have among others, the following duties:

(a) To select from among its members such officers and adopt bylaws and rules for the conduct of its meetings as it deems advisable, and to define the duties of such officers;

(b) To submit to the Secretary prior to the beginning of each fiscal period a budget for such fiscal period, including a report and explanation of the items appearing therein and a recommendation as to the rate of assessment for such period;

(c) To act as intermediary between the Secretary and any processing handler and grower;

(d) To investigate and assemble data on the growing, handling and marketing conditions with respect to pistachios;

(e) To keep minutes, books and records which will clearly reflect all of its acts and transactions, and such minutes, books and records shall be available for examination by the Secretary at any time;

(f) To furnish to the Secretary such available information as requested;

(g) To appoint such employees as it deems necessary and determine their salaries, define their duties and fix the bonds of the Committee;

(h) To cause the books of the Committee to be audited by one or more certified public accountants approved by the Committee at least once for each marketing year and at such other times as the Committee deems necessary or as the Secretary may request, and to file with the Secretary reports of all audits, including quarterly financial reports made, and to make available to the industry, such audits that do not contain confidential data;

(i) To give the Secretary the same notice of the meetings of the Committee as is given to its members;

(j) To furnish to the Secretary a written report of the proceedings of each meeting of the Committee;

(k) To follow the Secretary's guidelines in considering and recommending regulatory actions;

(l) To investigate compliance with the provisions of this part; and

(m) With the approval of the Secretary, to redefine the districts into which the production area is divided and to reapportion the representation of any district on the Committee: *Provided,* That any such changes shall reflect, insofar as practicable, shifts in pistachio production within the districts and the production area.

§ 983.41 Compensation and expenses.

The members of the Committee, and the alternate members when acting as members, shall serve without compensation but shall be allowed their necessary actual expenses, as approved by the Committee: *Provided,* That the Committee may request the attendance of one or more alternates not acting as members at any meeting of the Committee, and such alternates may be allowed their necessary expenses.

§ 983.42 Annual report.

The Committee shall, as soon as is practicable after the close of each marketing season, prepare and mail an annual report to the Secretary and make a copy available to each grower and handler who requests a copy of the report.

Expenses and Assessments

§ 983.50 Expenses.

The Committee is authorized to incur such expenses as the Secretary finds are reasonable and likely to be incurred during each production year for the maintenance and functioning of the Committee and for such other purposes as the Secretary may, pursuant to the provisions of this part, determine to be appropriate. The funds to cover such expenses shall be acquired in the manner prescribed in § 983.51.

§ 983.51 Assessments.

(a) As his or her pro rata share of the expenses which the Secretary finds are reasonable and likely to be incurred by the Committee during a production year, each processing handler during such period shall pay to the Committee, upon demand, assessments on all pistachios so processed. Assessments shall be based on pounds of edible, inshell pistachios processed. The payment of assessments for the maintenance and functioning of the Committee may be required under this part throughout the period it is in effect, irrespective of whether particular provisions thereof are suspended or become inoperative.

(b) The Secretary shall fix the rate of assessment to be paid by each such person during a production year in an amount designed to secure sufficient funds to cover the expenses which may be incurred during such period. Such expenses may include an item for accumulation and maintenance of an operating reserve fund not to exceed approximately two production years' budgeted expenses. At any time during or after the production year, the Secretary may increase the rate of assessment in order to secure sufficient funds to cover any later finding by the Secretary relative to the expenses which may be incurred: *Provided,* That any assessment, excluding any amount collected pursuant to § 983.64(e), must be limited to a maximum assessment of ½ of one percent (.5%) of the latest farm-gate crop value unless the annual budget exceeding that amount has been approved in accordance with the super majority required in § 983.38(a). The Committee may accept the payment of assessments in advance, and may also borrow money for such purposes.

(c) Any processing handler who fails to pay an assessment within the time required by the Committee shall pay to the Committee a late charge of 10 percent of the amount of the assessment determined to be past due and, in addition, interest on the unpaid balance at the rate of 1½ percent per month or such other figures as recommended by the Committee and approved by the Secretary.

§ 983.53 Accounting.

(a) If, at the end of a production year, the assessments collected are in excess of expenses incurred, such excess shall be accounted for in accordance with one of the following:

(1) If such excess is not retained in a reserve, as provided in paragraph (a)(2) of this section, it shall be refunded proportionately to the persons from whom it was collected in accordance with § 983.51(a): *Provided,* That any sum paid by a person in excess of his or her pro rata share of the expenses during any production year may be applied by the Committee at the end of such production year as credit for such person, toward the Committee's fiscal

operations of the following production year;

(2) The Committee, with the approval of the Secretary, may carry over such excess into subsequent production years as a reserve: *Provided*, That funds already in the reserve do not exceed approximately two production year's budgeted expenses. Such reserve funds may be used:

(i) To defray expenses, during any production year, prior to the time assessment income is sufficient to cover such expenses;

(ii) to cover deficits incurred during any production year when assessment income is less than expenses;

(iii) to defray expenses incurred during any period when any or all provisions of this part are suspended or are inoperative; and,

(iv) to cover necessary expenses of liquidation in the event of termination of this part. Upon such termination, any funds not required to defray the necessary expenses of liquidation shall be disposed of in such manner as the Secretary may determine to be appropriate: *Provided*, That to the extent practical, such funds shall be returned pro rata to the persons from whom such funds were collected;

(b) All funds received by the Committee pursuant to the provisions of this part shall be used solely for the purpose specified in this part and shall be accounted for in the manner provided in this part. The Secretary may at any time require the Committee and its members to account for all receipts and disbursements; and

(c) Upon the removal or expiration of the term of office of any member of the Committee, such member shall account for all receipts and disbursements and deliver all Committee property and funds in his or her possession to the Committee, and shall execute such assignments and other instruments as may be necessary or appropriate to vest in the Committee full title to all of the Committee property, funds, and claims vested in such member pursuant to this part.

Regulations

§ 983.60 Marketing policy.

Each season prior to making any recommendations pursuant to § 983.61, the Committee may adopt a report setting forth its marketing policy for the ensuing season. Such marketing policy report may contain information relative to:

(a) The estimated total production of pistachios within the production area;

(b) The expected general quality of pistachios in the production area and in other areas;

(c) The expected demand conditions for pistachios in different market outlets;

(d) The expected shipments of pistachios produced in the production area and in areas outside the production area;

(e) Supplies of competing commodities;

(f) Other factors having a bearing on the marketing of pistachios; and

(g) The type of regulations expected to be recommended during the season.

§ 983.61 Recommendation for regulations.

(a) Whenever the Committee deems it advisable to regulate the handling of any variety or varieties of pistachios in the manner provided in § 983.62, it shall so recommend to the Secretary.

(b) In arriving at its recommendations for regulation pursuant to paragraph (a) of this section, the Committee shall give consideration to current information with respect to the factors affecting the supply and demand for pistachios during the period or periods when it is proposed that such regulations should be made effective. With each recommendation for regulation, the Committee shall submit to the Secretary the data and information on which the recommendation is predicated and other available information as the Secretary may request.

§ 983.62 Issuance of regulations.

(a) The Secretary shall regulate, in the manner specified in this section, the handling of pistachios whenever the Secretary finds, from the recommendations and information submitted by the Committee, or from other available information, that such regulations will tend to effectuate the declared policy of the act. Such regulations may:

(1) Limit during any period or periods, the shipment of pistachios by establishing, in terms of grades, minimum standards of quality, including standards for aflatoxin, bleaching, and the blending of artificially and naturally opened pistachios;

(2) Limit during any period or periods, the use of specified containers for shipment;

(3) Fix the size, capacity, weight, dimensions, markings, labeling, or pack of the container, or containers, which may be used in the packaging or processing of pistachios; and

(4) Prescribe different requirements under paragraphs (a)(1) through (a)(3) of this section for the handling of any variety of pistachios to destinations within any geographical area or market type identified and recommended by the Committee and approved by the Secretary.

(b) The Committee shall be informed immediately of any such regulation issued by the Secretary and the Committee shall promptly give notice thereof to processing handlers and non-processing handlers, each of whom will be bound by any such regulation.

§ 983.63 Modification, suspension, or termination of regulations.

(a) In the event the Committee at any time finds that, by reason of changed conditions, any regulations issued pursuant to § 983.62 should be modified, suspended, or terminated, it shall so recommend to the Secretary.

(b) Whenever the Secretary finds from the recommendations and information submitted by the Committee or from other available information, that a regulation should be modified, suspended, or terminated with respect to any or all shipments of pistachios in order to effectuate the declared policy of the act, the Secretary shall modify, suspend, or terminate such regulation. If the Secretary finds that a regulation obstructs or does not tend to effectuate the declared policy of the act, the Secretary shall suspend or terminate such regulation. On the same basis and in like manner the Secretary may terminate any such modification or suspension.

§ 983.64 Inspection and certification.

(a) Incoming inspection. Whenever the processing of any variety of pistachios is regulated pursuant to § 983.62, each processing handler who receives pistachios from a grower to hull and dry may be required to have such pistachios inspected by the Federal or Federal-State Inspection Service or such other inspection service as may be recommended by the Committee and approved by the Secretary. Such pistachios shall be certified as meeting the applicable requirements of such regulation.

(b) Outgoing inspection. Whenever the handling of any variety of pistachios is regulated pursuant to § 983.62, each person who handles pistachios, prior to the sale, consignment, shipment, marketing or distribution of such pistachios, may be required to have such pistachios inspected by the Federal or Federal-State Inspection Service or such other inspection service as may be recommended by the Committee and approved by the Secretary. Such pistachios shall be certified as meeting the applicable requirements of such regulation: *Provided*, That inspection and certification shall be required for pistachios which previously have been

so inspected and certified, only if such pistachios have been regraded, resorted, repackaged, or in any other way further prepared for market.

(c) Promptly after inspection and certification as prescribed in paragraphs (a) or (b) of this section, each such handler shall submit, or cause to be submitted, to the Committee a copy of the certificate of inspection issued with respect to such pistachios. The Committee may, with the approval of the Secretary, prescribe rules and regulations to waive the inspection requirements of this section where it is determined that it is not practicable to provide inspection at the time and place designated: *Provided,* That all shipments made under such waiver shall comply with all regulations in effect.

(d) The Committee may, with the approval of the Secretary, establish a period prior to shipment during which the inspections required by this section must be performed.

(e) The Committee may enter into an agreement with the Federal and Federal-State Inspection Services or other approved inspection services, with respect to the costs of the inspection required by paragraphs (a) and (b) of this section, and may collect from handlers their respective pro rata shares of such costs.

(f) The Committee, with the approval of the Secretary, may prescribe rules and regulations to administer this section.

§ 983.65 Substandard pistachios.

The Committee shall, with the approval of the Secretary, establish such reporting and disposition procedures as it deems necessary to ensure that pistachios which do not meet the effective incoming and/or outgoing minimum standards do not enter normal market outlets for merchantable pistachios.

§ 983.66 Exemptions.

The Committee, with the approval of the Secretary, may prescribe exemptions based on minimum quantity or other factors for certain shipments of pistachios from the provisions specified in §§ 983.51 and 983.64. The Committee, with the approval of the Secretary, may prescribe safeguards to prevent pistachios handled pursuant to this section from entering the channels of trade for other than the purpose authorized.

Reports

§ 983.70 Reports and recordkeeping.

(a) Upon request of the Committee, made with the approval of the Secretary, each handler shall furnish to the Committee, in such manner and at such time as it may prescribe, such reports and other information as may be necessary for the Committee to perform its duties under this part.

(b) Such reports may include, but are not necessarily limited to, the following:

(1) The name, address, telephone number of the handler, and other identifying information as appropriate;

(2) The quantities of pistachios, shelled and inshell, received by such handler;

(3) The quantities of pistachios, shelled and inshell, disposed of by such handler;

(4) The manner of disposition and disposition dates of such pistachios;

(5) The quantity of pistachios, shelled and inshell, held in inventory by such handler;

(6) The quantity of merchantable pistachios processed;

(7) A listing of such handler's growers including name, address, telephone number and location of grower acreage; and

(8) Identification of the inspection certificate or waiver pursuant to which the pistachios were processed.

(c) Each handler shall maintain for at least four succeeding years such records of the pistachios received and disposed of by such handler as may be necessary to verify reports submitted to the Committee pursuant to this section.

§ 983.71 Confidential information.

All reports and records furnished or submitted by handlers to the Committee which include data or information constituting a trade secret or disclosing the trade position, financial condition, or business operations of the particular handlers or their customers or growers shall be received by, and at all times kept in the custody and under the control of, one or more employees of the Committee, who shall disclose such information to no person except the Secretary. Compilations of general reports from data submitted by handlers is authorized, subject to the prohibition of disclosure of individual handler identity or operations.

§ 983.72 Other reports.

Upon the request of the Committee, with the approval of the Secretary, each handler shall furnish such other reports and information as are needed to enable the Committee to perform its functions under this part.

Miscellaneous Provisions

§ 983.80 Compliance.

(a) Except as provided in this part, no person shall handle pistachios, the shipment of which has been prohibited by the Secretary in accordance with the provisions of this part; and no person shall handle pistachios except in conformity with the provisions of this part and the regulations issued under this part.

(b) For the purpose of checking and verifying reports filed by handlers, the Committee, through its duly authorized representatives, shall have access to any handler's premises during regular business hours, and shall be permitted at any such times to inspect such premises and any pistachios held by such handler, and any and all records of the handler with respect to his or her acquisition, sales, uses and shipments of pistachios. Each handler shall furnish all labor and equipment necessary to make such inspections.

§ 983.81 Right of the Secretary.

The members of the Committee (including successors and alternates) and any agents, employees or representatives appointed or employed by the Committee thereof, shall be subject to removal or suspension by the Secretary, in his or her discretion, at any time. Each and every regulation, decision, determination, or other act of the Committee shall be subject to the continuing right of the Secretary to disapprove of the same at any time, and upon such disapproval, the disapproved action of the Committee shall be deemed void, except as to acts done in reliance thereon or in accordance therewith prior to such disapproval by the Secretary.

§ 983.82 Termination or suspension of order.

(a) The Secretary shall terminate or suspend the operation of any or all of the provisions of this part whenever the Secretary finds that such provisions do not tend to effectuate the declared policy of the Act.

(b) The Secretary shall conduct a referendum within the month of November of every fifth year after the effective date of this part (but not during the same year as the California Pistachio Commission's referendum), to ascertain whether continuance of this part is favored by the growers. The Secretary shall continue the operation of this part if either one of the following is found:

(1) Sixty-five percent or more of the growers who vote in the referendum vote in favor of continuation, and the growers so voting marketed at least 50 percent or more of the total quantity of pistachios marketed in the preceding production year by all of the growers who vote in the referendum; or

(2) That a majority of growers who vote in the referendum vote in favor of continuation, and that the growers so voting marketed 65 percent or more of the total quantity of pistachios marketed in the preceding production year by all of the growers who vote in the referendum.

(c) The Committee shall consider all petitions from growers submitted to it for termination of this part. It may recommend that the Secretary conduct a special referendum upon receipt of a petition signed by 15 percent of the growers by number who produced not less than 15 percent of the volume in the immediately preceding season. If a referendum meets the preceding criteria, then procedures would follow paragraph (b) of this section.

(d) The Secretary shall terminate the provisions of this part at the end of any production year whenever the Secretary finds by referendum or otherwise that such termination is favored by a majority of the growers of pistachios in the production area: *Provided,* That such majority have, during the production year, produced more than 50 percent of the volume of the pistachios produced for market within the production area. Such termination shall become effective only if announced by the Secretary on or before June 1.

(e) The provisions of this part, as well as any amendments, shall become effective at such time as the Secretary may declare, and shall continue in force until terminated or suspended in one of the ways specified in this section.

(f) The provisions of this part shall, in any event, terminate whenever the provisions of the Act authorizing them cease to be in effect.

§ 983.83 Procedure upon termination.

(a) Upon the termination of this part, the members of the Committee then functioning shall continue as joint trustees, for the purpose of liquidating the affairs of the Committee, continue as trustee of all funds, and property then in its possession, and under its control, including claims for any funds unpaid or property not delivered at the time of such termination. Action by such trustees shall require the concurrence of a majority of said trustees.

(b) The said trustees shall:

(1) Continue in such capacity until discharged by the Secretary;

(2) From time to time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the Committee and the joint trustees, to such persons as the Secretary may direct; and

(3) Upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title and right to all the funds, properties, and claims vested in the Committee or the joint trustees, pursuant thereto.

(c) Any person to whom funds, property, or claims have been transferred or delivered by the Committee or the joint trustees, pursuant to this section, shall be subject to the same obligations imposed upon the members of said Committee and upon said joint trustees.

§ 983.84 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this part or of any regulation issued pursuant thereto, or the issuance of any amendments to either thereof, shall not:

(a) Affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise, in connection with any provision of this part or any regulation issued thereunder;

(b) Release or extinguish any violation of this part or any regulation issued thereunder; and

(c) Affect or impair any rights or remedies of the Secretary, or of any other persons, with respect to any such violations.

§ 983.85 Personal liability.

No member or alternate member of the Committee, nor any employee, representative, or agent of the Committee shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any person, for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate member, employee, representative, or agent, except for acts of dishonesty, willful misconduct, or gross negligence.

§ 983.86 Separability.

If any provision of this part is declared invalid, or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder of this part or the applicability thereof to any other person, circumstance, or thing, shall not be affected thereby.

§ 983.87 Derogation.

Nothing contained in this part is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States (a) to exercise any powers granted by the Act or otherwise, or (b), in accordance with such powers, to act in the premise whenever such action is deemed advisable.

§ 983.88 Duration of immunities.

The benefits, privileges, and immunities conferred upon any person by virtue of this part shall cease upon its termination, except with respect to acts done under and during the existence of this part.

§ 983.89 Agents.

The Secretary may, by a designation in writing, name any person, including any officer or employee of the United States Government, or name any, division or agency in the United States Department of Agriculture, to act as the Secretary's agent or representative in connection with any of the provisions of this part.

*** § 983.90 Counterparts.**

Handlers may sign an agreement with the Secretary indicating their support for the marketing order. This agreement may be executed in multiple counterparts by each handler. If fifty percent of the handlers, weighted by the volume of pistachios handled during a representative period, enter into such an agreement, then a marketing agreement shall exist for the pistachio marketing order.

*** § 983.91 Additional parties.**

After the marketing order becomes effective, any handler may become a party to the marketing agreement if a counterpart is executed by him or her and delivered to the Secretary.

*** § 983.92 Order with marketing agreement.**

Each signatory handler hereby requests the Secretary to issue, pursuant to the Act, an order providing for regulating the handling of pistachios in the same manner as is provided for in this agreement.

Dated: July 26, 1996.

Lon Hatamiya,

Administrator.

[FR Doc. 96–19550 Filed 7–29–96; 9:14 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Chapter I

[Summary Notice No. PR–96–3]

Petition for Rulemaking; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for rulemaking received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR Part 11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials or withdrawals of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received September 30, 1996.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Ave., SW., Washington, DC 20591; telephone (202) 267–3132. Comments may also be sent electronically to the following Internet address: nprmcmts@mail.hg.faa.gov.

FOR FURTHER INFORMATION CONTACT: Mr. D. Michael Smith, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591; telephone (202) 267–7470.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C. on July 26, 1996.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Rulemaking

Docket No: 28620.

Petitioner: National Air Transportation Association.

Regulations Affected: 14 CFR 119.9(b).

Description of Rulechange Sought: To permit a part 121 or 135 operator to display on its aircraft the certificate holder's air carrier or operating certificate number, as appropriate, rather than the name of the certificate holder operating the aircraft.

Petitioner's Reason for the Request: The petitioner feels that, in representing its part 135 on-demand member operators, the requirements of § 119.9(b) will adversely affect the security and privacy of their current operations, as well as infringe on the rights of the aircraft owners, who in many cases are not the operators.

[FR Doc. 96–19504 Filed 7–30–96; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 96–AAL–19]

Proposed Revision of Class E Airspace; Aniak, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action will revise Class E airspace at Aniak, AK. The development of a Global Positioning System (GPS) instrument approach to RWY 10 at Aniak Airport, AK, has made this action necessary. The area would be depicted on aeronautical charts for pilot reference. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Aniak, AK.

DATES: Comments must be received on or before September 17, 1996.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, AAL–530, Docket No. 96–AAL–19, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

The official docket may be examined in the Office of the Assistant Chief Counsel for the Alaskan Region at the same address.

An informal docket may also be examined during normal business hours in the Office of the Manager, System Management Branch, Air Traffic Division, at the address shown above.

FOR FURTHER INFORMATION CONTACT: Robert van Haastert, System Management Branch, AAL–538, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5863.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 96–AAL–19.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the System Management Branch, Air Traffic Division, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the System Management Branch, AAL–530, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the Class E airspace at Aniak, AK, due to the creation of a GPS instrument approach to RWY 10. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 of FAA Order 7400.9C, dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E airspace designation listed in

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

PART 71—[AMENDED]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

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

§ 71.1 [Amended]

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

* * * * *

Paragraph 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth.

* * * * *

AAL AK E5 Aniak, AK [Revised]

Aniak Airport, AK
(Lat. 61°34′53″ N, long. 159°32′35″ W)
Aniak NDB
(Lat. 61°35′25″ N, long. 159°35′52″ W)
Aniak Localizer
(Lat. 61°34′36″ N, long. 159°31′32″ W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Aniak Airport and within 4 miles north and 8 miles south of the 265° bearing of the Aniak NDB to 16 miles west of the NDB and within 2.5 miles each side of the Aniak NDB 113° bearing extending from the 6.5-mile radius of the airport to 14.7 miles east of the airport and 4 miles each side of the Aniak Localizer front course extending from the 6.5-mile radius of the airport to 14.8 miles northwest of the airport; and that airspace extending upward from 1,200 feet above the surface within 8 miles north and 4 miles south of the Aniak Localizer front course extending from the airport to 27 miles west of the airport and within 4 miles north and 8 miles south of the Aniak NDB 113° bearing extending from 5.6 miles east of the airport to 21.6 miles east of the airport.

* * * * *

Issued in Anchorage, AK, on July 24, 1996.

Trent S. Cummings,

Acting Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 96–19501 Filed 7–30–96; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 71

[Airspace Docket No. 96–AAL–18]

Proposed Establishment of Class E Airspace; Anvik, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action establishes Class E airspace at Anvik, AK. The development of a Non-Directional Beacon (NDB) instrument approach to RWY 35 has made this action necessary. This action will change the airport status from Visual Flight Rules (VFR) to Instrument Flight Rules (IFR). The area would be depicted on aeronautical charts for pilot reference. The intended effect of this proposal is to provide adequate controlled airspace for IFR operations at Anvik, AK.

DATES: Comments must be received on or before September 17, 1996.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, AAL–530, Docket No. 96–AAL–18, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

The official docket may be examined in the Office of the Assistant Chief Counsel for the Alaskan Region at the same address.

An informal docket may also be examined during normal business hours in the Office of the Manager, System Management Branch, Air Traffic Division, at the address shown above.

FOR FURTHER INFORMATION CONTACT: Robert van Haastert, System Management Branch, AAL–538, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5863.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 96–AAL–18.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the System Management Branch, Air Traffic Division, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the System Management Branch, AAL–530, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Anvik, AK, due to the creation of NDB approach to

RWY 35. The status of Anvik Airport will change from VFR to IFR. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 of FAA Order 7400.9C, dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E airspace designation listed in this document would be published subsequently in the Order. The FAA has determined that these proposed regulations only involve an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore —(1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

PART 71—[AMENDED]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

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

§ 71.1 [Amended]

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

* * * * *

Paragraph 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth.

* * * * *

AAL AK E5 Anvik, AK [New]

Anvik Airport, AK

(Lat. 62°38′55″ N, long. 160°11′23″ W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Anvik Airport and 2.5 miles each side of a 200° bearing from the airport extending from the 6.5-mile radius to 8 miles southwest of the airport; and that airspace extending upward from the 1,200 feet above the surface within an 18-mile radius of the airport clockwise from the 090° bearing to the 245° bearing.

* * * * *

Issued in Anchorage, AK, on July 24, 1996.

Trent S. Cummings,

Acting Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 96–19503 Filed 7–30–96; 8:45 am]

BILLING CODE 4910–13–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 498

RIN 0960–AE41

Hearings and Appeals for Civil Monetary Penalty Cases

AGENCY: Social Security Administration (SSA).

ACTION: Proposed rule.

SUMMARY: We propose to add new rules that would establish hearing procedures for the Social Security Administration's civil monetary penalty cases. These proposed rules would implement the provisions of section 1129 and section 1140 of the Social Security Act which require an opportunity to be heard on the record before a determination to impose penalties or assessments becomes final.

DATES: To be sure that your comments are considered, we must receive them no later than September 30, 1996.

ADDRESSES: Comments should be submitted in writing to the Social Security Administration, c/o Commissioner of Social Security, P.O. Box 1585, Baltimore, MD 21235, sent by telefax to (410) 966–2830, sent by E-mail to ''regulations@ssa.gov'' or delivered to 3–B–1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, between 8:00 a.m. and 4:30 p.m. on regular business days.

The electronic file of this document is available on the Federal Bulletin Board (FBB) at 9 a.m. on the date of publication in the Federal Register. To download the file, modem dial (202) 512–1387. The FBB instructions will explain how to download the file and the fee. This file is in WordPerfect and will remain on the FBB during the comment period.

FOR FURTHER INFORMATION CONTACT: Regarding this Federal Register document—Henry D. Lerner, Legal Assistant, Division of Regulations and Rulings, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–1762; regarding eligibility or filing for benefits—our national toll-free number, 1–800–772–1213.

SUPPLEMENTARY INFORMATION:

Background

The Social Security Administration (SSA) was established as an independent agency effective March 31, 1995, under Public Law 103–296, the Social Security Independence and Program Improvements Act of 1994 (SSIPIA). The SSIPIA also created an independent Office of the Inspector General (OIG), to which the Commissioner of Social Security (Commissioner) delegated certain authority under the civil monetary penalty (CMP) provisions on June 28, 1995. However, the Commissioner retained the authority to conduct initial hearings and review initial hearing decisions related to the imposition of CMPs and assessments.

On November 27, 1995, the OIG published a final rule at 60 FR 58225 establishing a new part 498 in title 20 of the *Code of Federal Regulations*. This new part serves as a repository for the SSA's existing CMP regulations which implemented section 1140 of the Social Security Act (the Act). These regulations were previously located at 42 CFR part 1003.

In addition, the OIG published a final rule on April 24, 1996, at 61 FR 18078 to implement SSA's new CMP authority provided under section 206(b) of the SSIPIA, which added section 1129 to the Act, effective October 1, 1994. This authority allows for the imposition of penalties and assessments against any individual, organization, agency, or other entity that makes or causes to be made a false or misleading statement or representation of a material fact for use in determining initial or continuing rights to Old-Age, Survivors, and Disability Insurance or supplemental security income benefit payments if the person knew or should have known that such statement or representation is false, misleading, or omits a material fact.

When published in final form, these proposed hearing regulations will complete the final phase of the implementation process for the provisions of section 1129 and section 1140 of the Act which require that a person be given an opportunity to be

heard on the record prior to a final determination to impose penalties or assessments.

Hearing Process

The Commissioner has decided to retain the Departmental Appeals Board (DAB) of the Department of Health and Human Services (HHS) on an interim basis to conduct hearings and appeals, and to issue recommended decisions in SSA's CMP cases. SSA intends to enter into a reimbursable agreement with the DAB under the Economy Act, 31 U.S.C. 1535(a).

The Commissioner's decision was based on a number of criteria, including the DAB's expertise in handling CMP cases and its reputation for rendering decisions in an efficient and timely manner. Moreover, in light of the fact that the authority under section 1129 is new, this will give SSA the opportunity to assess the volume of CMP cases and projected resource requirements prior to establishing its own internal hearing mechanism.

These proposed rules will require adherence to various deadlines to ensure the expeditious conduct of proceedings and prompt resolution of CMP cases. In accordance with § 498.109, these proposed hearing regulations will provide a person, upon whom the OIG seeks to impose penalties and assessments, as applicable, the right to request an initial hearing within 60 days of notification by the OIG. As described in § 498.202 of these proposed rules, the person's request for a hearing must be in writing and contain a statement of the specific issues and conclusions of law with which the person disagrees. These proposed rules also provide that a hearing request must be dismissed if not filed in a timely manner unless, upon a showing of good cause, an extension is granted to the respondent.

Initial hearings in CMP cases will be conducted by an administrative law judge. At the hearing, a person will be entitled to be represented by counsel, to present witnesses, and to cross-examine witnesses.

These proposed hearing regulations have been modeled on the HHS's hearing regulations which govern CMP cases for which the DAB also conducts hearings and appeals on behalf of the Secretary of the HHS. As indicated in the final rule published on April 24, 1996, we have reserved the issue of recommended exclusions of physicians and medical providers from the Medicare program at this time.

Regulatory Procedures

Executive Order 12866

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

Paperwork Reduction Act

These proposed regulations impose no new reporting or recordkeeping requirements requiring OMB clearance.

Regulatory Flexibility Act

We have determined that no regulatory impact analysis is required for these proposed regulations. Based on our determination, the Commissioner certifies that these proposed regulations would not have a significant economic impact on a number of small business entities. Therefore, we have not prepared a regulatory flexibility analysis.

Effect of NPRM on Pending Actions

Until the promulgation of final regulations, the Commissioner intends that these proposed regulations shall provide guidance with respect to the hearing and appeals process to be used in CMP cases.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security—Disability Insurance; 96.002, Social Security—Retirement Insurance; 96.004, Social Security—Survivors Insurance; 96.006, Supplemental Security Income Program)

List of Subjects in 20 CFR Part 498

Administrative practice and procedure, Fraud, Penalties.

Approved: July 8, 1996.

Shirley S. Chater,

Commissioner of Social Security.

For reasons set forth in the preamble, part 498 of chapter III of the Code of Federal Regulations would be amended by adding §§ 498.201 through 498.223 to read as follows.

PART 498—HEARINGS AND APPEALS FOR CIVIL MONETARY PENALTY CASES

Sec.

498.201 Definitions.
498.202 Hearing before an administrative law judge.
498.203 Rights of parties.
498.204 Authority of the administrative law judge.
498.205 Ex parte contacts.
498.206 Prehearing conferences.
498.207 Discovery.
498.208 Exchange of witness lists, witness statements and exhibits.
498.209 Subpoenas for attendance at hearing.
498.210 Fees.
498.211 Form, filing and service of papers.
498.212 Computation of time.
498.213 Motions.
498.214 Sanctions.
498.215 The hearing and burden of proof.
498.216 Witnesses.
498.217 Evidence.
498.218 The record.
498.219 Post-hearing briefs.
498.220 Initial decision.
498.221 Appeal to DAB.
498.222 Final decision of the Commissioner.
498.223 Stay of initial decision.
498.224 Harmless error.

Authority: Secs. 205(a), 205(b), 702(a)(5), 1129, and 1140 of the Social Security Act (42 U.S.C. 405(a), 405(b), 902(a)(5), 1320a–8, and 1320b–10).

§ 498.201 Definitions.

As used in this part—

ALJ refers to an Administrative Law Judge of the Departmental Appeals Board.

Civil monetary penalty cases refer to all proceedings arising under any of the statutory bases for which the Inspector General, Social Security Administration has been delegated authority to impose civil monetary penalties.

DAB refers to the Departmental Appeals Board of the U.S. Department of Health and Human Services.

§ 498.202 Hearing before an administrative law judge.

(a) A party under any criteria specified in §§ 498.100 through 498.132 may request a hearing before an ALJ.

(b) In civil monetary penalty cases, the parties to a hearing will consist of the respondent and the Inspector General.

(c) The request for a hearing must be:

(1) In writing and signed by the respondent or by the respondent's attorney; and

(2) Filed within 60 days after the notice is received by the respondent or upon a showing of good cause, the time permitted by an ALJ as provided in accordance with § 498.109.

(d) The request for a hearing shall contain a statement as to the:

(1) Specific issues or findings of fact and conclusions of law in the notice letter with which the respondent disagrees; and

(2) Basis for the respondent's contention that the specific issues or findings and conclusions were incorrect.

(e) For purposes of this section, the date of receipt of the notice letter will be presumed to be five days after the date of such notice, unless there is a reasonable showing to the contrary.

(f) The ALJ shall dismiss a hearing request where:

(1) The respondent's hearing request is not filed in a timely manner and the respondent fails to demonstrate good cause for such failure;

(2) The respondent withdraws or abandons respondent's request for a hearing; or

(3) The respondent's hearing request fails to raise any issue which may properly be addressed in a hearing.

§ 498.203 Rights of parties.

(a) Except as otherwise limited by this part, all parties may:

(1) Be accompanied, represented, and advised by an attorney;

(2) Participate in any conference held by the ALJ;

(3) Conduct discovery of documents as permitted by this part;

(4) Agree to stipulations of fact or law which will be made part of the record;

(5) Present evidence relevant to the issues at the hearing;

(6) Present and cross-examine witnesses;

(7) Present oral arguments at the hearing as permitted by the ALJ; and

(8) Submit written briefs and proposed findings of fact and conclusions of law after the hearing.

(b) Fees for any services performed on behalf of a party by an attorney are not subject to the provisions of section 206 of title II of the Social Security Act, which authorizes the Commissioner to specify or limit these fees.

§ 498.204 Authority of the administrative law judge.

(a) The ALJ will conduct a fair and impartial hearing, avoid delay, maintain order and assure that a record of the proceeding is made.

(b) The ALJ has the authority to:

(1) Set and change the date, time, and place of the hearing upon reasonable notice to the parties;

(2) Continue or recess the hearing in whole or in part for a reasonable period of time;

(3) Hold conferences to identify or simplify the issues, or to consider other matters that may aid in the expeditious disposition of the proceeding;

(4) Administer oaths and affirmations;

(5) Issue subpoenas requiring the attendance of witnesses at hearings and the production of documents at or in relation to hearings;

(6) Rule on motions and other procedural matters;

(7) Regulate the scope and timing of documentary discovery as permitted by this part;

(8) Regulate the course of the hearing and the conduct of representatives, parties, and witnesses;

(9) Examine witnesses;

(10) Receive, exclude, or limit evidence;

(11) Take official notice of facts;

(12) Upon motion of a party, decide cases, in whole or in part, by summary judgment where there is no disputed issue of material fact; and

(13) Conduct any conference or argument in person, or by telephone upon agreement of the parties.

(c) The ALJ does not have the authority to:

(1) Find invalid or refuse to follow Federal statutes or regulations, or delegations of authority from the Commissioner;

(2) Enter an order in the nature of a directed verdict;

(3) Compel settlement negotiations;

(4) Enjoin any act of the Commissioner or the Inspector General; or

(5) Review the exercise of discretion by the Office of the Inspector General to seek to impose a civil monetary penalty or assessment under §§ 498.100 through 498.132.

§ 498.205 Ex parte contacts.

No party or person (except employees of the ALJ's office) will communicate in any way with the ALJ on any matter at issue in a case, unless on notice and opportunity for all parties to participate. This provision does not prohibit a person or party from inquiring about the status of a case or asking routine questions concerning administrative functions or procedures.

§ 498.206 Prehearing conferences.

(a) The ALJ will schedule at least one prehearing conference, and may schedule additional prehearing conferences as appropriate, upon reasonable notice to the parties.

(b) The ALJ may use prehearing conferences to address the following:

(1) Simplification of the issues;

(2) The necessity or desirability of amendments to the pleadings, including the need for a more definite statement;

(3) Stipulations and admissions of fact as to the contents and authenticity of documents and deadlines for challenges, if any, to the authenticity of documents;

(4) Whether the parties can agree to submission of the case on a stipulated record;

(5) Whether a party chooses to waive appearance at a hearing and to submit only documentary evidence (subject to the objection of other parties) and written argument;

(6) Limitation of the number of witnesses;

(7) The time and place for the hearing and dates for the exchange of witness lists and of proposed exhibits;

(8) Discovery of documents as permitted by this part;

(9) Such other matters as may tend to encourage the fair, just, and expeditious disposition of the proceedings; and

(10) Potential settlement of the case.

(c) The ALJ shall issue an order containing the matters agreed upon by the parties or ordered by the ALJ at a prehearing conference.

§ 498.207 Discovery.

(a) For the purpose of inspection and copying, a party may make a request to another party for production of documents which are relevant and material to the issues before the ALJ.

(b) Any other form of discovery, such as requests for admissions, written interrogatories and depositions, is not authorized.

(c) For the purpose of this section, the term documents includes information, reports, answers, records, accounts, papers, memos, notes and other data and documentary evidence. Nothing contained in this section will be interpreted to require the creation of a document, except that requested data stored in an electronic data storage system will be produced in a form accessible to the requesting party.

(d)(1) A party who has been served with a request for production of documents may file a motion for a protective order. The motion for protective order shall describe the document or class of documents to be protected, specify which of the grounds in § 498.207(d)(2) are being asserted, and explain how those grounds apply.

(2) The ALJ may grant a motion for a protective order if he or she finds that the discovery sought:

(i) Is unduly costly or burdensome;

(ii) Will unduly delay the proceeding; or

(iii) Seeks privileged information.

(3) The burden of showing that discovery should be allowed is on the party seeking discovery.

§ 498.208 Exchange of witness lists, witness statements and exhibits.

(a) At least 15 days before the hearing, the parties shall exchange:

(1) Witness lists;

(2) Copies of prior written statements of proposed witnesses; and

(3) Copies of proposed hearing exhibits, including copies of any written statements that the party intends to offer in lieu of live testimony in accordance with § 498.216.

(b)(1) Failure to comply with the requirements of paragraph (a) of this

section may result in the exclusion of evidence or testimony upon the objection of the opposing party.

(2) When an objection is entered, the ALJ shall determine whether good cause justified the failure to timely exchange the information listed under paragraph (a) of this section. If good cause is not found, the ALJ shall exclude from the party's case-in-chief:

(i) The testimony of any witness whose name does not appear on the witness list, and

(ii) Any exhibit not provided to the opposing party as specified in paragraph (a) of this section.

(3) If the ALJ finds that good cause exists, the ALJ shall determine whether the admission of such evidence would cause substantial prejudice to the objecting party due to the failure to comply with paragraph (a) of this section. If the ALJ finds no substantial prejudice, the evidence may be admitted.

(4) If the ALJ finds substantial prejudice, the ALJ may exclude the evidence, or at his or her discretion, may postpone the hearing for such time as is necessary for the objecting party to prepare and respond to the evidence.

(c) Unless a party objects by the deadline set by the ALJ's prehearing order pursuant to § 498.206 (b)(3) and (c), documents exchanged in accordance with paragraph (a) of this section will be deemed authentic for the purpose of admissibility at the hearing.

§ 498.209 Subpoenas for attendance at hearing.

(a) A party wishing to procure the appearance and testimony of any individual, whose appearance and testimony are relevant and material to the presentation of a party's case at a hearing, may make a motion requesting the ALJ to issue a subpoena.

(b) A subpoena requiring the attendance of an individual may also require the individual to produce evidence at the hearing in accordance with § 498.207.

(c) A party seeking a subpoena will file a written motion not less than 30 days before the date fixed for the hearing, unless otherwise allowed by the ALJ for good cause shown. Such request will:

(1) Specify any evidence to be produced;

(2) Designate the witness(es); and

(3) Describe the address and location with sufficient particularity to permit such witness(es) to be found.

(d) Within 20 days after the written motion requesting issuance of a subpoena is served, any party may file an opposition or other response.

(e) If the motion requesting issuance of a subpoena is granted, the party seeking the subpoena will serve the subpoena by delivery to the individual named, or by certified mail addressed to such individual at his or her last dwelling place or principal place of business.

(f) The subpoena will specify the time and place at which the witness is to appear and any evidence the witness is to produce.

(g) The individual to whom the subpoena is directed may file with the ALJ a motion to quash the subpoena within 10 days after service.

(h) When a subpoena is served by a respondent on a particular individual or particular office of the Office of the Inspector General, the OIG may comply by designating any of its representatives to appear and testify.

(i) In the case of contumacy by, or refusal to obey a subpoena duly served upon any person, the exclusive remedy is specified in section 205(e) of the Social Security Act (42 U.S.C. 405(e)).

§ 498.210 Fees.

The party requesting a subpoena will pay the cost of the fees and mileage of any witness subpoenaed in the amounts that would be payable to a witness in a proceeding in United States District Court. A check for witness fees and mileage will accompany the subpoena when served, except that when a subpoena is issued on behalf of the Inspector General, a check for witness fees and mileage need not accompany the subpoena.

§ 498.211 Form, filing and service of papers.

(a) *Form*. (1) Unless the ALJ directs the parties to do otherwise, documents filed with the ALJ will include an original and two copies.

(2) Every document filed in the proceeding will contain a caption setting forth the title of the action, the case number, and a designation of the pleading or paper.

(3) Every document will be signed by, and will contain the address and telephone number of the party or the person on whose behalf the document was filed, or his or her representative.

(4) Documents are considered filed when they are mailed.

(b) *Service.* A party filing a document with the ALJ will, at the time of filing, serve a copy of such document on every other party. Service upon any party of any document will be made by delivering a copy, or placing a copy of the document in the United States mail, postage prepaid and addressed, or with a private delivery service, to the party's last known address. When a party is represented by an attorney, service will be made upon such attorney. Proof of service should accompany any document filed with the ALJ.

(c) *Proof of service.* A certificate of the individual serving the document by personal delivery or by mail, setting forth the manner of service, will be proof of service.

§ 498.212 Computation of time.

(a) In computing any period of time under this part or in an order issued thereunder, the time begins with the day following the act, event or default, and includes the last day of the period unless it is a Saturday, Sunday or legal holiday observed by the Federal Government, in which event it includes the next business day.

(b) When the period of time allowed is less than 7 days, intermediate Saturdays, Sundays and legal holidays observed by the Federal Government will be excluded from the computation.

(c) Where a document has been served or issued by placing it in the mail, an additional 5 days will be added to the time permitted for any response. This paragraph does not apply to requests for hearing under § 498.202.

§ 498.213 Motions.

(a) An application to the ALJ for an order or ruling will be by motion. Motions will:

(1) State the relief sought, the authority relied upon and the facts alleged; and

(2) Be filed with the ALJ and served on all other parties.

(b) Except for motions made during a prehearing conference or at a hearing, all motions will be in writing.

(c) Within 10 days after a written motion is served, or such other time as may be fixed by the ALJ, any party may file a response to such motion.

(d) The ALJ may not grant or deny a written motion before the time for filing responses has expired, except upon consent of the parties or following a hearing on the motion.

(e) The ALJ will make a reasonable effort to dispose of all outstanding motions prior to the beginning of the hearing.

(f) There is no right to appeal to the DAB any interlocutory ruling by the ALJ.

§ 498.214 Sanctions.

(a) The ALJ may sanction a person, including any party or attorney, for:

(1) Failing to comply with an order or procedure;

(2) Failing to defend an action; or

(3) Misconduct that interferes with the speedy, orderly or fair conduct of the hearing.

(b) Such sanctions will reasonably relate to the severity and nature of the failure or misconduct. Such sanction may include—

(1) In the case of refusal to provide or permit discovery under the terms of this part, drawing negative factual inferences or treating such refusal as an admission by deeming the matter, or certain facts, to be established;

(2) Prohibiting a party from introducing certain evidence or otherwise supporting a particular claim or defense;

(3) Striking pleadings, in whole or in part;

(4) Staying the proceedings;

(5) Dismissal of the action; or

(6) Entering a decision by default.

(c) In addition to the sanctions listed in paragraph (b)of this section, the ALJ may:

(1) Order the party or attorney to pay attorney's fees and other costs caused by the failure or misconduct; or

(2) Refuse to consider any motion or other action that is not filed in a timely manner.

(d) In civil monetary penalty cases commenced under section 1129 of the Act, the ALJ may also order the party or attorney who has engaged in any of the acts described in paragraph (a) of this section to pay attorney's fees and other costs caused by the failure or misconduct.

§ 498.215 The hearing and burden of proof.

(a) The ALJ will conduct a hearing on the record in order to determine whether the respondent should be found liable under this part.

(b) In civil monetary penalty cases under §§ 498.100 through 498.132:

(1) The respondent has the burden of going forward and the burden of persuasion with respect to affirmative defenses and any mitigating circumstances; and

(2) The Inspector General has the burden of going forward and the burden of persuasion with respect to all other issues.

(c) The burden of persuasion will be judged by a preponderance of the evidence.

(d) The hearing will be open to the public unless otherwise ordered by the ALJ for good cause.

(e)(1) A hearing under this part is not limited to specific items and information set forth in the notice letter to the respondent. Subject to the 15-day requirement under § 498.208, additional items or information may be introduced by either party during its case-in-chief, unless such information or items are inadmissible under § 498.217.

(2) After both parties have presented their cases, evidence may be admitted on rebuttal as to those issues presented in the case-in-chief, even if not previously exchanged in accordance with § 498.208.

§ 498.216 Witnesses.

(a) Except as provided in paragraph (b) of this section, testimony at the hearing will be given orally by witnesses under oath or affirmation.

(b) At the discretion of the ALJ, testimony (other than expert testimony) may be admitted in the form of a written statement. Any such written statement must be provided to all other parties along with the last known address of such witness, in a manner that allows sufficient time for other parties to subpoena such witness for cross-examination at the hearing. Prior written statements of witnesses proposed to testify at the hearing will be exchanged as provided in § 498.208.

(c) The ALJ will exercise reasonable control over the mode and order of witness direct and cross examination and evidence presentation so as to:

(1) Make the examination and presentation effective for the ascertainment of the truth;

(2) Avoid repetition or needless waste of time; and

(3) Protect witnesses from harassment or undue embarrassment.

(d) The ALJ may order witnesses excluded so that they cannot hear the testimony of other witnesses. This does not authorize exclusion of:

(1) A party who is an individual;

(2) In the case of a party that is not an individual, an officer or employee of the party appearing for the entity pro se or designated as the party's representative; or

(3) An individual whose presence is shown by a party to be essential to the presentation of its case, including an individual engaged in assisting the attorney for the Inspector General.

§ 498.217 Evidence.

(a) The ALJ will determine the admissibility of evidence.

(b) Except as provided in this part, the ALJ will not be bound by the Federal Rules of Evidence, but may be guided by them in ruling on the admissibility of evidence.

(c) Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or by considerations of undue delay or needless presentation of cumulative evidence.

(d) Although relevant, evidence must be excluded if it is privileged under Federal law, unless the privilege is waived by a party.

(e) Evidence concerning offers of compromise or settlement made in this action will be inadmissible to the extent provided in Rule 408 of the Federal Rules of Evidence.

(f)(1) Evidence of crimes, wrongs or acts other than those at issue in the instant case is admissible in order to show motive, opportunity, intent, knowledge, preparation, identity, lack of mistake, or existence of a scheme.

(2) Such evidence is admissible regardless of whether the crimes, wrongs or acts occurred during the statute of limitations period applicable to the acts which constitute the basis for liability in the case, and regardless of whether they were referenced in the IG's notice sent in accordance with § 498.109.

(g) The ALJ will permit the parties to introduce rebuttal witnesses and evidence as to those issues raised in the parties' case-in-chief.

(h) All documents and other evidence offered or taken for the record will be open to examination by all parties, unless otherwise ordered by the ALJ for good cause.

§ 498.218 The record.

(a) The hearing shall be recorded and transcribed. Transcripts may be obtained following the hearing from the ALJ.

(b) The transcript of testimony, exhibits and other evidence admitted at the hearing, and all papers and requests filed in the proceeding constitute the record for the decision by the ALJ.

(c) The record may be inspected and copied (upon payment of a reasonable fee) by any person, unless otherwise ordered by the ALJ for good cause.

§ 498.219 Post-hearing briefs.

(a) Any party may file a post-hearing brief.

(b) The ALJ may require the parties to file post-hearing briefs and may permit the parties to file reply briefs.

(c) The ALJ will fix the time for filing briefs, which is not to exceed 60 days from the date the parties receive the transcript of the hearing or, if applicable, the stipulated record.

(d) The parties' briefs may be accompanied by proposed findings of fact and conclusions of law.

§ 498.220 Initial decision.

(a) The ALJ will issue an initial decision, based only on the record, which will contain findings of fact and conclusions of law.

(b) The ALJ may affirm, deny, increase, or reduce the penalties or assessments proposed by the Inspector General.

(c) The ALJ will issue the initial decision to all parties within 60 days after the time for submission of post-hearing briefs or reply briefs, if permitted, has expired. The decision will be accompanied by a statement describing the right of any party to file a notice of appeal with the DAB and instructions for now to file such appeal. If the ALJ cannot issue an initial decision within the 60 days, the ALJ will notify the parties of the reason for the delay and will set a new deadline.

(d) Unless an appeal or request for extension pursuant to § 498.221(a) is filed with the DAB, the initial decision of the ALJ becomes final and binding on the parties 30 days after the ALJ serves the parties with a copy of the decision. If service is by mail, the date of service will be deemed to be five days from the date of mailing.

§ 498.221 Appeal to DAB.

(a) Any party may appeal the decision of the ALJ to the DAB by filing a notice of appeal with the DAB within 30 days of the date of service of the initial decision. The DAB may extend the initial 30-day period for a period of time not to exceed 30 days if a party files with the DAB a request for an extension within the initial 30-day period and shows good cause.

(b) If a party files a timely notice of appeal with the DAB, the ALJ will forward the record of the proceeding to the DAB.

(c) A notice of appeal will be accompanied by a written brief specifying exceptions to the initial decision and reasons supporting the exceptions, and identifying which finding of fact and conclusions of law the party is taking exception to. Any party may file a brief in opposition to exceptions, which may raise any relevant issue not addressed in the exceptions, within 30 days of receiving the notice of appeal and accompanying brief. The DAB may permit the parties to file reply briefs.

(d) There is no right to appear personally before the DAB, or to appeal to the DAB any interlocutory ruling by the ALJ.

(e) No party or person (except employees of the DAB) will communicate in any way with members of the DAB on any matter at issue in a case, unless on notice and opportunity for all parties to participate. This provision does not prohibit a person or party from inquiring about the status of a case or asking routine questions concerning administrative functions or procedures.

(f) The DAB will not consider any issue not raised in the parties' briefs, nor any issue in the briefs that could have been, but was not, raised before the ALJ.

(g) If any party demonstrates to the satisfaction of the DAB that additional evidence not presented at such hearing is relevant and material and that there were reasonable grounds for the failure to adduce such evidence at such hearing, the DAB may remand the matter to the ALJ for consideration of such additional evidence.

(h) The DAB may remand a case to an ALJ for further proceedings, or may issue a recommended decision to decline review or affirm, increase, reduce, or reverse any penalty or assessment determined by the ALJ.

(i) When the DAB reviews a case, it will limit its review to whether the ALJ's initial decision is supported by substantial evidence on the whole record or contained error of law.

(j) Within 60 days after the time for submission of briefs or, if permitted, reply briefs has expired, the DAB will issue to each party to the appeal and to the Commissioner a copy of the DAB's recommended decision and a statement describing the right of any respondent who is found liable to seek judicial review upon a final determination.

§ 498.222 Final decision of the Commissioner.

(a) Except with respect to any penalty or assessment remanded to the ALJ, the DAB's recommended decision, including a recommended decision to decline review of the initial decision, shall become the final decision of the Commissioner 60 days after the date on which the DAB serves the parties to the appeal and the Commissioner with a copy of the recommended decision, unless the Commissioner reverses or modifies the DAB's recommended decision within that 60-day period. If the Commissioner reverses or modifies the DAB's recommended decision, the Commissioner's decision is final and binding on the parties. If service is by mail, the date of service will be deemed to be five days from the date of mailing.

(b) There shall be no right to personally appear before or submit additional evidence, pleadings or briefs to the Commissioner.

(c)(1) Any petition for judicial review must be filed within 60 days after the parties are served with a copy of the final decision. If service is by mail, the date of service will be deemed to be five days from the date of mailing.

(2) In compliance with 28 U.S.C. 2112(a), a copy of any petition for judicial review filed in any U.S. Court of Appeals challenging a final action of the Commissioner will be sent by certified mail, return receipt requested, to the SSA General Counsel. The petition copy will be time-stamped by the clerk of the court when the original is filed with the court.

(3) If the SSA General Counsel receives two or more petitions within 10 days after the DAB issues its decision, the General Counsel will notify the U.S. Judicial Panel on Multidistrict Litigation of any petitions that were received within the 10-day period.

§ 498.223 Stay of initial decision.

(a) The filing of a respondent's request for review by the DAB will automatically stay the effective date of the ALJ's decision.

(b)(1) After issuance of the final decision, the respondent may file a request for stay of the effective date of any penalty or assessment with the ALJ. The request must be accompanied by a copy of the notice of appeal filed with the Federal court. The filing of such a request will automatically act to stay the effective date of the penalty or assessment until such time as the ALJ rules upon the request.

(2) The ALJ may not grant a respondent's request for stay of any penalty or assessment unless the respondent posts a bond or provides other adequate security.

(3) The ALJ will rule upon a respondent's request for stay within 10 days of receipt.

§ 498.224 Harmless error.

No error in either the admission or the exclusion of evidence, and no error or defect in any ruling or order or in any act done or omitted by the ALJ or by any of the parties is ground for vacating, modifying or otherwise disturbing an otherwise appropriate ruling or order or act, unless refusal to take such action appears to the ALJ or the DAB to be inconsistent with substantial justice. The ALJ and the DAB at every stage of the proceeding will disregard any error or defect in the proceeding that does not affect the substantial rights of the parties.

[FR Doc. 96–19425 Filed 7–30–96; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF STATE

Office of Freedom of Information, Privacy and Classification Review

22 CFR Part 171

[Public Notice 2405]

Access to Information—Executive Order 12958, ''Classified National Security Information,'' Provisions

AGENCY: Office of Freedom of Information, Privacy and Classification Review, Department of State.

ACTION: Proposed rule.

SUMMARY: The Department of State proposes to amend its regulations on classified national security information. The rule describes how members of the public, government employees or agencies may obtain access to information in Department of State classified records and how such requests are processed. The rule also explains the appeals process available to requestors in the event a request for the declassification of information in Department of State classified records is denied.

DATES: Comments must be submitted on or before September 30, 1996.

ADDRESSES: Written comments may be mailed or delivered to Margaret P. Grafeld, Chief, Privacy, Plans and Appeals Divisions, Office of Freedom of Information, Privacy and Classification Review, Room 1239, Department of State, 2201 C Street, NW, Washington, DC 20520–1239.

FOR FURTHER INFORMATION CONTACT: Questions regarding mandatory declassification review or other aspects of Executive Order 12958 may be addressed to Margaret P. Grafeld, Chief, Privacy, Plans and Appeals Division, Office of Freedom of Information, Privacy and Classification Review, Room 1239, Department of State, 2201 C Street, NW., Washington, DC 20520–1239. Telephone: 202/627–6620; FAX: 202/647–5159.

SUPPLEMENTARY INFORMATION: Executive Order 12958 of April 17, 1995, prescribes a uniform system for classifying, safeguarding, and declassifying national security information. Section 5.6(c)(2) of Executive Order 12958 requires agencies that originate or handle classified information to publish in the Federal Register implementing regulations that affect members of the public. Accordingly, the Department of State has revised 22 CFR, Parts 171.20 through 171.26 (Subpart C) to bring these rules into conformity with Executive Order 12958. Covered under this revision are definitions, access to records, processing requests, and appeals. The rule is not expected to have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. In addition, the rule does not impose information collection requirements under the provisions of the Paperwork Reduction Act of 1980. The rule is exempt from review under E.O. 12866, but has been reviewed internally by the Department to ensure consistency with the objectives thereof.

List of Subjects in 22 CFR Part 171

Administrative practice and procedure, Appeals procedures, Classified information, Conflict of interests, Confidential business information, Freedom of information Privacy.

PART 171—AVAILABILITY OF INFORMATION AND RECORDS TO THE PUBLIC

For the reasons set forth in the preamble, 22 CFR Part 171 is amended as follows.

1. The authority citation for Part 171 is revised to read as follows:

Authority: 5 U.S.C. 551 *et seq.*, 552, 552a, and App. 201; Executive Order 12958, 3 CFR, 1995 Comp., p. 333; and Executive Order 12600, 3 CFR, 1987 Comp., p. 235.

2. Subpart C is revised to read as follow:

Subpart C—Executive Order 12958 Provisions

171.20 Definitions.
171.21 Access to records.
171.22 Determination in disputed cases.
171.23 Challenges to classification.
171.24 Access by historical researchers and former Presidential appointees.
171.25 Exemptions.

Subpart C—Executive Order 12958 Provisions

§ 171.20 Definitions.

(a) *National security* means the national defense or foreign relations of the United States.

(b) *Information* means any knowledge that can be communicated or documentary material, regardless of its physical form or characteristics, that is owned by, produced by or for, or is under the control of the United States Government.

(c) *Control* means the authority of the agency that originated the information, or its successor in function, to regulate access to the information.

(d) *Classified national security information* (hereafter *classified information* means information that has been determined pursuant to this Executive Order 12958 or any predecessor Order to require protection against unauthorized disclosure and is marked to indicate its classified status when in documentary form.

(e) *Foreign government information* means:

(1) Information provided to the United States Government by a foreign government or governments, an international organization of governments, or any element thereof, with the expectation that the information, the source of the information, or both, are to be held in confidence;

(2) Information produced by the United States pursuant to or as a result of a joint arrangement with a foreign government or governments, or an international organization of governments, or any element thereof, requiring that the information, the arrangement, or both, are to be held in confidence; or

(3) Information received and treated as ''foreign government information'' under the terms of a predecessor Order.

(f) *Classification* means the act or process by which information is determined to be classified information.

(g) *Original classification* means an initial determination that information requires, in the interest of national security, protection against unauthorized disclosure.

(h) *Original classification authority* means an individual authorized in writing, either by the President, or by agency heads or other officials designated by the President, to classify information in the first instance.

(i) *Unauthorized disclosure* means a communication or physical transfer of classified information to an unauthorized recipient.

(j) *Agency* means any ''executive agency'' as defined in 5 U.S.C. 105, and any other entity within the executive branch that comes into the possession of classified information.

(k) *Senior agency official* means the official designated by the agency head under Section 5.6(c) of this Executive Order 12958 to direct and administer the agency's program under which information is classified, safeguarded, and declassified.

(l) *Confidential source* means any individual or organization that has provided, or that may reasonably be expected to provide information to the United States on matters pertaining to the national security with the expectation that the information or relationship, or both, are to be held in confidence.

(m) *Damage to the national security* means harm to the national defense or foreign relations of the United States from the unauthorized disclosure of information, to include the sensitivity, value and utility of that information.

(n) *Presidential appointees* includes former officials of the Department of State or other U.S. Government agencies who held policy positions and were appointed by the President, by and with the advice and consent of the Senate, at the level of Ambassador, Assistant Secretary of State or above. It does not include Foreign Service Officers as a class or persons who merely received assignment commissions as Foreign Service Officers, Foreign Service Reserve Officers, Foreign Service Staff Officers and employees.

§ 171.21 Access to records.

(a) Request for mandatory classification review. For a request for classified records to be processed under Section 3.6 of E.O. 12958, it must describe the record(s) with sufficient specificity to enable the agency to locate the record(s) with a reasonable amount of effort. Whenever a request does not reasonably describe the record(s), the Department shall notify the requester that no further action will be taken unless additional information is provided, or the scope of the request is narrowed.

(b) Mandatory review. A request for declassification under the Executive Order 12958 is termed a mandatory review; it is separate from and different than a request made under the Freedom of Information Act (FOIA). When a requester submits a request under both mandatory review and FOIA, the Department shall require the requester to elect one or the other. If the requester fails to elect one or the other, the request will be treated as a FOIA request unless the materials requested are subject only to mandatory review.

(c) Scope. All information classified under this or predecessor orders shall be subject to declassification review upon request by a member of the public, a government employee or agency, with the following exceptions:

(1) Information exempted from search and review under the Central Intelligence Information Act;

(2) Information which is the subject of pending litigation;

(3) Information which has been reviewed and withheld within the past two years;

(4) Information originated by the incumbent President; the incumbent President's White House staff; committees, commissions or boards appointed by the incumbent President; or other entities within the Executive Office of the President that solely advise and assist the incumbent President. If the information requested is the subject of pending litigation, or has been reviewed for declassification and withheld within the past two years, the Department will inform the requester of these facts and of the requester's appeal rights. The Archivist of the United States shall establish procedures for the declassification of Presidential or White House materials accessioned into the National Archives or maintained in the Presidential libraries.

(d) The Department may refuse to confirm or deny the existence or nonexistence of requested information whenever the fact of its existence or nonexistence is itself classified.

(e) Processing. In responding to mandatory review requests, the Department shall either make a prompt declassification determination and notify the requester accordingly, or inform the requester of the additional time needed to process the request. The Department shall ordinarily make a final determination within 180 days from the date of receipt. When information cannot be declassified in its entirety, the Department will make reasonable efforts to release those declassified portions of the requested information that constitute a coherent segment.

(f) Other agency records. When the Department receives a request for records in its possession that were originated by another agency, it shall refer the request and the pertinent records to the originating agency unless that agency has agreed that the Department may review the records in accordance with declassification guides or guidelines provided by the originating agency. The originating agency shall communicate its declassification determination to the Department.

(g) Foreign government information. When foreign government information is being considered for declassification, the declassifying agency is the agency that originally received or classified the information. The declassifying agency shall:

(1) Determine whether the information is subject to a treaty or international agreement that would prevent its declassification;

(2) Determine whether the information is subject to Section 1.6(d)(5), (6) or (8) of the Executive Order 12958;

(3) Consult with any other concerned agencies;

(4) Consult with the Department and/or the foreign government, as appropriate.

(h) Cryptologic and intelligence information. Mandatory declassification review requests for cryptologic information and information concerning intelligence activities or intelligence sources or methods shall be processed solely in accordance with special procedures established by the Secretary of Defense and the Director of Central Intelligence, respectively.

(i) Appeals. Upon denial of an initial request in whole or in part, the Department shall notify the requester of the right of an administrative appeal, which must be filed within 60 days of receipt of the denial. The Department shall normally make a determination within 60 days following receipt of an appeal. If additional time is needed to make a determination, the Department shall notify the requester of the additional time needed and provide the requester with a reason for extension. The Department shall notify the requester in writing of the final determination and of the reasons for any denial.

(j) Appeals to the Interagency Security Classification Appeals Panel. The Interagency Security Classification Appeals Panel shall publish in the Federal Register the rules and procedures for bringing mandatory declassification appeals before it.

§ 171.22 Determination in disputed cases.

(a) It is presumed that information that continues to meet the classification requirements under this Executive Order 12958 requires continued protection. In some exceptional cases, however, the need to protect such information may be outweighed by the public interest in disclosure of the information, and in these cases the information should be declassified. When such questions arise, they shall be referred to the Secretary of State or the Department's senior agency official. That official will determine, as an exercise of discretion, whether the public interest in disclosure outweighs the damage to national security that might reasonably be expected from disclosure.

(b) This provision does not:

(1) Amplify or modify the substantive criteria or procedures for classification; or

(2) Create any substantive or procedural rights subject to judicial review.

§ 171.23 Challenges to classification.

(a) Authorized holders of information who, in good faith, believe that its classification status is improper are encouraged and expected to challenge the classification status of the

information. An authorized holder is any individual, including an individual external to the Department, who has been granted access to specific classified information in accordance with section 4.2(g) of the Executive Order 12958.

(b) Challenges shall be presented to an original classification authority with jurisdiction over the information. A formal challenge under Section 1.9 of the Executive Order 12958 must be in writing, but need not be any more specific than to question why information is or is not classified, or is classified at a certain level. The classification challenge provision is not intended to prevent an authorized holder form informally questioning the classification status of particular information. Such informal inquiries are encouraged in order to limit the number of formal challenges.

(c) Whenever the Department receives a classification challenge to information that has been the subject of a challenge within the past two years, or that is the subject of pending litigation, it is not required to process the challenge beyond informing the challenger of this fact an of the challenger's appeal rights, if any.

(d) Challenges, responses and appeals shall, if possible, be unclassified. However, classified information contained in a challenge, a response from the department or an appeal shall be handled and protected in accordance with this Executive Order 12958 and its implementing directives.

(e) Information being challenged for classification shall remain classified unless and until a decision is made to declassify it.

(f) The Secretary of State or the senior agency official of the Department shall establish procedures under which authorized holders of classified information may make such challenges. These procedures shall assure that:

(1) No retribution is taken against an authorized holder bringing a challenge in good faith;

(2) An opportunity is provided for review by an impartial official or panel; and

(3) Classification challenges shall be considered separately from FOIA or other access requests.

(g) Processing an initial written response to a challenge shall be provided within 60 days. If the Department is unable to respond to the challenge within 60 days, it must acknowledge the challenge in writing and provide a date by which it will respond. The Department's acknowledgement must state that if no response is received within 120 days, the challenger has the right to forward the challenge to the Interagency Security Classification Appeals Panel. The challenger may also forward the challenge to the Interagency Security Classification Appeals Panel if the Department has not responded to an internal appeal within 90 days after receiving the appeal. Responses to challenges denied by the Department shall also include the challenger's appeal rights to the Interagency Security Classification Appeals Panel.

§ 171.24 Access by historical researchers and former Presidential appointees.

(a) Section 4.2(a)(3) of this Executive Order 12958 restricts access to classified information to individuals who have a need-to-know the information. This may be waived for persons who are engaged in historical research projects; or previously occupied policy-making positions to which they were appointed by the President. Access requests made under this provision must be submitted in writing and must include a general description of the records and the time period covered by the request.

(b) Access may be granted only if the Secretary of State or the senior agency official of the Department:

(1) Determines in writing that access is consistent with the interest of national security;

(2) Takes appropriate steps to protect classified information from unauthorized disclosure or compromise; and

(3) Ensures that the information is safeguarded in a manner consistent with the Executive Order 12958.

(c) Access granted to former Presidential appointees shall be limited to items the individual originated, reviewed, signed or received while serving as a Presidential appointee.

§ 171.25 Exemptions.

The Freedom of Information and Privacy Acts exemptions and any other exemptions under applicable law may be invoked by the Department to deny material on grounds other than classification.

Patrick F. Kennedy,

Assistant Secretary for the Bureau of Administration.

[FR Doc. 96–15513 Filed 7–30–96; 8:45 am]

BILLING CODE 4710–24–M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 19 and 21

[Notice No. 832; 95R–029P]

RIN 1512–AB60

Formulas for Denatured Alcohol and Rum

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is proposing in this document to update the information provided for in parts 19 and 21 relating to the formulation of completely denatured alcohol (CDA), specially denatured alcohol (SDA), and specially denatured rum (SDR); the denaturants authorized for use in the manufacturing of these formulations; and the specifications for these denaturants. The updates being proposed include replacing the previously named ''Scientific Services Division'' and ''Chemical Branch'' with their new names, removing the only proprietory name listed with the denaturant denatonium benzoate, incorporating an ATF ruling that approves the use of two substitute denaturants, and making other amendments to provide clarity. ATF believes that the proposed updates will ensure that the information provided in this part is current.

As part of the President's regulatory reform initiative that calls for a complete review and revision of all Federal government regulations, ATF is proposing in this document to eliminate regulatory requirements that may pose an undue burden on industry members.

DATES: Written comments must be received on or before September 30, 1996.

ADDRESSES: Submit written comments to: Chief, Wine, Beer, and Spirits Regulations Branch; Bureau of Alcohol, Tobacco and Firearms; PO Box 50221; Washington, DC 20091–0221. Attn: Notice No. 832.

FOR FURTHER INFORMATION CONTACT: Mary A. Wood, Wine, Beer, and Spirits Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226; (202) 927–8210.

SUPPLEMENTARY INFORMATION:

Background

27 CFR part 21 contains listings of information relating to the formulation

of CDA, SDA, and SDR, to the specifications for denaturants and to the denaturants authorized for use in the formulation of CDA, SDA, and SDR. ATF is authorized under section 5242 of the Internal Revenue Code of 1986 to prescribe the character and quantity of approved denaturing materials. Pursuant to § 21.91, ATF may authorize substitutions or variations from the specified list of denaturants pursuant to an application filed with ATF by the denaturer. This document proposes to amend part 21 to incorporate denaturants that have been approved pursuant to such applications but not yet published in this part, as well as to clarify the regulations where necessary. Additionally, this document proposes to make a technical correction to the wording of § 21.91 by replacing ''of'' with ''or'' in the second sentence.

Correcting Division and Branch Names

The ATF National Laboratory Center, Rockville, Maryland, underwent reorganization and the division and certain branches were renamed. The division previously named ''Scientific Services Division'' has been renamed ''Laboratory Services Division'' and the branch previously named ''Chemical Branch'' has been renamed ''Alcohol and Tobacco Laboratory.'' The regulations are being corrected to reflect the new names. The division name correction affects § 21.11. The branch name correction affects §§ 21.3, 21.11, 21.21, 21.31, 21.33, 21.34, 21.56, 21.65, and 21.141.

Removal of a Proprietary Name

The appearance of the proprietary brand name ''BITREX'' in conjunction with the approved denaturant denatonium benzoate, N.F. may be mistakenly considered a product endorsement by ATF over all other proprietory names. Since ''denatonium benzoate, N.F.'' is the actual chemical name for this denaturant, ''BITREX'' is eliminated every where it appears in parts 19 and 21.

Substitute Denaturants

ATF Ruling 94–4 approved the use of heptane as a substitute denaturant for toluene in SDA Formula No. 2–B (SDA 2–B) and alpha terpineol as a substitute denaturant in SDA Formula No. 38–B (SDA 38–B).

Heptane is currently approved as a substitute denaturant for rubber hydrocarbon solvent in SDA 28–A. This ruling allows for the use of heptane as a substitute, on an equal (1:1) basis, for any one of the denaturants (toluene, benzene or rubber hydrocarbon solvent) in SDA 2–B.

Alpha terpineol having similar specifications to those of pine oil, N.F., an approved denaturant for SDA 38–B, is now approved for use as a substitute denaturant in SDA 38–B.

Other Changes

27 CFR 21.6 and 21.141 are proposed to be amended to correctly cite referenced information.

Public Participation

ATF requests written comments from all interested persons. All comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before the closing date.

ATF will not recognize any material as confidential. Any material which the commenter considers to be confidential or inappropriate for disclosure should not be included in the comment. The name of the person submitting the comment is not exempt from disclosure.

Any interested person who desires an opportunity to comment orally at a public hearing should submit a request, in writing, to the Director within the 60-day comment period. The Director, however, reserves the right to determine, in light of all circumstances, whether a public hearing will be scheduled.

Written comments will be available for public inspection during normal business hours at the following address: ATF Reading Room, Office of Public Affairs and Disclosure, Room 6480, 650 Massachusetts Avenue, NW., Washington, DC.

Regulatory Flexibility Act

It is hereby certified that this proposed regulation will not have a significant economic impact on a substantial number of small entities. The regulations will provide industry members with the most current listings of denaturants, denatured alcohol and rum formulations and their specifications. The regulations will not increase recordkeeping or reporting requirements. Accordingly, a regulatory flexibility analysis is not required because the proposal, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities. Pursuant to section 7805(f) of the Internal Revenue Code, this regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Executive Order 12866

It has been determined that this proposed regulation is not a significant regulatory action as defined in Executive Order 12866. Accordingly, this proposal is not subject to the analysis required by this Executive Order.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Public Law 96–511, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this document because no new information collection requirements are being proposed.

The collections of information referenced in this notice of proposed rulemaking have been previously reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h); 27 CFR parts 19 and 20).

Drafting Information

The principal author of this document is Mary A. Wood of the Wine, Beer, and Spirits Regulations Branch, Bureau of Alcohol, Tobacco, and Firearms.

List of Subjects

27 CFR Part 19

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations (Government agencies), Chemicals, Claims, Customs duties and inspection, Electronic fund transfers, Excise taxes, Exports, Gasohol, Imports, Labeling, Liquors, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Research, Security measures, Spices and flavorings, Stills, Surety bonds, Transportation, Vinegar, Virgin Islands, Warehouses, Wine.

27 CFR Part 21

Alcohol and alcoholic beverages, Authority delegation, Chemicals, Gasohol.

Authority and Issuance

Accordingly, ATF is proposing to amend chapter I, of title 27 of the Code of Federal Regulations as follows:

Sec. A. The regulations in 27 CFR part 19 are amended as follows:

PART 19—DISTILLED SPIRITS PLANTS

Para. 1. The authority citation for part 19 continues to read as follows:

Authority: 19 U.S.C. 81c, 1311; 26 U.S.C. 5001, 5002, 5004–5006, 5008, 5010, 5041, 5061, 5062, 5066, 5081, 5101, 5111–5113,

5142, 5143, 5146, 5171–5173, 5175, 5176 5178–5181, 5201–5204, 5206, 5207, 5211–5215, 5221–5223, 5231, 5232, 5235, 5236, 5241–5243, 5271, 5273, 5301, 5311–5313, 5362, 5370, 5373, 5501–5505, 5551–5555, 5559, 5561, 5562, 5601, 5612, 5682, 6001, 6065, 6109, 6302, 6311, 6676, 6806, 7011, 7510, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

§ 19.460 [Amended]

Para. 2. Section 19.460(a) is amended by removing the word ''(BITREX),'' wherever it appears.

§ 19.1005 [Amended]

Para. 3. Section 19.1005(c) is amended by removing the word ''(Bitrex),'' wherever it appears.

Sec. B. The regulations in 27 CFR part 21 are amended as follows:

PART 21—FORMULAS FOR DENATURED ALCOHOL AND RUM

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

Authority: 5 U.S.C. 552(a); 26 U.S.C. 5242, 7805.

§§ 21.3, 21.21, 21.31, 21.34, and 21.56 [Amended]

Para. 2. Sections 21.3(b), 21.21 (b) and (c), 21.31(c), 21.34(c), and 21.56(a) are amended by removing the words ''Chemical Branch'' and adding in their place the words ''Alcohol and Tobacco Laboratory.''

Para. 3. Section 21.6 is amended by revising the first sentence of paragraph (a) to read as follows:

§ 21.6 Incorporations by reference.

(a) ''The United States Pharmacopoeia and the National Formulary'' published together as ''The USP and NF Compendia,'' are incorporated by reference in this part. * * *

* * * * *

§ 21.11 [Amended]

Para. 4. Section 21.11 is amended in the definition ''Chief, Chemical Branch'' by removing the words ''Scientific Services Division'' and adding in their place the words ''Laboratory Services Division'' and by removing the words ''Chemical Branch'' and adding in their place the words ''Alcohol and Tobacco Laboratory.''

§ 21.32 [Amended]

Para. 5. Section 21.32(a) is amended by removing the word ''(BITREX).''

Para. 6. Section 21.33 is amended as follows:

1. Paragraph (a) is revised to read as follows:

§ 21.33 Formula No. 2–B.

(a) *Formula.* To every 100 gallons of alcohol add:

One-half gallon of benzene, ½ gallon of rubber hydrocarbon solvent, ½ gallon of toluene, or ½ gallon of heptane.

* * * * *

2. Paragraph (c) is amended by removing the words ''Chemical Branch'' and adding in their place ''Alcohol and Tobacco Laboratory.''

§ 21.65 [Amended]

Para. 7. Section 21.65(a) is amended as follows:

1. The words ''Alpha terpineol'' are added at the top of the list of substances.

2. In the concluding text, the words ''Chemical Branch'' are removed and added in their place are the words ''Alcohol and Tobacco Laboratory'' every place they appear.

§ 21.76 [Amended]

Para. 8. Section 21.76(a) is amended by removing the word ''(BITREX).''

§ 21.91 [Amended]

Para. 9. Section 21.91 is amended by removing ''of'' where it appears for the second time in the second sentence and adding ''or'' in its place.

§§ 21.95 through 21.132 [Redesignated as §§ 21.96 through 21.133]

Para. 10. Sections 21.95 through 21.132 are redesignated as §§ 21.96 through 21.133.

Para. 11. A new § 21.95 is added to read as follows:

§ 21.95 Alpha terpineol.

(a) Boiling point at 752mm 218.8–219.4 °C.

(b) Density at 15° 0.9386.

(c) Refractive index at 20° 1.4831.

§ 21.141 [Amended]

Para. 12. Section 21.141 is amended as follows:

1. Formula 40–B is added to the end of the list in the column entitled ''Formulas authorized for the entry ''External pharmaceuticals, miscellaneous, U.S.P. or N.F.'', Code No. 249.''

2. The words ''Chemical Branch'' are removed from footnote 1 and added in their place are the words ''Alcohol and Tobacco Laboratory.''

§ 21.151 [Amended]

Para. 13. Section 21.151 is amended as follows:

1. ''Alpha Terpineol * * * S.D.A. 38–B'' is added directly after, ''Almond oil, bitter, N.F.X * * * S.D.A. 38–B.''

2. ''(BITREX)'' is removed from the reference to ''Denatonium benzoate, N.F. S.D.A. 1, 40–B.''

3. ''2–B'' is added between ''S.D.A.'' and ''28–A'' across from ''Heptane.''

Signed: May 29, 1996.

John W. Magaw,

Director.

Approved: June 6, 1996.

John P. Simpson,

Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 96–19388 Filed 7–30–96; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 206

RIN 1010–AC06

Amendments to Transportation Allowance Regulations for Federal and Indian Leases to Specify Allowable Costs and Related Amendments to Gas Valuation Regulations

AGENCY: Minerals Management Service, Interior.

ACTION: Proposed rulemaking.

SUMMARY: The Minerals Management Service (MMS) proposes to amend its regulations governing valuation for royalty purposes of gas produced from Federal and Indian leases. The proposed rule primarily addresses allowances for transportation of gas. The amendments would clarify the methods by which gas royalties and deductions for gas transportation are calculated.

DATES: Comments must be submitted on or before September 30, 1996.

ADDRESSES: Comments should be sent to: David S. Guzy, Chief, Rules and Procedures Staff, Minerals Management Service, Royalty Management Program, P.O. Box 25165, MS 3101, Denver, Colorado 80225–0165, courier delivery to Building 85, Denver Federal Center, Denver, CO 80225, telephone (303) 231–3432, fax (303) 231–3194, e-Mail David__Guzy@smtp.mms.gov.

FOR FURTHER INFORMATION CONTACT: David S. Guzy, Chief, Rules and Procedures Staff, Minerals Management Service, Royalty Management Program, telephone (303) 231–3432, fax (303) 231–3194, e-Mail David__Guzy@smtp.mms.gov.

SUPPLEMENTARY INFORMATION: The principal authors of this proposed rule are Theresa Walsh Bayani at (303) 275–7247, Susan Lupinski at (303) 275–7246, and Gregory Smith at (303) 275–7102 from MMS's Offices in Lakewood, Colorado, and Geoffrey Heath at (202) 208–3051 and Peter Schaumberg at (202) 208–4036 from the Office of the Solicitor in Washington, D.C.

I. General

MMS published a set of rules in 30 CFR Part 206 governing gas valuation and gas transportation calculation methods to clarify and codify the departmental policy of granting deductions for the reasonable actual costs of transporting gas from a Federal or Indian lease (when the gas is sold at a market away from the lease) (53 FR 1272, January 15, 1988).

Since the 1988 rulemaking, Federal Energy Regulatory Commission (FERC) regulatory actions significantly affected the gas transportation industry. Before these changes, gas pipeline companies served as the primary merchants in the natural gas industry. During that environment, pipelines:

- Bought gas at the wellhead,
- Transported the gas, and
- Sold the gas at the city gate to local distribution companies (LDC).

In the mid-1980's, FERC began establishing a competitive gas market, allowing shippers access to the pipeline transportation grid. These actions ensured that willing buyers and sellers could negotiate their own sales transactions.

Specifically, starting with the implementation of FERC Order 436, FERC began regulating pipelines as open access transporters and requiring non-discriminatory transportation. This permitted downstream gas users (such as LDC's and industrial users) to buy gas directly from gas merchants in the production area and to ship that gas through interstate pipelines.

FERC Order 436 and amendments, plus the elimination of price controls, created a vigorous spot market. Producers and marketers, in competition for the sale of gas to end users, are now transporting substantial volumes of gas that they own through interstate pipelines.

In the early 1990's, FERC recognized that pipelines still held an advantage over competing sellers of gas. Pipelines held substantial market power and sold gas bundled with a transportation service. FERC remedied the inequities in the gas market by issuing FERC Order 636, effective May 18, 1992. FERC Order 636:

- Required the separation (unbundling) of sales and gas transportation services;
- Enabled the implementation of a capacity release program; and
- Allowed pipelines to assess shippers surcharges for services such as transition costs and FERC's annual charges (57 FR 13267, April 16, 1992).

The unbundled costs—previously embedded in a lump-sum charge—include:

- Transmission,
- Storage,
- Production, and
- Gathering costs.

MMS reviewed its current gas transportation regulations (30 CFR 206.156 and 206.157 (Federal), and 206.176 and 206.177 (Indian)(1996)) and determined that they provide general authority to calculate transportation deductions for cost components resulting from implementing FERC Order 636 and previous FERC orders. However, MMS determined that we should provide specific guidance to lessees and royalty payors on which transportation service components are deductible transportation costs. This guidance is necessary because transportation service components previously aggregated may now be separately identified in transportation contracts, and new transportation costs unique to the FERC Order 636 environment are emerging.

Further, some ''transportation'' service components reflect non-deductible costs of marketing rather than transportation.

The purpose of this proposed rule is to clarify for the oil and gas industry which cost components or other charges are deductible (related to transportation) and which costs are not deductible (related to marketing) for Federal and Indian leases. The discussion in this preamble, and the proposed rule, relates primarily to the effects of FERC Order 636 on interstate gas pipelines that FERC regulates. To the extent these same types of changes and issues are relevant for intrastate pipelines, this proposed rule applies equally.

In conjunction with the proposed changes to the transportation allowance regulations, MMS also proposes certain changes to the gas valuation regulations. When FERC approves tariffs, they generally allow pipelines to include provisions ensuring that pipelines can maintain operational and financial control of their systems. These provisions may include requirements that shippers maintain pipeline receipts and deliveries within certain daily or monthly tolerances and that shippers ''cash-out'' accumulated imbalances. As explained in more detail below, if a shipper over-delivers production to a pipeline, the pipeline may purchase the excess gas quantities from the shipper. If the gas quantity exceeds certain prescribed tolerances, the shipper may incur a ''penalty'' in the form of a substantially reduced price for that gas. MMS will not accept that ''penalty price'' as the value of production and proposes in this rule a method for valuing production sold under such circumstances.

Certain additions to revenues from the sale of natural gas may occur in the gas transportation environment. These issues are gas valuation issues beyond the scope of this rulemaking. However, these additions to revenues may be royalty bearing under existing regulations.

MMS also recognizes that certain lessee gas transportation arrangements result in financial transactions not directly associated with the gas value. Such transactions may not have royalty consequences. If a lessee is unsure whether its transactions result in additional royalty obligations, it may request a value determination from MMS as provided in the existing rules.

The amendments discussed below apply to both arm's-length and non-arm's-length situations for valuing gas production and calculating transportation allowances.

II. Section-by-Section Analysis

MMS proposes amending its regulations and deleting the existing §§ 206.157(f) and 206.177(f) (although MMS retains the substance of this paragraph in a later revised paragraph). We redesignated paragraph (g) of these sections as paragraph (h) and added two new paragraphs. New paragraph (f) describes the types of costs MMS will allow as part of a transportation allowance. A new paragraph (g) lists those costs that MMS expressly disallows. Because some of the nonallowable costs affect valuation, MMS proposes amending §§ 206.152, 206.153, 206.172 and 206.173. These amendments address valuation of certain ''cash-out'' volumes and expressly reaffirm that marketing costs are not allowable deductions from royalty value.

A. Sections 206.152, 206.153, 206.172 and 206.173 How to Value Over-Delivered Volumes Under a ''Cash-Out'' Program

See the discussion below at 30 CFR 206.157 and 30 CFR 206.177 for the proposed changes to 30 CFR 206.152, 206.153, 206.172, and 206.173.

B. Sections 206.157(f) and 206.177(f) Allowable Costs in Determining Transportation Allowances

1. Firm Demand Charges

In §§ 206.157(f)(1) and 206.177(f)(1), MMS proposes allowing firm demand charges—limited to the applicable rate per MMBtu multiplied by the actual volumes transported—as allowable costs in computing the transportation

allowance. FERC Order 636 made significant changes to the structure of interstate gas pipelines services; however, these services and the costs reflected in their rates are not new to the gas industry. Because FERC unbundled these services, MMS determined that certain firm demand costs may be allowable transportation costs.

Firm transportation is a service in which the shipper contracts and pays for a capacity entitlement. Pipelines generally provide firm transportation under a two-part rate structure:

(a) demand or reservation charges to recover its fixed costs; and

(b) a commodity charge which usually recovers its variable costs.

In contrast, interruptible transportation is a lower priority service. During peak demand periods on the pipeline system, the pipeline must provide the firm customers' capacity requirements before permitting access to shippers with interruptible service.

In Order 636, FERC adopted a rate design allocating 100 percent of the fixed costs of operating the pipeline to the firm demand charge. These costs include:

- Depreciation;
- Operation and maintenance costs; and
- Return on equity.

Customers with firm service pay a monthly demand charge, based on the amount of capacity reserved, plus a commodity charge for the variable costs of pipeline operation (on-line compression, etc.). Customers with interruptible service pay only a commodity charge because they do not reserve pipeline capacity.

Under the current rules, MMS allows all those costs that were in tariffs because the costs generally were not separately identified. After FERC Order 636, these costs are segregated and MMS allows the costs for firm and interruptible service in determining the transportation allowance for both arm's-length and non-arm's-length contracts. MMS considers firm and interruptible service charges as actual costs of transportation, with certain exceptions discussed below. (See also the discussion below regarding commodity charges in proposed §§ 206.157(f)(3) and 206.177(f)(3)).

MMS recognizes that other valuation implications result from a lessee's choice of securing firm versus interruptible services. For instance, gas transported under firm transportation service will likely command a higher sales price than gas transported under interruptible service. If the gas sales transaction is not arm's-length, the lessee would apply the comparability criteria in §§ 206.152, 206.153, 206.172 and 206.173 and compare values of gas transported under the same transportation arrangement—firm to firm and interruptible to interruptible.

2. Capacity Release Program

The capacity release program reallocates a shipper's unused firm transportation capacity. In low demand periods, shippers with firm transportation release unused capacity to the pipeline. During peak demand periods, shippers with firm transportation maintain their contracted pipeline capacity. When another party acquires released capacity from the pipeline, the pipeline credits the payments to the shipper who released the firm transportation. That transaction could result in a loss or gain to the releasing firm transportation holder.

When another shipper does not acquire released capacity, a loss occurs—the capacity holder loses what it paid for some of its firm capacity. In §§ 206.157(f)(1) and 206.177(f)(1) MMS proposes that such losses to the lessee/holder of firm transportation would not be deductible transportation costs. In addition, the lessee may not include any losses it incurs from receiving less for release of its firm capacity than what it paid. Similarly, any gains from the sale of firm capacity would have no allowance or royalty consequences.

MMS does not consider these gains or losses associated with transfers of firm transportation as part of the actual costs of transportation. Therefore, regardless of whether the firm capacity holder makes or loses money on capacity releases, it may only claim the firm demand charge per MMBtu multiplied by the actual volume it transports as its transportation allowance.

When a lessee/shipper acquires released capacity on a pipeline, MMS allows the cost of buying that capacity as a transportation cost to the extent the capacity is actually used.

3. Pipeline Rate Adjustments

Pipeline rates are sometimes subject to later adjustment; the pipeline may agree to retroactively adjust the effective rate in a rate case settlement, or FERC may order a rate adjustment when it acts on the merits of a rate increase application. For example, a rate reduction may occur if:

- A pipeline determines that its operating costs are lower than it originally projected; or
- Its billing determinants are higher.

In such cases, the pipeline may have to refund certain revenues it collects; such as penalty revenues. Only in rare instances does FERC allow pipelines to retroactively increase rates.

MMS proposes that if the lessee receives a payment or credit from the pipeline for penalty refunds, rate case refunds, or other reasons, the lessee must reduce the firm demand charge used to calculate its transportation allowance reported on the Form MMS–2014, Report of Sales and Royalty Remittance. The lessee must modify the Form MMS–2014 by the amount of the refund or other credit (including any interest the lessee receives from the pipeline) for the affected reporting period. In this situation, the lessee would owe additional royalty.

MMS recognizes that this requirement may be administratively burdensome because the lessee may have to amend numerous Forms MMS–2014 for many leases. This may occur if more than one refund for the same lease happens at different times. Please comment on this issue, including suggestions for simplified reporting so that MMS may address the reporting issue either in a final rule or in ''MMS Oil and Gas Payor Handbook'' amendments.

4. Sections 206.157(f)(2) and 206.177(f)(2) Gas Supply Realignment (GSR) Costs

In §§ 206.157(f)(2) and 206.177(f)(2), MMS proposes allowing Gas Supply Realignment (GSR) costs as an allowable transportation cost. GSR costs result from a pipeline reforming or terminating supply contracts with purchasers in implementing the restructuring requirements of FERC Order 636 or subsequent FERC orders. Under FERC Order 636, pipelines may recover 100 percent of their prudently incurred eligible contract settlement costs through charges to their transportation customers. Pipelines allocate:

- 90 percent of the costs to existing firm transportation customers; and
- 10 percent to interruptible transportation customers.

The pipeline's transportation rate will include these GSR costs which may be embedded in the transportation rates or identified separately as a surcharge.

Because FERC allows GSR costs in the basic pipeline transportation rates, MMS considers these costs as an actual cost of transportation under the existing regulations. In this proposed rule, MMS is specifically identifying GSR costs as an allowable cost. This treatment of GSR costs is consistent with MMS's treatment of lump-sum contract settlement payments received by a lessee for amending or terminating gas sales contracts.

The proposed rule does not affect the principles governing when and to what

extent such payments are or become royalty-bearing, as set forth in the decisions of the Assistant Secretary for Land and Minerals Management and the Assistant Secretary for Indian Affairs in *Shell Offshore, Inc.*, Docket No. MMS–91–0087–OCS (Sept. 2, 1994), and *Samedan Oil Corp.*, Docket No. MMS–94–0003–O&G (Sept. 16, 1994) (upheld on judicial review pending in *Samedan Oil Corp.* v. *Deer,* No. 94CV02123 (RCL) (D.D.C. June 14, 1995)), *appeal pending,* No. 95–5210 (D.C. Cir). Pipelines may recover GSR costs as part of their transportation charges to all their customers. When pipelines impose those charges on gas, this is rarely the gas which was the subject of the reformed or settled contract. Even if it were, the lessee/shipper must pay royalty on part or all of the contract settlement payment. The portion of the payment which is indirectly ''paid back'' to the pipeline through the GSR charge is still allowable as part of the transportation allowance.

5. Sections 206.157(f)(3) and 206.177(f)(3) Commodity Charges

Under existing §§ 206.157 and 206.177, MMS allows costs which are directly related to the transportation of production in the transportation allowance. In §§ 206.157(f)(3) and 206.177(f)(3), MMS proposes allowing the commodity charges paid to pipelines as allowable costs in computing the transportation allowance.

The commodity charge, and the firm demand charge as explained above, allows the pipeline to recover the costs of providing its service. While the firm demand charge represents the fixed costs of operating the pipeline, the commodity charge represents the pipeline's transportation-related variable costs. The pipeline assesses firm transportation shippers a commodity charge based on the quantities of gas actually transported. The pipeline assesses the interruptible transportation shippers a commodity charge or rate for each unit of gas transported.

Currently, MMS allows these commodity charges in determining transportation allowances. Under the proposed rule, MMS specifically identifies the commodity charge as an allowable cost.

6. Sections 206.157(f)(4) and 206.177(f)(4) Wheeling Costs

In many cases, a lessee transports gas produced from Federal or Indian leases through a market center or hub. A hub is a connected manifold of pipelines through which a series of incoming pipelines are interconnected to a series of outgoing pipelines. For example, gas coming in on Pipeline A may go out of the market hub on Pipeline A or Pipeline B. The transportation of gas from one pipeline through the hub to either the same or another pipeline is known as wheeling. The hub operator charges a fee for the wheeling. MMS proposes allowing wheeling costs in determining transportation allowances in §§ 206.157(f)(4) and 206.177(f)(4).

7. Sections 206.157(f) (5) and (6) and 206.177(f) (5) and (6) GRI Fees and ACA Fees

As part of the standard pipeline tariff, FERC allows pipelines to charge fees to support programs of the Gas Research Institute (GRI). Also, the pipelines include Annual Charge Adjustment (ACA) fees that pay for FERC's operating expenses. Currently, MMS allows the GRI/ACA fees as part of the transportation allowance and will continue to allow them under the proposed rule.

8. Sections 206.157(f)(7) and 206.177(f)(7) Actual or Theoretical Losses

Under the existing regulations at 30 CFR 206.157(f) and 206.177(f), if a lessee is charged for actual or theoretical losses under an arm's-length contract, the lessee may deduct the related transportation costs. The rules also allow these costs for non-arm's-length transportation contracts if a FERC or State regulatory agency-approved tariff includes an actual or theoretical loss component.

MMS proposes continuing this same provision in the proposed §§ 206.157(f)(7) and 206.177(f)(7). However, MMS is modifying the wording at §§ 206.157(f) and 206.177(f) for clarification. There will be no substantive change from the existing rules.

9. Sections 206.157(f)(8) and 206.177(f)(8) Supplemental Services Necessary for Transportation

MMS proposes allowing certain supplemental costs for compression, dehydration, and treatment of gas only if the transporter requires such services as part of the transportation process.

MMS does not allow any costs for compression, dehydration, and treatment of gas for the purpose of placing gas in marketable condition. It is clear that Federal and Indian lessees must put production in marketable condition at no cost to the lessor (30 CFR 206.152(i), 206.153(i), 206.172(i), and 206.173(i)(1995)); *Mesa Operating Limited Partnership* v. *Department of the Interior,* 931 F.2d 318 (5th Cir. 1991), cert. denied, 112 S.Ct. 934 (1992).) Therefore, MMS requires the lessee to compress, dehydrate, sweeten, and otherwise treat the gas to place it in the condition necessary to meet typical requirements for gas purchase contracts or pipeline standards. MMS recognizes, however, that there may be unusual circumstances where the pipeline performs additional compression, dehydration, or other treatment of gas to remove impurities during the transportation process.

Under the proposed rule, if the lessee demonstrates that the costs it incurs for these treatment purposes are not related to the treatment required to put the gas in marketable condition, then the lessee can include these costs in its transportation allowance.

MMS will not allow transportation deductions for:

- Any costs necessary to bring production up to the required pipeline system standards; or
- Any indirect costs included by the lessee for these treatment services.

This situation occurs when the pipeline treats the gas to put it in marketable condition and then increases other transportation costs billed to the lessee/shipper. These supplemental costs are not the costs already included in the calculation of the pipeline's operational costs for firm and interruptible demand charges.

C. Sections 206.157(g) and 206.177(g) Nonallowable Costs in Determining Transportation Allowances

FERC Order 636 and other FERC orders—designed to increase competition in the natural gas industry—substantially changed the structure of gas transportation and sales transactions. Clearly, some costs are for marketing gas production and are not for costs incurred to transport gas.

Lessees cannot deduct from royalty value the costs of marketing production from Federal and Indian leases. For decades, the regulations required that the lessee place production in marketable condition at no cost to the lessor. Thus, if the purchaser incurs costs to market the production, the lessee may not reduce the royalty value (either directly or through the transportation allowance) to compensate the purchaser for those marketing costs. Neither may the lessee pay another entity for marketing services and deduct the costs of those services from the royalty value.

The Interior Board of Land Appeals (IBLA) supported this principle in *Walter Oil and Gas Corporation,* 111 IBLA 265 (1989). IBLA concluded that a lessee may not deduct the costs of

finding markets for gas, regardless of whether it uses its own employees to market the gas or contracts out those functions. Similarly, if a purchaser reduces the price paid to the lessee for any costs of marketing transactions, the lessee must adjust the price upward by the amount of these costs when it reports value for royalty purposes.

This principle derives from the lessee's implied covenant to market production for the mutual benefit of the lessee and the lessor. Because the implied covenant to market is the lessee's obligation, the lessor does not share in the marketing costs. This implied covenant and the marketable condition rule require the lessee to market the gas at its own expense.

The proposed rule adds specific language to paragraph (i) of 30 CFR 206.152, 206.153, 206.172, and 206.173 to expressly state the lessee's obligation to incur all marketing costs. In all sections, MMS will amend paragraph (i) to add the words ''and to market the gas for the mutual benefit of the lessee and the lessor'' after the words ''place gas in marketable condition'' and before the words ''at no cost to the Federal government (or Indian lessor, as applicable).'' MMS will also add the words ''or to market the gas'' at the end of the last sentence of that paragraph to accomplish this objective. MMS believes that the added language contains the concept embodied in the implied covenant to market for the mutual benefit of Federal and Indian oil and gas leases.

Because of the developing gas market, transporters, purchasers, or marketers charge producers for various marketing costs. MMS will not allow:

- The costs of these transactions as a transportation deduction; or
- Any reduction in gas sales value by the lessee when the purchaser performs these services.

Under the proposed rule, the following transactions fall under the non-deductible ''marketing costs'' category:

Sections 206.157(g)(1) and 206.177(g)(1) Storage fees. Under the proposed rule, MMS will not allow gas storage costs as part of the costs of transportation. This includes long-term storage and short duration storage (often less than one day). The short duration storage is often known as ''banking'' or ''parking'' and frequently occurs at a marketing center or hub. MMS will disallow costs for other temporary storage during the transportation process (whether the storage actually occurs or is solely a matter of accounting convenience). MMS considers these costs as marketing costs. However, MMS recognizes that these temporary storage costs are different from longer term storage. Please comment on whether and why MMS should allow these costs under paragraph (f) of this section.

Off-lease storage for marketing purposes also has an effect on the royalty value of stored production. The regulation at 30 CFR § 202.150 (1995), the language of the various mineral leasing statutes, and terms of Federal leases require that royalty be a percentage of the amount or value of the production *removed or sold* from the lease. MMS considers gas removed from a Federal or Indian lease and stored at a location off the lease for future sale subject to royalty at the time of removal from the lease. In this situation, the lessee would determine the value of the gas production by applying the provisions of 30 CFR 206.152 and 206.172 (unprocessed gas), or 206.153 and 206.173 (1995) (processed gas) because there is no arm's-length sale at the time of production and removal from the lease. (See *BWAB, Inc.,* 108 IBLA 250 (1989)). If a lessee accumulated its production off-lease during periods when demand was low and sold those accumulated volumes in a later period, the prices realized upon sale may be higher or lower than those available at the time of production. MMS would not share in any increase or decrease in value resulting from storing gas as part of the lessee's marketing strategy. This appears to be an exception to the gross proceeds rule; in this circumstance, MMS would not look to the lessee's proceeds at the time of later sale because MMS required the lessee to pay royalty on the value of the gas at the time of its removal from the lease.

Sections 206.157(g)(2) and 206.177(g)(2) Aggregator/marketer fees. Aggregator/marketer fees are fees a producer pays to another person or company (including its affiliates) to market its gas. Aggregator/marketer fees are similar to commissions or fees paid to another party for that party's costs of finding or maintaining a market for the gas production. Under the proposed rule, MMS will not allow these costs as a transportation deduction.

Sections 206.157(g)(3) and 206.177(g)(3) Penalties. FERC allows pipelines to impose ''penalties'' or economic disincentives for shipper actions that threaten the pipeline's operational integrity or cause an unnecessary financial burden to the pipeline. The following are the most common types of penalties:

- Cash-out penalties.
- Scheduling penalties.
- Imbalance penalties.
- Curtailment and operational flow order penalties.

(i) *Cash-out penalties.* Many pipelines require monthly or daily imbalance cash-outs of pipeline receipts and deliveries. Over-delivery and underdelivery imbalances which exceed a specified tolerance or threshold (such as ± 5 percent) may be subject to a penalty. For example, if a lessee/producer delivers greater volumes than the tolerances established in the transportation contract permit, the pipeline will purchase the volumes exceeding the producer's nominated volumes. This is known as ''cashing-out'' the over-deliveries to the pipeline. Transportation contracts usually express the penalty as a percentage reduction or addition to the cash-out index or reference price.

Generally, the pipeline purchases excess volumes within the tolerances at a base-index price (such as a monthly average or reference spot-market price) for buying and selling imbalances. For volumes exceeding the stated tolerances, the pipeline purchases or cashes-out at a reduced price such as 90 percent of the index price. The penalties usually increase with an increasing percentage of over-delivery.

MMS views price reductions for volume differences outside the specified tolerances as costs incurred as a result of the lessee's breaching its duty to market the production for the mutual benefit of the lessee and lessor. (This is also true in the case of scheduling penalties, imbalance penalties, and operational penalties discussed below.) MMS believes that the lessee can avoid this situation because there are a variety of mitigating devices available to help the lessee balance production and nominations. Examples include:

1. Swapping imbalances or transferring them among the purchasers' contracts;
2. Establishing debit/credit accounts (commonly called ''U-accounts'') with the pipeline for the shipper to carry over its imbalances into subsequent months;
3. Using electronic bulletin boards to adjust for variations between deliveries and nominations on a daily basis, or using swing supplies and flexible receipt point authority to make adjustments;
4. Entering into predetermined allocation agreements with other shippers using the same pipeline receipt points; and
5. Insisting the operators of the upstream facilities at receipt points enter into operational balancing agreements with downstream transporters.

Therefore, the proposed rule specifies that the lessee may not deduct as a transportation cost any reduction in sales price for over-delivered volumes outside the specified tolerances. This cost to the lessee is a marketing expense the lessee must bear.

In addition to penalties under cash-out programs, MMS also looked at the implications cash-outs have on gas value for royalty purposes. Under the cash-out programs, when the over-deliveries are within the tolerances, the transporter's contract price (for example, the base-index price or referenced spot-market price) generally results in reasonable values. If the transporter's purchase of the excess volumes is under an arm's-length contract, MMS believes generally that there's no reason not to accept the purchase price for those volumes as royalty value under the existing regulations. If the transporter's purchase is under a non-arm's-length contract, the lessee will value the excess volumes under the benchmarks established in the existing rules. Thus, for excess deliveries to the pipeline within the tolerances, there appears to be no reason to change existing rules.

Although the over-deliveries within tolerances may represent reasonable value, MMS does not consider the pipeline's purchase of excess volumes outside the tolerances at a reduced penalty price as a reasonable value for royalty purposes. The lessee's failure to conform its deliveries to the pipeline requirements should not prejudice the lessor's royalty interest.

Thus, the proposed rule amends paragraph (b)(1) of 30 CFR 206.152 and 206.172 (unprocessed gas), and 206.153 and 206.173 (processed gas) by adding another exception to the general rule that the gross proceeds under an arm's-length contract are acceptable as the royalty value. This new exception adds paragraph (iv) to these sections and provides that over-delivered volumes outside the pipeline tolerances are valued at the same price the pipeline purchases over-delivered volumes within the tolerances. MMS will not accept the penalty ''cash-out'' price as royalty value.

The proposed rule also would provide that if MMS determines that the ''cash-out'' price is unreasonably low, it would require the lessee to use the benchmarks to value the gas instead of the cash-out price. Also note that for production from Indian leases, other valuation provisions in the regulations apply; i.e., major portion and dual accounting.

(ii) Scheduling penalties. When differences in the volume between scheduled and actual pipeline receipts occur, shippers pay fees or penalties for scheduling (daily differences). This can occur when daily inputs differ from volumes scheduled or nominated at a receipt point and are outside the tolerance specified in the transportation contract or tariff. Under the proposed rule, the lessee cannot deduct these penalties as a transportation allowance.

(iii) Imbalance penalties. When differences in the volume between the pipeline's scheduled deliveries occur and are outside the tolerance specified in the transportation contract or tariff, shippers pay fees or penalties for imbalances on a daily or monthly basis. (Note: Pipelines do not assess imbalance penalties and cash-out penalties for the same violation.) Under the proposed rule, the lessee cannot deduct these penalties as a transportation allowance.

(iv) Operational penalties. Operational penalties are fees the shipper pays to the transporter for violation of curtailment or operational flow orders (for example, orders the pipeline issues to remedy a situation which threatens the integrity of the pipeline). Under the proposed rule, the lessee cannot deduct these penalties as a transportation allowance.

Sections 206.157(g)(4) and 206.177(g)(4) Intra-hub title transfer fees. When the pipeline transports gas through a market center or hub, the hub operator may also assess a fee for administrative services to account for the sale of gas within a hub (known as title transfer tracking). The hub operator assesses these fees as part of the sales transaction for gas at the hub—not as part of the transportation through the hub. Thus, in §§ 206.157(f)(4) and 206.177(f)(4), MMS is not allowing such fees as part of the transportation allowance.

Sections 206.157(g)(5) and 206.177(g)(5) Other nonallowable costs. MMS proposes including a general provision in paragraph (g)(5) of both sections. This provision prohibits the lessee from deducting costs in its transportation allowance for services the lessee must provide at no cost to the lessor. Lessees may attempt to use the transportation allowance deduction for costs which the lessee must bear. This provision prevents lessees from relabeling or restructuring these transactions. For example, most lessees/shippers invest substantial sums in computer software to gain access to pipelines' electronic bulletin boards. Bulletin boards enable the lessee to exchange data and participate in capacity release transactions. MMS will not allow such costs as part of a transportation allowance.

III. Other Matters

Retroactive Effective Date

Gas sales and transportation transactions continue to evolve under the series of FERC Orders discussed above. As noted previously, MMS believes most of the proposed changes to the transportation allowance rules in §§ 206.157 and 206.177 are generally consistent with the existing rule. Thus, applying the existing rules should, in most circumstances, result in the same transportation allowance as under the proposed rule.

MMS proposes to make the changes to the valuation and transportation rules effective May 18, 1992, the effective date of FERC Order 636. MMS wants to avoid any potential inequities for those lessees already operating in the FERC Order 636 environment.

Some changes may have occurred in the gas market before FERC Order 636. Please comment on whether an earlier retroactive effective date is appropriate.

Indian Leases

Although this proposed rule applies to both Federal and Indian mineral leases, MMS recently separated its existing valuation and transportation regulations into individual sections for Federal and Indian leases. Additionally, a negotiated rulemaking committee composed of Indian, industry, and MMS representatives is developing new regulations for gas valuation on Indian leases (identified in the semi-annual regulatory agenda by identifier RIN 1010–AB57) which may replace allowances with an index method in areas where there are published indices. When these new regulations become final, the regulations in this proposed rulemaking may be superseded.

Under the Department of the Interior—Department Manual Part 512, Chapter 2, MMS prepared an analysis of the potential impacts of this rule on Indian trust resources. Our analysis shows that the rule will likely have a neutral or beneficial impact on Indian royalties. During the comment period for this proposed rule, we will also accept comments on the analysis. For a copy of this analysis, please contact David S. Guzy, Chief, Rules and Procedures Staff, Telephone (303) 231–3432, FAX, (303) 231–3194.

A complete set of the public comments and the economic analysis will be made available on the Internet at www.rmp.mms.gov.

Federal Valuation Negotiated Rulemaking

A negotiated rulemaking committee recently developed separate regulations

concerning gas valuation for royalty purposes on Federal leases. This committee addressed both gas valuation and transportation deduction issues. The proposed regulations developed by this committee (Federal Register, 60 FR 56007, November 6, 1995) are not intended to affect this proposed rule.

IV. Procedural Matters

The Regulatory Flexibility Act

The Department certifies that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The proposed rule enhances the valuation and transportation regulations for natural gas to clarify the deductibility of costs under FERC Order 636.

Executive Order 12630

The Department certifies that the rule does not represent a governmental action capable of interference with constitutionally protected property rights. Thus, there is no need to prepare a Takings Implication Assessment under Executive Order 12630, ''Government Action and Interference with Constitutionally Protected Property Rights.''

Executive Order 12866

This proposed rule does not meet the criteria for a significant rule requiring review by the Office of Management and Budget under E.O. 12866.

Executive Order 12988

The Department has certified to OMB that this proposed regulation meets the applicable standards provided in Section 3(a) and 3(b)(2) of E.O. 12988.

Unfunded Mandates Reform Act of 1995

The Department of the Interior has determined and certifies according to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rule will not impose a cost of $100 million or more in any given year on local, tribal, State governments, or the private sector.

Paperwork Reduction Act

The Office of Management and Budget approved the information collection requirements contained in this rule under 44 U.S.C. 3501 *et seq.*, and assigned Clearance Numbers 1010–0022, 1010–0061, and 1010–0075. This proposed rule does not require additional recordkeeping.

National Environmental Policy Act of 1969

We determined that this rulemaking is not a major Federal Action significantly affecting the quality of the human environment, and a detailed statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is not required.

List of Subjects in 30 CFR 206

Coal, Continental Shelf, Geothermal energy, Government contracts, Indian lands, Mineral royalties, Natural gas, Petroleum, Public lands—mineral resources, Reporting and recordkeeping requirements.

Dated: July 15, 1996.

Sylvia V. Baca,

Deputy Assistant Secretary—Land and Minerals Management.

For the reasons set out in the preamble, MMS proposes to amend 30 CFR Part 206 as follows:

PART 206—PRODUCT VALUATION

1. The authority citation for Part 206 continues to read as follows:

Authority: 5 U.S.C. 301 *et seq.*; 25 U.S.C. 396 *et seq.*, 396a *et seq.*, 2101 *et seq.*; 30 U.S.C. 181 *et seq.*, 351 *et seq.*, 1001 *et seq.*, 1701 *et seq.*; 31 U.S.C. 9701; 43 U.S.C. 1301 *et seq.*, 1331 *et seq.*, and 1801 *et seq.*

Subpart D—Federal Gas

2. Section 206.152 is amended by revising the first sentence of paragraph (b)(1)(i) and adding a new paragraph (b)(1)(iv) to read as follows:

§ 206.152 Valuation standards—unprocessed gas.

* * * * *

(b)(1)(i) The value of gas sold under an arm's-length contract is the gross proceeds accruing to the lessee except as provided in paragraphs (b)(1)(ii), (iii), and (iv) of this section. * * *

* * * * *

(iv) *How to value over-delivered volumes under a ''cash-out'' program.* This paragraph applies to situations where a pipeline purchases gas from a lessee according to a ''cash-out'' program under a transportation contract. For all over-delivered volumes, the royalty value is the price the pipeline is required to pay for volumes within the tolerances for over-delivery specified in the transportation contract. Use the same value for volumes that exceed the over-delivery tolerances even if those volumes are subject to a lower price under the transportation contract. However, if MMS determines that the price specified in the transportation contract for over-delivered volumes is unreasonably low, the lessee must value all over-delivered volumes under paragraph (c)(2) or (c)(3) of this section.

3. In § 206.152, paragraph (i) is revised to read as follows:

§ 206.152 Valuation standards—unprocessed gas.

* * * * *

(i) The lessee must place gas in marketable condition and market the gas for the mutual benefit of the lessee and the lessor at no cost to the Federal Government unless the lease agreement states otherwise. Where the value established under this section is determined by a lessee's gross proceeds, that value shall be increased to the extent that the gross proceeds have been reduced because the purchaser, or any other person, is providing certain services the cost of which ordinarily is the responsibility of the lessee to place the gas in marketable condition or to market the gas.

* * * * *

4. Section 206.153 is amended by revising the first sentence of paragraph (b)(1)(i) and adding a new paragraph (b)(1)(iv) to read as follows:

§ 206.153 Valuation standards—processed gas.

* * * * *

(b)(1)(i) The value of residue gas or any gas plant product sold under an arm's-length contract is the gross proceeds accruing to the lessee, except as provided in paragraphs (b)(1) (ii), (iii), and (iv) of this section. * * *

* * * * *

(iv) *How to value over-delivered volumes under a ''cash-out'' program.* This paragraph applies to situations where a pipeline purchases gas from a lessee according to a ''cash-out'' program under a transportation contract. For all over-delivered volumes, the royalty value is the price the pipeline is required to pay for volumes within the tolerances for over-delivery specified in the transportation contract. Use the same value for volumes that exceed the over-delivery tolerances even if those volumes are subject to a lower price under the transportation contract. However, if MMS determines that the price specified in the transportation contract for over-delivered volumes is unreasonably low, the lessee must value all over-delivered volumes under paragraph (c)(2) or (c)(3) of this section.

* * * * *

5. Section 206.153 is amended by revising paragraph (i) to read as follows:

§ 206.153 Valuation standards—processed gas.

* * * * *

(i) The lessee must place residue gas and gas plant products in marketable condition and market the residue gas and gas plant products for the mutual benefit of the lessee and the lessor at no cost to the Federal Government unless

the lease agreement states otherwise. Where the value established under this section is determined by a lessee's gross proceeds, that value shall be increased to the extent that the gross proceeds have been reduced because the purchaser, or any other person, is providing certain services the cost of which ordinarily is the responsibility of the lessee to place the residue gas or gas plant products in marketable condition or to market the residue gas and gas plant products.

* * * * *

6.–8. In § 206.157, paragraph (f) is removed; paragraph (g) is redesignated as paragraph (h) and revised; and new paragraphs (f) and (g) are added to read as follows:

§ 206.157 Determination of transportation allowances.

* * * * *

(f) *Allowable costs in determining transportation allowances.* The lessee may include, but is not limited to, the following costs in determining the arm's-length transportation allowance under paragraph (a) of this section or the non-arm's-length transportation allowance under paragraph (b) of this section:

(1) *Firm demand charges paid to pipelines.* The lessee must limit the allowable costs for the firm demand charges to the applicable rate per MMBtu multiplied by the actual volumes transported. The lessee may not include any losses incurred for previously purchased but unused firm capacity. The lessee also may not include the difference between what is paid and any credits received from the pipeline for releasing firm capacity. If the lessee receives a payment or credit from the pipeline for penalty refunds, rate case refunds, or other reasons, the lessee must reduce the firm demand charge claimed on the Form MMS–2014. The lessee must modify the Form MMS–2014 by the amount received or credited for the affected reporting period;

(2) *Gas supply realignment (GSR) costs.* The GSR costs result from a pipeline reforming or terminating supply contracts with producers to implement the restructuring requirements of FERC Orders in 18 CFR Part 284;

(3) *Commodity charges.* The commodity charge allows the pipeline to recover the costs of providing service;

(4) *Wheeling costs.* Hub operators charge a wheeling cost for transporting gas from one pipeline to either the same or another pipeline through a market center or hub. A hub is a connected manifold of pipelines through which a series of incoming pipelines are interconnected to a series of outgoing pipelines;

(5) *Surcharges or fees to support programs of the Gas Research Institute (GRI).* The GRI conducts research, development, and commercialization programs on natural gas related topics for the benefit of the U.S. gas industry and gas customers;

(6) *Annual Charge Adjustment (ACA) fees.* FERC charges these fees to pipelines to pay for its operating expenses;

(7) *Payments (either volumetric or in value) for actual or theoretical losses.* This paragraph does not apply to non-arm's-length transportation arrangements unless the transportation allowance is based on a FERC or State regulatory-approved tariff; and

(8) *Supplemental costs for compression, dehydration, and treatment of gas.* MMS allows these costs only if such services are required for transportation and exceed the services necessary to place production into marketable condition required under §§ 206.152(i) and 206.153(i) of this part.

(g) *Nonallowable costs in determining transportation allowances.* The lessee cannot include the following costs in determining the arm's-length transportation allowance under paragraph (a) of this section or the non-arm's-length transportation allowance under paragraph (b) of this section:

(1) *Fees or costs incurred for storage.* This includes:

(i) Storing production in a storage facility, whether on or off the lease; and

(ii) Temporary storage services offered by market centers or hubs (commonly referred to as ''parking'' or ''banking''), or other temporary storage services provided by pipeline transporters, whether actual or provided as a matter of accounting;

(2) *Aggregator/marketer fees.* This includes fees the lessee pays to another person (including its affiliates) to market the lessee's gas, including purchasing and reselling the gas, or finding or maintaining a market for the gas production;

(3) *Penalties the lessee incurs as shipper.* These penalties include, but are not limited to:

(i) Over-delivery ''cash-out'' penalties. Includes the difference between the price the pipeline pays the lessee for over-delivered volumes outside the tolerances and the price the lessee receives for over-delivered volumes within the tolerances;

(ii) *''Scheduling'' penalties.* Includes penalties the lessee incurs for differences between daily volumes delivered into the pipeline and volumes scheduled or nominated at a receipt or delivery point;

(iii) *''Imbalance'' penalties.* Includes penalties the lessee incurs (generally on a monthly basis) for differences between volumes delivered into the pipeline and volumes scheduled or nominated at a receipt or delivery point; and

(iv) *''Operational'' penalties.* Includes fees the lessee incurs for violation of the pipeline's curtailment or operational orders issued to protect the operational integrity of the pipeline;

(4) *Costs for intra-hub transfer fees paid to hub operators for administrative services (e.g., title transfer tracking) necessary to account for the sale of gas within a hub;* and

(5) *Any cost the lessee incurs for services it is required to provide at no cost to the lessor.*

(h) *Other transportation cost determinations.*

This section applies when calculating transportation costs to establish value using a netback procedure or any other procedure that requires deduction of transportation costs.

Subpart E—Indian Gas

9. Section 206.172 is amended by revising the first sentence of paragraph (b)(1)(i) and adding a new paragraph (b)(1)(iv) to read as follows:

§ 206.172 Valuation standards—unprocessed gas.

* * * * *

(b)(1)(i) The value of gas sold under an arm's-length contract is the gross proceeds accruing to the lessee except as provided in paragraphs (b)(1) (ii), (iii), and (iv) of this section. * * *

* * * * *

(iv) *How to value over-delivered volumes under a ''cash-out'' program.* This paragraph applies to situations where a pipeline purchases gas from a lessee according to a ''cash-out'' program under a transportation contract. For all over-delivered volumes, the royalty value is the price the pipeline is required to pay for volumes within the tolerances for over-delivery specified in the transportation contract. Use the same value for volumes that exceed the over-delivery tolerances even if those volumes are subject to a lower price under the transportation contract. However, if MMS determines that the price specified in the transportation contract for over-delivered volumes is unreasonably low, the lessee must value all over-delivered volumes under paragraph (c)(2) or (c)(3) of this section.

10. Section 206.172 is amended by revising paragraph (i) to read as follows:

§ 206.172 Valuation standards—unprocessed gas.

* * * * *

(i) The lessee must place gas in marketable condition and market the gas for the mutual benefit of the lessee and the lessor at no cost to the Indian lessor unless the lease agreement states otherwise. Where the value established under this section is determined by a lessee's gross proceeds, that value shall be increased to the extent that the gross proceeds have been reduced because the purchaser, or any other person, is providing certain services the cost of which ordinarily is the responsibility of the lessee to place the gas in marketable condition or to market the gas.

* * * * *

11. Section 206.173 is amended by revising the first sentence of paragraph (b)(1)(i) and adding a new paragraph (b)(1)(iv) to read as follows:

§ 206.173 Valuation standards—processed gas.

* * * * *

(b)(1)(i) The value of residue gas or any gas plant product sold under an arm's-length contract is the gross proceeds accruing to the lessee, except as provided in paragraphs (b)(1) (ii), (iii), and (iv) of this section. * * *

* * * * *

(iv) *How to value over-delivered volumes under a ''cash-out'' program.* This paragraph applies to situations where a pipeline purchases gas from a lessee according to a ''cash-out'' program under a transportation contract. For all over-delivered volumes, the royalty value is the price the pipeline is required to pay for volumes within the tolerances for over-delivery specified in the transportation contract. Use the same value for volumes that exceed the over-delivery tolerances even if those volumes are subject to a lower price under the transportation contract. However, if MMS determines that the price specified in the transportation contract for over-delivered volumes is unreasonably low, the lessee must value all over-delivered volumes under paragraph (c)(2) or (c)(3) of this section.

* * * * *

12. Section 206.173 is amended by revising paragraph (i) to read as follows:

§ 206.173 Valuation standards—processed gas.

* * * * *

(i) The lessee must place residue gas and gas plant products in marketable condition and market the residue gas and gas plant products for the mutual benefit of the lessee and the lessor at no cost to the Indian lessor unless the lease agreement states otherwise. Where the value established under this section is determined by a lessee's gross proceeds, that value shall be increased to the extent that the gross proceeds have been reduced because the purchaser, or any other person, is providing certain services the cost of which ordinarily is the responsibility of the lessee to place the residue gas or gas plant products in marketable condition or to market the residue gas and gas plant products.

* * * * *

13.–15. In § 206.177, paragraph (f) is removed; paragraph (g) is redesignated as paragraph (h) and revised; and new paragraphs (f) and (g) are added to read as follows:

§ 206.177 Determination of transportation allowances.

* * * * *

(f) *Allowable costs in determining transportation allowances.* The lessee may include, but is not limited to, the following costs in determining the arm's-length transportation allowance under paragraph (a) of this section or the non-arm's-length transportation allowance under paragraph (b) of this section:

(1) *Firm demand charges paid to pipelines.* Limit the allowable costs for the firm demand charges to the applicable rate per MMBtu multiplied by the actual volumes transported. The lessee may not include any losses incurred from not using its previously purchased firm capacity. Nor may the lessee include the difference between what is paid and any credits received from the pipeline for releasing firm capacity. If the lessee receives a payment or credit from the pipeline for penalty refunds, rate case refunds, or other reasons, the lessee must reduce the firm demand charge claimed on the Form MMS–2014. The lessee must modify the Form MMS–2014 by the amount received or credited for the affected reporting period;

(2) *Gas supply realignment (GSR) costs.* The GSR costs result from a pipeline reforming or terminating supply contracts with producers to implement the restructuring requirements of FERC Orders in 18 CFR Part 284;

(3) *Commodity charges.* The commodity charge allows the pipeline to recover the costs of providing service;

(4) *Wheeling costs.* Hub operators charge a wheeling cost for transporting gas from one pipeline to either the same or another pipeline through a market center or hub. A hub is a connected manifold of pipelines through which a series of incoming pipelines are interconnected to a series of outgoing pipelines;

(5) *Surcharges or fees to support programs of the Gas Research Institute (GRI).* The GRI conducts research, development, and commercialization programs on natural gas related topics for the benefit of the U.S. gas industry and gas customers;

(6) *Annual Charge Adjustment (ACA) fees.* FERC charges these fees to pipelines to pay for its operating expenses;

(7) *Payments (either volumetric or in value) for actual or theoretical losses.* This paragraph does not apply to non-arm's-length transportation arrangements unless the transportation allowance is based on a FERC or State regulatory-approved tariff; and

(8) *Supplemental costs for compression, dehydration, and treatment of gas.* MMS allows these costs only if such services are required for transportation and exceed the services necessary to place production into marketable condition required under §§ 206.172(i) and 206.173(i) of this part.

(g) *Nonallowable costs in determining transportation allowances.* The lessee cannot include the following costs in determining the arm's-length transportation allowance under paragraph (a) of this section or the non-arm's-length transportation allowance under paragraph (b) of this section:

(1) *Fees or costs incurred for storage.* This includes:

(i) Storing production in a storage facility, whether on or off the lease; and

(ii) Temporary storage services offered by market centers or hubs (commonly referred to as ''parking'' or ''banking''), or other temporary storage services provided by pipeline transporters, whether actual or provided as a matter of accounting;

(2) *Aggregator/marketer fees.* This includes fees the lessee pays to another person (including its affiliates) to market the lessee's gas, including purchasing and reselling the gas, or finding or maintaining a market for the gas production;

(3) *Penalties the lessee incurs as shipper.* These penalties include, but are not limited to:

(i) *Over-delivery ''cash-out'' penalties.* Includes the difference between the price the pipeline pays the lessee for over-delivered volumes outside the tolerances and the price the lessee receives for over-delivered volumes within the tolerances;

(ii) *''Scheduling'' penalties.* Includes penalties the lessee incurs for differences between daily volumes delivered into the pipeline and volumes scheduled or nominated at a receipt or delivery point;

(iii) *''Imbalance'' penalties.* Includes penalties the lessee incurs (generally on a monthly basis) for differences between volumes delivered into the pipeline and volumes scheduled or nominated at a receipt or delivery point; and

(iv) *''Operational'' penalties.* Includes fees the lessee incurs for violation of the pipeline's curtailment or operational orders issued to protect the operational integrity of the pipeline;

(4) *Costs for intra-hub transfer fees paid to hub operators for administrative services (e.g., title transfer tracking) necessary to account for the sale of gas within a hub;* and

(5) *Any cost the lessee incurs for services it is required to provide at no cost to the lessor.*

(h) *Other transportation cost determinations.*

This section applies when calculating transportation costs to establish value using a netback procedure or any other procedure that requires deduction of transportation costs.

[FR Doc. 96–19310 Filed 7–30–96; 8:45 am]

BILLING CODE 4310–MR–P

FEDERAL MARITIME COMMISSION

46 CFR Part 540

[Docket 94–21]

Inquiry Into Alternative Forms of Financial Responsibility for Nonperformance of Transportation

AGENCY: Federal Maritime Commission.

ACTION: Discontinuance of proceeding.

SUMMARY: The Federal Maritime Commission had solicited public comment on certain passenger vessel operator financial responsibility issues under section 3 of Public Law 89–777. On the basis of the comments received, the Commission has determined to proceed with a further notice of proposed rulemaking in a separate docketed proceeding and is discontinuing this proceeding.

FOR FURTHER INFORMATION CONTACT: Joseph C. Polking, Secretary, Federal Maritime Commission, 800 North Capitol Street, N.W., Washington, D.C. 20573, (202) 523–5725.

SUPPLEMENTARY INFORMATION:

Background

In Docket No. 94–06, *Financial Responsibility Requirements for Nonperformance of Transportation* (''NPR''),[1] the Commission proposed to increase its section 3, Pub. L. 89–777 coverage requirements. Given the industry's concerns about the NPR, the Commission determined to hold it in abeyance pending this Inquiry.[2] This Inquiry's purpose was to determine whether an acceptable alternative could be fashioned both to address the industry's concerns with the NPR and to ensure appropriate protection for passengers.

The comments filed on this Inquiry prompted the Commission to publish a Further Notice of Proposed Rulemaking in Docket No. 94–06 proposing revisions to the coverage requirements.[3] Thus, Docket 94–21 has served its purpose and is discontinued.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 96–19439 Filed 7–30–96; 8:45 am]

BILLING CODE 6730–01–M

[1] 59 FR 15149 (March 31, 1994).

[2] 59 FR 52133 (October 26, 1994).

[3] 61 FR 33059 (June 26, 1996).

DEPARTMENT OF ENERGY

48 CFR Parts 917, 950, 952, and 970

[1991–AB–28]

Acquisition Regulation; Department of Energy Management and Operating Contracts; Hearing Cancellation

AGENCY: Department of Energy.

ACTION: Cancellation of notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of cancellation of a public hearing on the Department of Energy's proposal to amend its acquisition regulations to implement certain key recommendations of the Department's contract reform initiative.

DATES: The public hearing originally scheduled for Thursday, August 1, 1996, beginning at 9:30 a.m. is cancelled.

FOR FURTHER INFORMATION CONTACT: Connie P. Fournier, Office of Policy (HR–51), Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–8245.

SUPPLEMENTARY INFORMATION: The subject of the public hearing is changes proposed to amend the Department of Energy Acquisition Regulation Parts 917, 950, 953, and 970 to improve the Department's acquisition system, principally in areas affecting management and operating contracts. A notice of proposed rulemaking and notice of public hearing appearing in the Federal Register on Monday, June 24, 1996 (61 FR 32588) announced that the public hearing would be held on Thursday, August 1, 1996, beginning at 9:30 a.m., in the Main Auditorium, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585.

The public hearing scheduled for Thursday, August 1, 1996, is cancelled.

Richard H. Hopf,

Deputy Assistant Secretary for Procurement and Assistance Management.

[FR Doc. 96–19480 Filed 7–30–96; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 960123012–6196–02; I.D. 011995A]

RIN 0648–AF78

Reef Fish Fishery of the Gulf of Mexico; Red Grouper Size Limit

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

ACTION: Proposed rule; withdrawal.

SUMMARY: NMFS announces that it is withdrawing the proposed rule to change the minimum allowable size of red grouper, currently 20 inches (50.8 cm), to 18 inches (45.7 cm) for persons not subject to the bag limit.

DATES: This proposed rule is withdrawn on July 31, 1996.

FOR FURTHER INFORMATION CONTACT: Michael E. Justen, 813–570–5305.

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf of Mexico is managed under the Fishery Management Plan for Reef Fish Resources of the Gulf of Mexico (FMP). The FMP was prepared by the Gulf of Mexico Fishery Management Council (Council) and is implemented by regulations at 50 CFR part 622 (formerly at 50 CFR part 641).

Under the framework procedure for adjusting FMP management measures, the Council proposed a regulatory amendment (RA) (50 CFR part 641) to change the minimum allowable size for red grouper from 20 inches (50.8 cm) to 18 inches (45.7 cm) for persons not subject to the bag limit. The proposed rule to implement the RA was published in the Federal Register on January 31, 1996 (61 FR 3369); comments were requested on or before March 1, 1996. Five members of the Council submitted a minority report opposing the RA. NMFS specifically requested comments on the following concerns: (1) Long- and

short-term economic and social effects of the rule; (2) potential for creating user conflicts; (3) consistency with the Magnuson Act's National Standards and with certain FMP objectives; and (4) difficulties with enforcing differential minimum size limits for the commercial and recreational fisheries.

NMFS received written comments from 586 entities on the advisability of the 18-inch (45.7-cm) minimum size limit. All but one commenter were from Florida.

Summary of Public Comments and Agency Responses

1. Long- and Short-Term Economic and Social Effects

Comment: Thirty-three commenters provided information on this issue. Five commercial associations and one commercial fisherman supported the reduction in minimum size. They believed the long- and short-term socioeconomic effects on recreational and commercial fisheries would be positive; that is, the rule would result in an increase of 5 to 10 percent in gross income. These commenters did not expect a derby fishery to develop as a result of the proposed minimum size reduction.

Twenty-seven commenters opposed the minimum size reduction for socioeconomic reasons. Six charter vessel/headboat operators stated that commercial fishermen would obtain more profits but would experience a fishery closure due to the quota being reached. They believed reduction in the size limit would cause negative responses among recreational anglers because few legal sized red grouper would be available for recreational anglers. They suggested that the smaller commercial size limit would devastate the resource because 18-inch fish (45.7-cm) would not have a chance to reproduce potentially causing a negative long term socioeconomic impact. These commenters believed that charterboat income and Florida's sales tax receipts would decrease.

Eight commercial fishermen stated that the commercial fishery would experience a short-term increase in income but ultimately would experience a long-term loss because the red grouper resource could not withstand the increased fishing pressure. They feared that if the quota were reached, and NMFS closed the fishery, very few fishermen could financially withstand the closure. They contended that a derby fishery would develop in future years similar to what has happened in the red snapper fishery. They also stated that the influx of smaller fish would depress market prices and reduce overall income to fishermen.

The Florida Department of Environmental Protection (FDEP) and Florida Marine Fisheries Commission (FMFC) stated that the proposed reduction in the size limit would not create any benefits.

In a minority report, five Council members stated they expected a short-term glut of 18- to 20-inch (45.7- to 50.8-cm) fish and cited testimony from dealers and fishermen indicating that smaller fish could result in size grading and reduced values.

One individual suggested that the commercial fishery would benefit in the short term but suffer in the long term due to overfishing. One recreational association indicated that the smaller size limit would cause overfishing. Four recreational anglers stated that no benefits would result from the reduction in the size limit.

Response: NMFS agrees with the 27 commenters that any short-term benefit to the commercial fishery would be offset by negative long- and short-term socioeconomic effects on the recreational fishery and by negative long-term socioeconomic effects on the commercial fishery.

2. Potential for User Conflicts

Comment: Thirty-one commenters provided information on this issue. Five commercial associations and one commercial fisherman supported the minimum size limit reduction. They believed it would minimize the potential for user conflicts because commercial fishermen target larger fish in deeper waters where recreational fishermen generally do not operate and the sedentary nature of red grouper should keep the two fisheries separated.

Twenty-five commenters opposed a reduction in the minimum size limit because of user conflict concerns. Six charter vessel/headboat operators stated that recreational anglers would object to commercial fishermen taking smaller fish and recommended the same size limit for all fishermen. Seven commercial fishermen were concerned about the potential for conflicts due to recreational anglers blaming commercial fishermen for the unavailability of 20-inch (50.8-cm) fish. They believed user conflicts would arise as commercial fishermen move shoreward to catch the smaller fish.

The FDEP and FMFC stated that the smaller commercial minimum size limit would cause conflicts between user groups.

Five Council members stated in a minority report that most recreational anglers opposed the size limit change.

One individual and one recreational association stated that the smaller commercial size limit would cause conflicts between the commercial and recreational fishermen. Three recreational anglers supported no change in the current commercial size limit because minimal conflicts occur under existing regulations.

Response: NMFS agrees with the 25 commenters that the smaller commercial size limit would cause conflicts between the commercial and recreational fishermen.

3. Consistency With the Magnuson Act's National Standards and With Certain FMP Objectives

Comment: Twenty commenters provided information on this issue. Five commercial associations and one commercial fisherman supporting the minimum size reduction doubted the smaller commercial minimum size limit would cause commercial landings to reach the annual quota (9.8 million pounds, 4.45 million kg) for the shallow water grouper complex which includes red grouper. The commercial fisherman did not believe that the change in the commercial size limit would alter fishing patterns. These commenters concluded that the proposed reduction in minimum size is consistent with the Magnuson Act—s National Standards and the FMP objectives.

Fourteen commenters opposed reduction in the commercial minimum size limit for reasons relating to the National Standards or FMP objectives. Two charter vessel/headboat operators and five commercial fishermen contended that reduction in the commercial size limit would lead to overfishing, a derby fishery, and conflicts with recreational fishermen. The FDEP stated that the reduction was inconsistent with the Magnuson Act's National Standards. In a minority report, five Council members contended that the smaller size limit was contrary to the Magnuson Act and certain FMP objectives because it might result in overfishing, a derby fishery, and conflicts with the recreational sector. A recreational angler stated the reduction discriminated against his user group.

Response: NMFS agrees with the 14 commenters to the extent that the proposed reduction in the commercial size limit is inconsistent with National Standard 1 and certain FMP objectives (i.e., FMP Objective 4—minimize user conflicts; FMP Amendment 1, Objective 7—maximize net economic benefits; FMP Amendment 8 Objective 3—protect juveniles; and FMP Amendment 8, Objective 2—avoid a derby fishery).

4. Difficulties With Enforcing Differential Size Limits

Comment: Thirty commenters provided information on this issue. Five commercial associations and one commercial fisherman stated that different size limits for recreational and commercial fishermen were enforceable because commercial fishermen must have a Federal permit to operate and, therefore, would be readily distinguishable from recreational fishermen. They noted the concept of different size limits for recreational and commercial fishermen has been tested and found acceptable, from the enforcement standpoint, in the amberjack and red snapper fisheries in the Gulf of Mexico.

Twenty-four commenters indicated that differing recreational and commercial minimum size limits complicate enforcement, especially when Federal and state size limits differ. Four charter vessel/headboat operators and eight commercial fishermen commented that compatible Federal and state regulations would simplify enforcement of minimum size limits. The FDEP, the Florida Department of Community Affairs (FDCA), and the FMFC believe that Federal regulations different from the state's would adversely impact Florida's ability to enforce its regulations.

The five Council members who filed a minority report pointed out that a size limit for red grouper that differs from the size limit for other grouper species would make enforcement more difficult.

Response: NMFS agrees with the 25 commenters that different minimum size limits for recreational and commercial fisheries would complicate enforcement, especially since Federal and Florida's size limits would be different.

5. Consistency With Florida's Coastal Management Plan

Comment: On November 28, 1995, the FDCA notified the Council that the proposed minimum size reduction is inconsistent with Florida's Coastal Management Program. Florida has a 20-inch (50.8-cm) commercial minimum size limit for red grouper, and the FDCA claimed that reducing the Federal size limit to 18 inches (45.7-cm) would undermine Florida's efforts to manage its fishery resources. Florida also opposed the size reduction because 18-inch red grouper are sexually immature, and harvesting red grouper prior to reproduction increases the potential for overfishing.

Response: Disapproval of the regulatory amendment renders Florida's inconsistency determination moot.

6. Summary of Public Responses

During the comment period, 586 commenters provided written comments on the advisability of implementing the proposed 18-inch 45.7-cm) minimum size limit for red grouper. All but one commenter was from Florida. Table 1 summarizes the responses.

TABLE 1.—COMMENTS ON THE PROPOSAL TO REDUCE THE COMMERCIAL MINIMUM SIZE LIMIT FOR RED GROUPER TO 18 INCHES (45.7 CM)

Constituent group	For	Against	*Other
Commercial Associations	5	.....	.....
Charter Vessel/Headboat Operators	3	9	1
Commercial Fishermen	2	84	.....
Environmental Groups	.....	.....	1
State Government Agencies	1	3	.....
Gulf Council (Minority Report)	.....	5	.....
Private Individuals	12	140	1
Recreational Associations	.....	4	.....
Recreational Anglers	.....	314	1
Total	23	559	4

*Commenters who did not take a position on the size limit

Agency Decision

After reviewing the RA, supporting documents, minority report, and comments received during the public comment period, NMFS has concluded that the proposed reduction in the commercial size limit is neither necessary nor appropriate for the conservation and management of red grouper. In particular, it is likely that the smaller commercial size limit would create conflicts between commercial and recreational fishermen and would not result in long-term benefits to the fisheries. NMFS is also concerned about the ineffectiveness of the proposed commercial size limit in preventing overfishing as required under National Standard 1 of the Magnuson Act. Accordingly, NMFS has disapproved the RA and withdraws the proposed rule to change the minimum size limit for red grouper for persons not subject to the bag limit.

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

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

Dated: July 25, 1996.

Charles Karnella,

Acting Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 96–19464 Filed 7–30–96; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 61, No. 148
Wednesday, July 31, 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.

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meeting of Humanities Panel

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, as amended), notice is hereby given that the following meeting of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506

FOR FURTHER INFORMATION CONTACT: Sharon I. Block, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meeting is for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meeting will consider information that is likely to disclose: (1) trade secrets and commercial or financial information obtained from a person and privileged or confidential; or (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that this meeting will be closed to the public pursuant to subsections (c)(4), and (6) of section 552b of Title 5, United States Code.

1. *Date:* August 1, 1996.
Time: 8:30 a.m. to 5:30 p.m.
Room: 415.
Program: This meeting will review applications for Fellowships for College Teachers and Independent Scholars in Music, Theater and Film, submitted to the Division of Research and Education Programs, for projects at the May 1, 1996 deadline.

2. *Date:* August 2, 1996.
Time: 8:30 a.m. to 6:00 p.m.
Room: 415.
Program: This meeting will review applications for Challenge Grants submitted to the Division of Challenge Grants for projects at the May 1, 1996 deadline.

3. *Date:* August 6, 1996.
Time: 8:30 a.m. to 5:30 p.m.
Room: 415.
Program: This meeting will review applications for Fellowships for College Teachers and Independent Scholars in Philosophy, submitted to the Division of Research and Education Programs, for projects at the May 1, 1996 deadline.

4. *Date:* August 6, 1996.
Time: 8:30 a.m. to 5:30 p.m.
Room: 317.
Program: This meeting will review applications for Fellowships for College Teachers and Independent Scholars in American History, submitted to the Division of Research and Education Programs, for projects at the May 1, 1996 deadline.

5. *Date:* August 7, 1996.
Time: 8:30 a.m. to 5:30 p.m.
Room: 317.
Program: This meeting will review applications for Fellowships for College Teachers and Independent Scholars in Rhetoric, Communications, Media, and American Studies, submitted to the Division of Research and Education Programs, for projects at the May 1, 1996 deadline.

6. *Date:* August 8, 1996.
Time: 8:30 a.m. to 5:30 p.m.
Room: 317.
Program: This meeting will review applications for Fellowships for University Teachers in British Literature, submitted to the Division of Research and Education Programs, for projects at the May 1, 1996 deadline.

7. *Date:* August 12, 1996.
Time: 8:30 a.m. to 5:30 p.m.
Room: 317.
Program: This meeting will review applications for Fellowships for University Teachers and Fellowships for College Teachers and Independent Scholars in Sociology, Psychology & Education submitted to the Division of Research and Education Programs, for projects at the May 1, 1996 deadline.

8. *Date:* August 13, 1996.
Time: 8:30 a.m. to 5:30 p.m.
Room: 317.
Program: This meeting will review applications for Fellowships for University Teachers and Fellowships for College Teachers and Independent Scholars in African, Asian, and Latin American History and Studies, submitted to the Division of Research and Education Programs, for projects at the May 1, 1996 deadline.

9. *Date:* August 16, 1996.
Time: 9:00 a.m. to 5:30 p.m.
Room: 415.
Program: This meeting will review applications for Fellowships for University Teachers in Philosophy, submitted to the Division of Research and Education Programs, for projects at the May 1, 1996 deadline.

10. *Date:* August 16, 1996.
Time: 8:30 a.m. to 5:30 p.m.
Room: 317.
Program: This meeting will review applications for Fellowships for College Teachers and Independent Scholars in Languages and Literatures, submitted to the Division of Research and Education Programs, for projects at the May 1, 1996 deadline.

11. *Date:* August 19, 1996.
Time: 8:30 a.m. to 5:30 p.m.
Room: 317.
Program: This meeting will review applications for Fellowships for University Teachers in Languages and Literatures, submitted to the Division of Research and Education Programs, for projects at the May 1, 1996 deadline.

12. *Date:* August 19, 1996.
Time: 8:30 a.m. to 5:30 p.m.
Room: 415.
Program: This meeting will review applications for Fellowships for University Teachers and Fellowships for College Teachers and Independent Scholars in Romance Languages and Literatures, submitted to the Division of Research and Education Programs, for projects at the May 1, 1996 deadline.

13. *Date:* August 20, 1996.

Time: 8:30 a.m. to 5:30 p.m.

Room: 415.

Program: This meeting will review applications for Fellowships for University Teachers and Fellowships for College Teachers and Independent Scholars in Political Science, Jurisprudence, and International Affairs, submitted to the Division of Research and Education Programs, for projects at the May 1, 1996 deadline.

14. *Date:* August 20, 1996.

Time: 8:30 a.m. to 5:30 p.m.

Room: 317.

Program: This meeting will review applications for Fellowships for College Teachers and Independent Scholars in American Literature, submitted to the Division of Research and Education Programs, for projects at the May 1, 1996 deadline.

15. *Date:* August 22, 1996.

Time: 8:30 a.m. to 5:30 p.m.

Room: 317.

Program: This meeting will review applications for Fellowships for University Teachers in Classical, Medieval, and Renaissance Studies, submitted to the Division of Research and Education Programs, for projects at the May 1, 1996 deadline.

16. *Date:* August 22, 1996.

Time: 8:30 a.m. to 5:30 p.m.

Room: 415.

Program: This meeting will review applications for Fellowships for College Teachers and Independent Scholars in Classical, Medieval, and Renaissance Studies, submitted to the Division of Research and Education Programs, for projects at the May 1, 1996 deadline.

17. *Date:* August 23, 1996.

Time: 8:30 a.m. to 5:30 p.m.

Room: 415.

Program: This meeting will review applications for Fellowships for University Teachers in American Literature, submitted to the Division of Research and Education Programs, for projects at the May 1, 1996 deadline.

18. *Date:* August 23, 1996.

Time: 8:30 a.m. to 5:30 p.m.

Room: 317.

Program: This meeting will review applications for Fellowships for University Teachers in Music, Theater, and Media, submitted to the Division of Research and Education Programs, for projects at the May 1, 1996 deadline.

Michael S. Shapiro,

Acting, Advisory Committee Management Officer.

[FR Doc. 96–19369 Filed 7–30–96; 8:45 am]

BILLING CODE 7536–01–M

DEPARTMENT OF COMMERCE

Office of the Secretary

Public Availability of the Report on Closed Meetings of Advisory Committees

SUMMARY: The Department of Commerce has prepared its report on the activities of closed or partially closed meetings of advisory committees as required by the Federal Advisory Committee Act.

ADDRESSES: Copies of the report have been filed and are available for public inspection at two locations:

Library of Congress, Newspaper and Current Periodicals Reading Room, Room LM133, Madison Building, 1st and Independence Avenues, S.E., Washington, D.C. 20540

Department of Commerce, Central Reference and Records Inspection Facility, Room 6020, Herbert C. Hoover Building, 14th and Constitution Avenue, N.W., Washington, D.C. 20230 Telephone (202) 482–4115.

SUPPLEMENTARY INFORMATION: The report covers meetings held in FY 95. Thirty-four committees and one subcommittee report having held closed or partially closed meetings. The names of these committees are listed below:

—Committee of Chairs of Industry Advisory Committees for Trade Policy Matters (TPM)
—Computer Systems Technical Advisory Committee
—Electronic Technical Advisory Committee
—Industry Sector Advisory Committee (ISAC) on Aerospace Equipment for Trade Policy Matters (TPM)
—ISAC on Building Products and Other Materials for TPM
—ISAC on Capital Goods for TPM
—ISAC on Chemicals and Allied Products for TPM
—ISAC on Consumer Goods for TPM
—ISAC on Electronics and Instrumentation for TPM
—ISAC on Energy for TPM
—ISAC on Ferrous Ores and Metals for TPM
—ISAC on Footwear, Leather, and Leather Products for TPM
—ISAC on Lumber and Wood Products for TPM
—ISAC on Nonferrous Ores and Metals for TPM
—ISAC on Paper and Paper Products for TPM
—ISAC on Services for TPM
—ISAC on Small and Minority Business for TPM
—ISAC on Textiles and Apparel for TPM
—ISAC on Transportation, Construction, and Agricultural Equipment for TPM
—ISAC on Wholesaling and Retailing for TPM
—Industry Functional Advisory Committee on Customs Matters for TPM
—Industry Functional Advisory Committee on Intellectual Property Rights for TPM
—Industry Functional Advisory Committee on Standards for TPM
—Industry Policy Advisory Committee for Trade Policy Matters
—Judges Panel of the Malcolm Baldrige National Quality Award
—Materials Processing Equipment Technical Advisory Committee
—National Medal of Technology Nomination Evaluation Committee
—National Technical Information Service Advisory Board
—Regulations and Procedures Technical Advisory Committee
—Sensors Technical Advisory Committee
—Subcommittee on Export Administration, President's Export Council
—Telecommunications Equipment Technical Advisory Committee
—Transportation and Related Equipment Technical Advisory Committee
—U.S. Automotive Parts Advisory Committee
—Visiting Committee on Advanced Technology

Twenty-two committees report not having held any closed or partially closed meetings.

FOR FURTHER INFORMATION CONTACT: Victoria A. Kruk, Committee Management Officer, Office of the Secretary, Department of Commerce, Washington, D.C. 20230, Telephone (202) 482–4115.

Dated: July 22, 1996.

Victoria A. Kruk,

Office of Executive, Assistance Management.

[FR Doc. 96–19390 Filed 7–30–96; 8:45 am]

BILLING CODE 3510–FA–P

Submission For OMB Review; Comment Request

The Department of Commerce (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: Housing Vacancy Survey.

Form Number(s): None.

Agency Approval Number: 0607–0179.

Type of Request: Extension of a currently approved collection.

Burden: 2,880 hours.

Number of Respondents: 4,800.

Avg Hours Per Response: 3 minutes.

Needs and Uses: The Housing Vacancy Survey (HVS) provides quarterly and annual statistics on rental vacancy rates and homeownership rates for the United States, the 4 census regions, the 50 states and the District of Columbia, and the 75 largest Metropolitan Areas (MAs). HVS data are collected for a sample of vacant housing units identified in the Current Population Survey. Information is collected from homeowners, realtors,

landlords, rental agents, neighbors or other knowledgeable persons. Private and public sector organizations use these rates extensively to gauge and analyze the housing market with regard to supply, cost, and affordability at various points in time. In addition, the rental vacancy rate is a component of the leading economic indicators, published by the Department of Commerce.

Affected Public: Individuals or households.

Frequency: Monthly.

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 24, 1996.

Linda Engelmeier,

Acting Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 96–19434 Filed 7–30–96; 8:45 am]

BILLING CODE 3510–07–F

International Trade Administration

[A–588–817]

Electroluminescent High Information Content Flat Panel Displays and Display Glass Therefor From Japan; Notice of Court Decision and Rescission of Revocation of Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of court decision and rescission of revocation of antidumping duty order.

SUMMARY: On August 25, 1994, the Department of Commerce (the Department) published a notice of revocation of the antidumping duty order on electroluminescent (EL) high information content flat panel displays (FPDs) and display glass therefor from Japan (*see Electroluminescent High Information Content Flat Panel Displays and Display Glass Therefor from Japan; Amendment of Notice of Court Decision and Revocation of Antidumping Duty Order,* 59 FR 43809 (Aug. 25, 1994)) pursuant to a mandamus order to enforce judgment issued by the United States Court of International Trade (the CIT) in *Hosiden Corporation* v. *United States,* 861 F. Supp. 115 (CIT August 12, 1994) (*Hosiden II*). In *Hosiden II,* the CIT ordered the Department to suspend liquidation of entries, but to otherwise reverse all action taken by the Department pursuant to its determination of sales at less-than-fair value, in order to implement its earlier decision affirming the International Trade Commission's (ITC's) negative injury determination on remand (*Hosiden Corporation* v. *United States,* 852 F. Supp. 1050 (CIT April 14, 1994) (*Hosiden I*). The Department appealed the CIT's mandamus order and, on May 31, 1996, the United States Court of Appeals for the Federal Circuit (the Federal Circuit) held that the mandamus order was contrary to law and, thus, vacated the CIT's mandamus order in *Hosiden Corp., et al.* v. *United States,* Appeal No. 95–1027 (Fed. Cir. May 31, 1996) . Therefore, we are now rescinding the revocation of the antidumping duty order on EL FPDs from Japan, reinstating the suspension of liquidation of entries of EL FPDs from Japan pursuant to the Department's May 6, 1994 notice of court decision and suspension of liquidation (59 FR 23690), and reinstating the collection of cash deposits on EL FPDs from Japan as of the date of this notice.

EFFECTIVE DATE: July 31, 1996.

FOR FURTHER INFORMATION CONTACT: Chip Hayes or Richard Rimlinger of Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On September 4, 1991, the Department published an antidumping duty order on EL FPDs (56 FR 43937) following an affirmative determination of sales at less-than-fair value by the Department on July 16, 1991 (56 FR 32376) and an August 26, 1991 decision by the ITC that a U.S. industry was being materially injured by reason of imports of flat panel displays and display glass therefor from Japan (56 FR 43937, September 5, 1991). Exporters of EL FPDs appealed the ITC determination to the CIT. The CIT remanded the determination to the ITC to reconsider its injury determination, and on March 8, 1993, the ITC determined on remand that no U.S. industry was being materially injured by reason of imports of EL FPDs. The ITC's remand was affirmed by the CIT on April 14, 1994, in *Hosiden I.* In accordance with the decision of the Federal Circuit in *Timken* v. *United States,* 893 F.2d 337 (Fed. Cir. 1990) (*Timken*), the Department published a notice on May 6, 1994 (59 FR 23690) stating that the Department would continue to order the suspension of liquidation of the subject merchandise and that ''[i]f the case is not appealed, or is affirmed on appeal, then the antidumping duty order on EL FPDs will be revoked.''

Subsequently, on August 12, 1994, the CIT issued a decision and mandamus order in *Hosiden II* requiring that the Department: (1) direct the U.S. Customs Service to cease the collection of cash deposits for estimated antidumping duties on EL FPDs and return any previously collected cash deposits; (2) end any previously ordered suspension of liquidation and suspend the liquidation of entries of EL FPDs in accordance with the CIT's Preliminary Injunction order, dated January 20, 1994; (3) refrain from imposing any further obligation on any party involved in any administrative review by the Department relating to EL FPDs; and (4) execute all documents and take all necessary actions to effectuate a revocation of the antidumping duty order. On August 25, 1994, the Department published the revocation of the antidumping duty order on EL FPDs (59 FR 43809, August 25, 1994) and took all other action required by the CIT's mandamus order.

The Department then appealed the CIT's August 12, 1994 decision and mandamus order to the Federal Circuit. On May 31, 1996, the Federal Circuit issued a decision that held that the August 12, 1994 mandamus order was contrary to law, and vacated the CIT's mandamus order. *Hosiden Corp., et al.* v. *United States,* Appeal No. 95–1027 (Fed. Cir. May 31, 1996). On July 22, 1996, the Federal Circuit issued a mandate finalizing its May 31, 1996 decision in Appeal No. 95–1027.

On May 31, 1996, the Federal Circuit also rendered a decision in a related case concerning the ITC's injury determination with respect to EL FPDs from Japan. In *Advanced Display Manufacturers Assn.* v. *United States,* Appeal No. 94–1380 (Fed. Cir. May 31, 1996), the Federal Circuit vacated the CIT's decision in *Hosiden I* with respect to the ITC's injury determination on remand, and remanded the matter for appropriate further proceedings. Thus,

in accordance with the Federal Circuit's *Timken* decision, the Department will continue to order the suspension of liquidation of EL FPDs from Japan and will not instruct the U.S. Customs Service to liquidate entries of the subject merchandise until there is a final and conclusive court decision in the matter within the meaning of 19 U.S.C. § 1516a(e).

The Federal Circuit's May 31, 1996 decision concerning Appeal No. 95–1027 vacated the CIT's decision and mandamus order in *Hosiden II.* Thus, consistent with the Federal Circuit's decision, the Department hereby rescinds the revocation of the antidumping duty order on electroluminescent high information content flat panel displays and display glass therefor from Japan. Further, the Department is directing the U.S. Customs Service to reinstate the suspension of liquidation pursuant to the Department's May 6, 1994 notice of court decision and suspension of liquidation, and reinstate the collection of cash deposits in the amount of 7.02 percent *ad valorem*, the last published deposit rate, for each entry of the subject merchandise which is entered, or withdrawn from warehouse, for consumption, on or after the date of the publication of this notice. Thus, the purpose of this notice is to effect the rescission of the revocation of the antidumping duty order on EL FPDs from Japan and to reinstate all agency action taken pursuant to the Department's May 6, 1994 notice of court decision and suspension of liquidation (59 FR 23690).

For all purposes under the statute, the anniversary month of the antidumping duty order on EL FPDs, which was published on September 4, 1991, will continue to be September. With the reinstatement of the antidumping duty order, the Department is also reinstating the administrative review of the order on EL FPDs from Japan for the September 1, 1992 through August 31, 1993 period, which was being conducted by the Department at the time of the court-ordered revocation of the order.

Because we revoked the order in August 1994, we necessarily did not publish an opportunity to request review, and did not initiate an administrative review, of entries for the September 1, 1993 through August 31, 1994 period, or any subsequent period. Therefore, in September 1996, the Department will publish a notice of opportunity to request review of the order on entries of EL FPDs from Japan during the periods September 1, 1993 through August 31, 1994; September 1, 1994 through August 31, 1995; and September 1, 1995 through August 31 , 1996.

Dated: July 25, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–19476 Filed 7–30–96; 8:45 am]

BILLING CODE 3510–DS–P

[A–122–814]

Pure Magnesium From Canada, Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 31, 1996.

FOR FURTHER INFORMATION CONTACT: Jennifer Yeske or Carole Showers, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–0189 or 482–3217, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 3, 1994, the Department published in the Federal Register a notice of ''Opportunity to Request Administrative Review'' (58 FR 41239) of the antidumping duty order on pure magnesium from Canada (57 FR 39390). Petitioner in this proceeding, Magnesium Corporation of America, requested an administrative review in accordance with 19 CFR 353.22(a)(1993). On September 30, 1993, the Department published a notice of initiation of this review (58 FR 51053). The period of review is February 20, 1992, through July 31, 1993. The Department is now conducting this review pursuant to section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Applicable Statute and Regulations

Unless otherwise stated, all citations to the statute and to the Department's regulations are references to the provisions as they existed on December 31, 1994.

Scope of the Review

The product covered by this review is pure magnesium. Pure unwrought magnesium contains at least 99.8 percent magnesium by weight and is sold in various slab and ingot forms and sizes. Granular and secondary magnesium are excluded from the scope of this review. Pure magnesium is currently classified under subheading 8104.11.0000 of the Harmonized Tariff Schedule (''HTS''). HTS item numbers are provided for convenience and for Customs purposes. The written description remains dispositive.

The period of review is February 20, 1992, through July 31, 1993.

Preliminary Results of Review

Early in the period of review, NHCI, the single manufacturer/exporter subject to review, made several shipments of the subject merchandise to the United States. While this merchandise entered during the period of review and a portion of the merchandise was subsequently sold, the Department confirmed at verification that all of the merchandise which entered was either re-exported without sale or the sales were cancelled. According to its practice, the Department does not include cancelled sales transactions in its analysis (*see Certain Small Business Telephone Systems and Subassemblies Thereof from Korea*, 58 FR 44501, 44503, August 23, 1993). Therefore, we have preliminarily determined that there are no appropriate U.S. sales to analyze which are associated with the entries covered by this review, and hence, no basis for assessing antidumping duties on those entries (*see Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany; Final Results of Antidumping Duty Administrative Review*, 56 FR 31692, 31743, July 11, 1991). Accordingly, we will liquidate these entries without regard to antidumping duties (*see Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Singapore, Thailand and the United Kingdom; Preliminary Results of Administrative Reviews, and Partial Termination of Administrative Reviews*, 61 FR 35713, 35717, July 8, 1996).

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise, entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided for by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for the reviewed firm will be that firm's rate established in the final results of this administrative review; (2) for previously reviewed or investigated companies, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review or the original less-than-fair-value

investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters not previously reviewed will be 21 percent, the rate established in *Pure Magnesium From Canada: Amendment of Final Determination of Sales At Less Than Fair Value and Order in Accordance With Decision on Remand*, 58 FR 62643, November 29, 1993.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Interested parties may request disclosure within five days of the date of publication of this notice and may request a hearing within 10 days of the date of publication. Any hearing, if requested, will be held as early as convenient for the parties but not later than 44 days after the date of publication or the first workday thereafter. Case briefs or other written comments from interested parties may be submitted not later than 30 days after the date of publication of this notice. Rebuttal briefs and rebuttal comments, limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication. The Department will publish the final results of this administrative review, including its results of its analysis of issues raised in any such written comments.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: July 24, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–19471 Filed 7–30–96; 8:45 am]

BILLING CODE 3510–DS–P

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC.

Docket Number: 96–067. Applicant: Woods Hole Oceanographic Institution, 266 Woods Hole Road, Woods Hole, MA 02543. Instrument: 5 Window Beta Detector with Anticoincidence, Model GM–25–5. Manufacturer: Risoe National Laboratory, Denmark. Intended Use: The instrument will be used for sampling the ocean at different depths to estimate carbon fluxes out of the upper water. This is a number that needs to be plugged into ocean/atmosphere models to estimate such things as global warming. Application accepted by Commissioner of Customs: June 19, 1996.

Docket Number: 96–068. Applicant: The University of Vermont, Burlington, VT 05405. Instrument: Multisample Inlet Manifold for Mass Spectrometer. Manufacturer: Pro-Vac Services, United Kingdom. Intended Use: The instrument is an accessory used to automate sample analysis performed with a mass spectrometer which will increase the daily sample processing. The mass spectrometer is used to determine stable isotope abundances of the elements C, O, N and S in natural materials for a variety of environmental, biological and ecological research projects. In addition, the accessory will be used for educational purposes in the course Environmental Isotope Geochemistry. Application accepted by Commissioner of Customs: June 20, 1996.

Docket Number: 96–069. Applicant: Arizona State University, Department of Zoology, Box 871501, Tempe, AZ 85287–1501. Instrument: Image Analysis System with Macro Accessory Package. Manufacturer: Imaging Research Inc., Canada. Intended Use: The instrument will be used for *in situ* hybridization studies and *in vitro* receptor autoradiography. The neurochemical data will be analyzed at various levels of neuroanatomical detail. These experiments will be conducted to determine how stress alters the major neurotransmitter systems in the hippocampus in the hope of understanding how stress alters the functional status of the hippocampus. Application accepted by Commissioner of Customs: June 26, 1996.

Docket Number: 96–070. Applicant: Massachusetts Institute of Technology, 77 Massachusetts Avenue, Cambridge, MA 02139. Instrument: Compact Geotechnical Centrifuge. Manufacturer: Chiker Technologies, United Kingdom. Intended Use: The instrument will be used to conduct experimental investigations of problems involving soil and groundwater behavior. Experiments will be conducted to examine how contaminants move through soil bodies under a variety of different conditions and under the influence of different body forces. In addition, the experiments will be conducted to investigate the performance of different *in situ* remediation technologies, such as ''pump-and-treat,'' air-sparging and surfactant flushing, that are available for cleaning up contaminated soil sites. The instrument will also be used in the course Introduction to Geotechnical Engineering that teaches the fundamentals of soil behavior and soil-structure interaction. Application accepted by Commissioner of Customs: June 26, 1996.

Frank W. Creel,

Director Statutory Import Programs Staff.

[FR Doc. 96–19473 Filed 7–30–96; 8:45 am]

BILLING CODE 3510–DS–P

Yale University; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 96–023. Applicant: Yale University, New Haven, CT 06510. Instrument: Shielded Gradient System, Model IC60. Manufacturer: Oxford Magnet Technology, United Kingdom. Intended Use: See notice at 61 FR 25622, May 22, 1996.

Comments: None received. Decision: Approved. No instrument of equivalent

scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. Reasons: The foreign instrument provides: (1) an off-the-shelf actively shielded gradient coil with guaranteed magnetic field specifications and minimized eddy current induction and (2) compatibility with an Oxford superconducting magnet. These capabilities are pertinent to the applicant's intended purposes and we know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 96–19472 Filed 7–30–96; 8:45 am]

BILLING CODE 3510–DS–P

[C–351–406]

Certain Agricultural Tillage Tools From Brazil; Preliminary Results of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative review.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the countervailing duty order on certain agricultural tillage tools from Brazil. For information on the net subsidy for the reviewed company, as well for all non-reviewed companies, please see the *Preliminary Results of Review* section of this notice. If the final results remain the same as these preliminary results of administrative review, we will instruct the U.S. Customs Service to assess countervailing duties as detailed in the *Preliminary Results of Review* section of this notice. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: July 31, 1996.

FOR FURTHER INFORMATION CONTACT: Gayle Longest or Anne D'Alauro, Office of CVD/AD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–3338 or (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On October 22, 1985, the Department published in the Federal Register (57 FR 10885) the countervailing duty order on certain agricultural tillage tools from Brazil. On October 5, 1995, the Department published a notice of ''Opportunity to Request an Administrative Review'' (60 FR 52149) of this countervailing duty order. We received a timely request for review, and we initiated the review, covering the period January 1, 1994 through December 31, 1994 on November 16, 1995 (60 FR 57573).

In accordance with section 355.22(a) of the Department's *Interim Regulations,* this review covers only those producers or exporters of the subject merchandise for which a review was specifically requested (*see Antidumping and Countervailing Duties: Interim Regulations; Request for Comments,* 60 FR 25130 (May 11, 1995)) (*Interim Regulations*). Accordingly, this review covers Marchesan Implementos Argicolas, S.A. This review also covers 5 programs.

As explained in the memoranda from the Assistant Secretary for Import Administration dated November 22, 1995, and January 11, 1996 (on file in the public file of the Central Records Unit, Room B–099 of the Department of Commerce), all deadlines were extended to take into account the partial shutdowns of the Federal Government from November 15 through November 21, 1995, and December 15, 1995, through January 6, 1996. Therefore, the deadline for these preliminary results is no later than July 31, 1996 and the deadline for the final results of this review is no later than 120 days from the date on which these preliminary results are published in the Federal Register.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (URAA) effective January 1, 1995 (the Act). The Department is conducting this administrative review in accordance with section 751(a) of the Act.

Scope of the Review

Imports covered by this review are shipments of certain round shaped agricultural tillage tools (discs) with plain or notched edge, such as colters and furrow-opener blades. During the review period, such merchandise was classifiable under item numbers 8432.21.00, 8432.29.00, 8432.80.00 and 8432.90.00 of the *Harmonized Tariff Schedule* (HTS). The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

Verification

As provided in section 782(i) of the Act, we verified information submitted by the Government of Brazil and Marchesan. We followed standard verification procedures, including meeting with government and company officials and examination of relevant accounting and financial records and other original source documents. Our verification results are outlined in the public versions of the verification reports, which are on file in the Central Records Unit (Room B–099 of the Main Commerce Building).

Analysis of Programs

I. Programs Preliminarily Determined To Be Not Used

We examined the following programs and preliminarily determine that the producer and/or exporter of the subject merchandise did not apply for or receive benefits under these programs during the period of review:

A. Accelerated Depreciation for Brazilian-Made Capital Goods

B. Preferencial Financing for Industrial Enterprises by Banco do Brasil (FST and EGF loans)

C. SUDENE Corporate Income Tax Reduction for Companies Located in the Northeast of Brazil

D. Preferencial Financing under PROEX (formerly under Resolution 68 and 509 through FINEX)

E. Preferencial Financing under FINEP

Preliminary Results of Review

In accordance with section 355.22(c)(4)(ii) of the Department's *Interim Regulations,* we calculated an individual subsidy rate for each producer/exporter subject to this administrative review. For the period January 1, 1994 through December 31, 1994, we preliminarily determine the net subsidy for Marchesan to be zero percent *ad valorem*.

As provided for in the Act, any rate less than 0.5 percent *ad valorem* in an administrative review is *de minimis.* Accordingly, no countervailing duties will be assessed. If the final results of this review remain the same as these preliminary results, the Department intends to instruct the U.S. Customs Service to liquidate, without regard to countervailing duties, shipments of the subject merchandise from Marchesan

exported on or after January 1, 1994, and on or before December 31, 1994. Also, the cash deposit required for this company will be zero.

Because the URAA replaced the general rule in favor of a country-wide rate with a general rule in favor of individual rates for investigated and reviewed companies, the procedures for establishing countervailing duty rates, including those for non-reviewed companies, are now essentially the same as those in antidumping cases, except as provided for in section 777A(e)(2)(B) of the Act. The requested review will normally cover only those companies specifically named. Pursuant to 19 C.F.R. § 355.22(g), for all companies for which a review was not requested, duties must be assessed at the cash deposit rate, and cash deposits must continue to be collected, at the rate previously ordered. As such, the countervailing duty cash deposit rate applicable to a company can no longer change, except pursuant to a request for a review of that company. *See Federal-Mogul Corporation and The Torrington Company* v. *United States,* 822 F.Supp. 782 (CIT 1993) and *Floral Trade Council* v. *United States,* 822 F.Supp. 766 (CIT 1993) (interpreting 19 C.F.R. § 353.22(e), the antidumping regulation on automatic assessment, which is identical to 19 C.F.R. § 355.22(g)). Therefore, the cash deposit rates for all companies except those covered by this review will be unchanged by the results of this review.

We will instruct Customs to continue to collect cash deposits for non-reviewed companies at the most recent company-specific or country-wide rate applicable to the company. Accordingly, the cash deposit rates that will be applied to non-reviewed companies covered by this order are those established in the most recently completed administrative proceeding. *See Certain Round-Shaped Agricultural Tillage Tools from Brazil; Final Results of Countervailing Duty Administrative Review,* 57 FR 22461. These rates shall apply to all non-reviewed companies until a review of a company assigned these rates is requested. In addition, for the period January 1, 1994 through December 31, 1994, the assessment rates applicable to all non-reviewed companies covered by this order are the cash deposit rates in effect at the time of entry.

Public Comment

Parties to the proceeding may request disclosure of the calculation methodology and interested parties may request a hearing not later than 10 days after the date of publication of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven days after the time limit for filing the case brief. Parties who submit argument in this proceeding are requested to submit with the argument (1) a statement of the issue and (2) a brief summary of the argument. Any hearing, if requested, will be held seven days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 C.F.R. § 355.38.

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under 19 C.F.R. § 355.38, are due. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)).

Dated: July 19, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–19475 Filed 7–30–96; 8:45 am]

BILLING CODE 3510–DS–P

National Oceanic and Atmospheric Administration

[I.D. 072596A]

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene a public meeting of the Reef Fish Stock Assessment Panel.

DATES: This meeting will begin at 1:00 p.m. on August 19, 1996, and conclude at 5:00 p.m. on August 21, 1996.

ADDRESSES: The meeting will be held at NMFS Southeast Fisheries Science Center, 75 Virginia Beach Drive, Miami, FL.

FOR FURTHER INFORMATION CONTACT: Steve Atran, Population Dynamics Statistician, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 331, Tampa, FL 33609; telephone: 813–228–2815.

SUPPLEMENTARY INFORMATION: The Reef Fish Stock Assessment Panel will review a report by Dr. Benny Galloway of LGL Associates on the assessment procedures and data used by NMFS for the red snapper stock assessments. In addition, the effect of untrawlable bottom on the assessment of shrimp trawl juvenile bycatch mortality will be addressed. The Southeast Fisheries Science Center will provide the information on the extent of untrawlable bottom.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at (see **ADDRESSES**) by August 12, 1996.

Dated: July 25, 1996.

Richard W. Surdi,

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

[FR Doc. 96–19463 Filed 7–30–96; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

Test Program for Negotiation of Comprehensive Small Business Subcontracting Plans

AGENCY: Department of Defense (DoD).

ACTION: Notice of test program.

SUMMARY: The Department of Defense is amending its Test Program for Negotiation of Comprehensive Small Business Subcontracting Plans.

EFFECTIVE DATE: July 31, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Tim J. Foreman, Office of Small and Disadvantaged Business Utilization, DUSD (I&CP) SADBU, 3061 Defense Pentagon, Washington, DC 20301–3061, telephone (703) 697–9384, telefax (703) 693–7014.

SUPPLEMENTARY INFORMATION:

A. Background

In accordance with Section 834 of Public Law 101–189, as amended, the Department of Defense (DoD) established a Test Program for Negotiation of Comprehensive Small Business Subcontracting Plans (the Program) to determine whether the use of comprehensive subcontracting plans

on a corporate, division, or plant-wide basis would increase subcontracting opportunities for small business concerns. DoD is amending the Program to implement the requirements of Section 811 of the National Defense Authorization Act for Fiscal Year 1996 (Pub. L. 104–106). The amendments (1) expand the purpose of the Program to include determination of whether the negotiation and administration of comprehensive subcontracting plans will reduce administrative burdens on contractors while enhancing subcontracting opportunities for small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals; (2) revise contractor eligibility criteria under the Program to permit participation by large business concerns who, during the preceding fiscal year, furnished DoD with supplies or services under at least three DoD contracts having an aggregate value of at least $5,000,000; (3) require that the Service Acquisition Executive within each military department and defense agency designate at least three, but not more than five, contracting activities to participate in the Program; and (4) require that participating contracting activities cover a broad range of supplies and negotiate not less than five comprehensive subcontracting plans.

Tim J. Foreman,

Office of Small and Disadvantaged Business Utilization.

The revised test plan is as follows:

Test Program for Negotiation of Comprehensive Small Business Subcontracting Plans

I. Purpose

This document implements Section 834 of Public Law 101–189, the National Defense Authorization Act for Fiscal Years 1990 and 1991, as amended. The primary purpose of the Comprehensive Small Business Subcontracting Plan Test Program (the Program) is to determine whether the negotiation and administration of comprehensive small business subcontracting plans will reduce administrative burdens on contractors while enhancing subcontracting opportunities for small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals under Department of Defense (DoD) contracts.

II. Authority

The Program is established pursuant to Section 834 of the National Defense Authorization Act for Fiscal Years 1990 and 1991, as amended.

III. Program Requirements

A. The Program shall be conducted from October 1, 1990, through September 30, 1998.

B. The selection of contractors for participation in the Program shall be in accordance with Section 811(b)(3) of the National Defense Authorization Act For Fiscal Year 1996, Public Law 104–106. Eligible contractors are large business concerns at the major (total) corporate level that, during the preceding fiscal year:

1. Were performing under at least three DoD contracts; furnished supplies or services (including professional services) to DoD, engaged in research and development for DoD, or performed construction for DoD; and were paid $5,000,000 or more for such contract activities; and

2. Achieved a small disadvantaged business (SDB) subcontracting participation rate of 5 percent or more during the preceding fiscal year. However, this requirement does not apply to the eight original contractors accepted into the Program. Additionally, a large business with an SDB subcontracting participation rate of less than 5 percent during the preceding fiscal year may request, through the designated contracting activity, to participate in the Program if the firm submits a detailed plan with milestones leading to attainment of at least a 5 percent SDB subcontracting participation rate by September 30, 1998.

C. Contractors selected for participation shall:

1. Be eligible in accordance with paragraph III(B);

2. Establish their comprehensive subcontracting plans on the same corporate, division or plant-wide basis under which they submitted the Standard Form (SF) 295 during the preceding fiscal year, except that a division or plant that historically reported through a higher level division, but would meet the criteria of paragraph III(B)(2), shall be permitted to participate in the Program if the lower level division, plant or profit center can demonstrate a 5 percent or greater subcontract performance level with SDB concerns;

3. Have reported to DoD on the SF 295 for the last fiscal year, except as provided in paragraph III(C(2);

4. Accept an SDB goal for each fiscal year of not less than 5 percent, or an SDB goal that is in accordance with the milestone established under paragraph III(B)(2);

5. Comply with the requirements of Defense Federal Acquisition Regulation Supplement (DFARS) Section 215.605 for source selection purposes;

6. Offer a broad range of subcontracting opportunities;

7. Voluntarily agree to participate; and

8. Have at least one active contract that requires a subcontracting plan at the designated DoD buying activity responsible for negotiating the Comprehensive Subcontracting Plan.

IV. Elements of the Comprehensive Small Business Subcontracting Plan

A. The comprehensive small business subcontracting plan shall address each of the 11 elements set forth in paragraph (d) of the clause at FAR 52.219–9, ''Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan.''

1. The subcontracting plan, percentage and corresponding dollar goals for awards to small business, small disadvantaged business and women-owned small business concerns shall be developed by the contractor for its entire business operation in support of all DoD contracts regardless of dollar value.

2. Participating contractors shall include separate specific goals and timetables for the awarding of subcontracts in two industry categories which have not historically been made available to small business and small disadvantaged business concerns. These industry categories will be recommended by the contractor and approved by the contracting officer. Subcontract awards made in support of the specific industry categories shall also count towards attainment of the overall small business and small disadvantaged business goals.

3. The subcontracting plan shall set forth the prime contractor's actions to publicize prospective subcontract opportunities for small business, small disadvantaged business and women-owned small business concerns.

B. Subcontracting plans to be established under the Program shall be submitted each year by participating contractors to the designated contracting officer 45 days prior to the end of the Government's fiscal year (September 30). However, new contractors requesting participation under the Program shall submit subcontracting plans to the contracting officer as close as possible to September 30.

V. Procedures

A. The Service Acquisition Executive within each military department and defense agency having contractors that

meet the requirements of paragraphs III(B) and (C) shall designate at least three but not more than five contracting activities to participate in the Program. In selecting the contracting activities to participate in the Program, the Service Acquisition Executive shall ensure that the designated activities cover a broad range of supplies and services.

B. The designated contracting activity will accomplish the following:

1. With the coordination of the Director, Office of Small and Disadvantaged Business Utilization, for their military department or defense agency, select as many eligible prime contractors (at least five) for participation under the Program as deemed appropriate.

2. Establish a ''Comprehensive Small Business Subcontracting Plan'' negotiating team(s) composed as follows:

a. A contracting officer(s) who will be responsible for negotiation and approval of the comprehensive subcontracting plan(s) as well as the responsibilities at FAR 19.705.

b. The contracting activity's Small and Disadvantaged Business Utilization Specialist.

c. The Small and Disadvantaged Business Utilization Specialist of the cognizant contract administration activity that administers the preponderance of the selected prime contractor's contracts and/or the appropriate individual who will administer contractor performance under the test in accordance with FAR 19.706 and the provisions herein.

d. Production specialist, price analyst and other functional specialists as appropriate.

C. The designated contracting officer shall:

1. Solicit proposed comprehensive subcontracting plans from selected contractor(s) as soon as possible and by July 1, annually thereafter.

2. By October 1, and annually thereafter, review, negotiate and approve on behalf of DoD a comprehensive subcontracting plan for each selected contractor.

3. Distribute copies of the approved subcontracting plan in accordance with paragraph VI(A).

4. Upon negotiation and acceptance of the comprehensive subcontracting plan, obtain from the contractor:

a. A listing of all active DoD contracts that contain individual subcontracting plans required by Section 211 of Public Law 95–507.

b. The listing shall include the following:

i. Contract number.

ii. Name and address of the contracting activity.

iii. Contracting officer's name and phone number.

5. Upon receipt of the information provided by the participating contractor under paragraph V(C)(4), direct the designated administrative contracting officer to issue a comprehensive change order, which modifies all of the contractor's active DoD contracts that include subcontracting plans. The modification will substitute the contractor's approved comprehensive subcontracting plan for the individual plans, will substitute the clause at DFARS 252.219–7004 for the clause at FAR 52.219–9, and will delete the clauses at FAR 52.219–10 and 52.219–16 and DFARS 252.219–7003 and 252.219–7005, as appropriate.

6. Review annually, with the current administration activity, the contractor's performance under the plan. Document the review findings and distribute, in accordance with paragraph VI(A), within 45 days of the end of the fiscal year.

7. By November 15 of the year after acceptance, and annually thereafter, determine whether the contractor has met its comprehensive subcontracting goals. If the goals have not been met, determine whether there is any indication that the contractor failed to make a good faith effort and take appropriate action.

8. By December 15, 1998, prepare and submit a report on each participating contractor's performance which details the results of the Program. The report must compare the contractor's performance under the Program with its performance for the three fiscal years prior to acceptance into the program. The report distribution will be in accordance with paragraph VI(A).

D. Participating contractors:

1. Shall establish their comprehensive subcontracting plans on the same corporate, division or plant-wide basis under which they submitted the SF 295 during the preceding fiscal year, except that those contractors that historically reported through a higher headquarters can elect to participate as a separate (lower level) reporting profit center, plant or division if the contractor achieved an SDB subcontracting performance rate of 5 percent or greater in the preceding fiscal year.

2. Upon negotiation of an acceptable comprehensive subcontracting plan, shall be exempt from individual contract-by-contract reporting requirements for DoD contracts unless otherwise required in accordance with paragraph III(C)(5).

3. Shall continue individual contract reporting on non-DoD contracts.

4. Shall comply with the flow-down provisions of Section 211 of Public Law 95–507. Large business concerns receiving a DoD subcontract in excess of $500,000 ($1,000,000 for construction) are required to adopt a plan similar to that mandated by the clause at FAR 52.219–9. Participating contractors are prohibited from flowing down the ''Comprehensive'' subcontracting deviation provisions of DFARS 252.219–7004. Accordingly, large business subcontractors to the participating contractors shall be required to establish individual subcontracting plans with specific goals for awards to small business, small disadvantaged business and women-owned small business concerns.

5. Upon expulsion from the Program or Program termination on September 30, 1998, shall negotiate and establish individual subcontracting plans on all future DoD contracts that otherwise meet the requirements of Section 211 of Public Law 95–507.

VI. Monitoring and Reporting of Comprehensive Subcontracting Plans and Goals

A. Upon negotiation and acceptance of comprehensive subcontracting plans and goals, the designated activity shall immediately forward one copy of the plan to each of the following:

1. Director, Office of Small and Disadvantaged Business Utilization, Office of the Deputy Under Secretary of Defense (International and Commercial Programs), 3061 Defense Pentagon, Room 2A338, Washington, DC 20301–3061.

2. Director, Small and Disadvantaged Business Utilization, for the military department or defense agency of the activity that negotiated and accepted the comprehensive subcontracting plan.

3. The cognizant contract administration office.

B. Each participating contractor shall complete the SF 295 ''Summary Subcontract Report'' in accordance with the instructions on the back of the form on a semi-annual basis, except as noted below:

1. One copy of the SF 295 and attachments shall be submitted to Director, Office of Small and Disadvantaged Business Utilization, Office of the Deputy Under Secretary of Defense (International and Commercial Programs), 3061 Defense Pentagon, Room 2A338, Washington, DC 20301–3061.

2. Participating contractors shall enter in Item 14 ''Remarks'' block the annual corporate, division or plant-wide small business, small disadvantaged business and women-owned small business

percentage and corresponding dollar goals.

3. Participating contractors shall also enter separate in Item 14 the percentage and corresponding dollar goals for each of the two selected industry categories (see paragraph IV(A)(2)).

4. Participating contractors shall also enter separately in Item 14 on a semi-annual cumulative basis the percentage and corresponding dollar amount of subcontract awards made in each of the two selected industry categories.

5. Participating contractors shall be exempt from the completion of SF 294 ''Subcontract Report For Individual Contracts'' for DoD contracts during their participation in the Program.

[FR Doc. 96–19414 Filed 7–30–96; 8:45 am]

BILLING CODE 5000–04–M

Office of the Secretary

Defense Science Board

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board will meet in closed session on August 5–16, 1996 at the Beckman Center, Irvine, California.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition and Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At that time the Board will examine the substance, interrelationships, and the US national security implications of three critical areas identified and tasked to the Board by the Secretary of Defense, Deputy Secretary of Defense, and Under Secretary of Defense for Acquisition and Technology. The subject areas are: Achieving and Innovative Support Structure to Enhance Early 21st Century Military Operations; and Tactics and Technology for 21st Century Military Superiority. The period of study is anticipated to culminate in the formulation of specific recommendations to be submitted to the Secretary of Defense, via the Under Secretary of Defense for Acquisition and Technology, for his consideration in determining resource policies, short- and long-range plans, and in shaping appropriate implementing actions as they may affect the U.S. national defense posture.

In accordance with Section 10(d) of the Federal Advisory Committee Act, P.L. No. 92–463, as amended (5 U.S.C. App. II, (1988)), it has been determined that this DSB meeting, concerns matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly this meeting will be closed to the public.

Dated: July 25, 1996.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–19450 Filed 7–30–96; 8:45 am]

BILLING CODE 5000–04–M

Defense Science Board Task Force on Anti-Personnel Landmine Alternatives, Landmine Detection and Demining, and Unexploded Ordnance (UXO) Clearance Operations

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Anti-Personnel Landmine Alternatives, Landmine Detection and Demining, and Unexploded Ordnance (UXO) Clearance Operations will meet in closed session on July 30–31, 1996 at Strategic Analysis, Inc., Arlington, Virginia. In order for the Task Force to obtain time sensitive classified briefings, critical to the understanding of the issues, this meeting is scheduled on short notice. The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will examine US landmine, landmine detection and demining efforts, and alternatives to anti-personnel landmines. It will also examine UXO remediation, active range UXO clearance, and explosive ordnance disposal (EOD) efforts. It will include in this examination, the relationship between the UXO/EOD detection/characterization/clearance and neutralization issues and landmine detection/neutralization issues. In accordance with Section 10(d) of the Federal Advisory Committee Act, P.L. No. 92–463, as amended (5 U.S.C. App. II, (1994)), it has been determined that this DSB Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1994), and that accordingly this meeting will be closed to the public.

Dated: July 25, 1996.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–19449 Filed 7–30–96; 8:45 am]

BILLING CODE 5000–04–M

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Resolution of Potential Conflict of Interest

The Defense Nuclear Facilities Safety Board (Board) has identified and resolved potential conflicts of interest situations related to its proposed contractor, MPR Associates, Incorporated (MPR). This Notice, which is a summary of the facts related to this decision, satisfies the requirements of 10 CFR 1706.8(e) with respect to publication in the Federal Register. Under the Board's Organizational and Consultant Conflicts of Interest Regulation, 10 CFR Part 1706 (OCI Regulations), an organizational or consultant conflict of interest (OCI) means that because of other past, present or future planned activities or relationships, a contractor or consultant is unable, or potentially unable, to render impartial assistance or advice to the Board, or the objectivity of such offeror or contractor in performing work for the Board is or might be otherwise impaired, or such offeror or contractor has or would have an unfair competitive advantage. While the OCI Regulations provide that contracts shall generally not be awarded to an organization where the Board has determined that an actual or potential OCI exists and cannot be avoided, the Board may waive this requirement in certain circumstances.

The Board is tasked with the responsibility of overseeing the safe operation of the Department of Energy's (DOE's) defense nuclear facilities in order to ensure that the health and safety of the workers and the general public are adequately protected. One such facility is the Savannah River Site, which operates an In-Tank Precipitation (ITP) facility that provides highly radioactive material to the Defense Waste Processing Facility for conversion into vitrified logs for long-term storage.

The Board has become aware of a potential health and safety matter at the Savannah River Site involving the ITP facility. Specifically, the ITP chemical process results in the generation of benzene in solution in an unpredictable manner. Furthermore, the benzene, a flammable substance, is released from the solution at an anomalous rate. These unpredictable phenomena could be due to catalysts, radioactive hydrolysis, turbulence, or other factors. Of overriding concern to the Board is that the result of these phenomena, in combination with oxygen intrusion, creates the potential for a deflagration or explosion of the vapor within the tank

and the subsequent release of highly radioactive material to the environment.

In order to prevent the potential for a deflagration or explosion, certain aspects of the ITP chemical process must be established and fully understood. The first issue involves determining what caused an unexpected chemical excursion to occur in Tank 48H of the ITP facility where excess sodium tetraphenylborate rapidly decomposed to benzene. The second issue that requires assessment occurred during the excursion and revealed the fact that the benzene, by some yet to be understood mechanism, was not immediately released into the tank vapor space. As the fortuitous retention of the benzene was not due to a safety system design feature, determining what caused the benzene to be retained must be comprehended as its release could have compromised the safety system and resulted in a serious threat to the safety of the workers and the general public. Lastly, the adequacy of the safety system design must be addressed based on the chemical excursion and benzene retention determinations. It is therefore imperative that a comprehensive understanding of the causes for the unresolved benzene issues be acquired and appropriate safety measures be put into effect.

Consequently, the Board informed DOE that no additional tank waste or sodium tetraphenylborate should be added to Tank 48H until the tetraphenylborate decomposition and benzene release mechanism are well understood and adequate safety measures are instituted.

The Board does not have the breadth of required expertise readily available to conduct an in-depth safety evaluation of the ITP chemical process. The Board determined that outside technical experts possessing the prerequisite combination of chemical engineering expertise and nuclear safety experience were essential to the expeditious and proficient evaluation of the Board's concerns. To accomplish this, the Board identified MPR Associates, Incorporated (MPR) as an organization which could immediately provide the necessary expert technical assistance needed to assess the safety implication of this situation. The scope of this assistance includes such areas as identification of benzene generation and release mechanisms, potential hazard prevention and mitigation, and establishment of safety class systems and controls. MPR's technical expertise is precisely the kind of support that is critical to the successful performance of the Board's requirement. Specifically, MPR will provide the expert services of Mr. Julian Nichols, a chemical engineer with extensive background knowledge and experience gained from his long-term efforts on similar problems within the commercial nuclear industry and through performance of safety-related activities at the Savannah River Site under previous contract to the Board.

However, MPR brought potential conflict of interest situations to the Board's attention based on their current contractual relationships with DOE through six subcontracts. A brief description of each scope of work follows:

1. Westinghouse Savannah River. Under this subcontract arrangement, MPR is performing an assessment of the Savannah River Site's integrated High-Level Waste System against commercial nuclear safety standards.

2. Westinghouse Hanford Company. This subcontract agreement requires MPR to provide direct support to the Spent Nuclear Fuel Project by participating in the K Basin Independent Technical Assessment and providing management and technical assistance in other projects of this nature.

3. Sandia National Laboratories. MPR is conducting an annealing demonstration of a U.S. reactor pressure vessel to determine if annealing is an economically viable option that can adequately address technical, engineering, and institutional issues.

4. Sandia National Laboratories. The scope of the contract is to provide on-going engineering support to the Sandia Fissile Materials Disposition Technical Integration Team in specific planning and technical management tasks related to DOE's decision making process in the technology areas of nuclear power and materials management.

5. Lawrence Livermore National Laboratory. Under this agreement, MPR is providing technical support in the analysis and development of federal facility compliance requirements, health and ecological risk assessments, and review of various policy guidance documents related to ''deactivation end states.''

6. Energetics. This subcontract requires MPR to provide technical assistance in the evaluation of a proposal submitted for a full-scale demonstration of fossil-fuel-fired vitrification technology for the vitrification of radionuclide and hazardous-material contaminated soils.

While MPR's anticipated contractual work for the Board and each DOE-related project would not necessarily create an actual overlap of work at this time, and hence no direct OCI, potential OCI's do exist due to MPR's concurrent relationships on behalf of DOE and the Board, as the Savannah River Site, for instance, is a defense nuclear facility under the Board's jurisdiction. Consequently, as a result of its relationships with DOE, the ability of MPR to provide objective to the Board could be questioned.

The Board reviewed each potential conflict of interest situation and concluded that it is nonetheless in the best interests of the Government to have MPR perform the ITP chemical process safety evaluation due to their extensive experience with similar technical issues gained primarily in the commercial nuclear area coupled with their ability to respond immediately to this need. The determination was made that even if there were conflicts of interest as a result of the DOE-related work, it was outweighed by the need for an immediate in-depth safety evaluation of the ITP chemical process by a known expert in order to contend with the health risk that could result from deflagration or explosion of the vapor within Tank 48H.

In accordance with the OCI Regulations, the Board also considered the value of MPR's subcontracts with DOE, which MPR disclosed represented a small fraction of its total revenues. In the Board's view, the revenues from the DOE-related projects do not make MPR financially dependent on DOE.

The Board also considered whether a source other than MPR existed which has the caliber of qualified staff capable of responding to the Board's needs without having potential OCI situations. Three other potential contractors were considered but they did not possess the necessary combination of expertise and experience to satisfy the requirements of the Board's urgent needs. The Board is not aware of any other firm with the level of background knowledge and experience essential to the successful undertaking of the Board's requirement. In the Board's opinion, MPR, a nationally-recognized, well-respected expert firm in the nuclear industry, is the only source known to the Board that can satisfactorily perform the evaluation required by the Board. The Board's view is supported by MPR's previous involvement with the U.S. Nuclear Regulatory Commission when the need for immediate expert advice arose in the wake of the Three-Mile Island nuclear accident, and the Board's own experience with MPR, including the expert technical assistance MPR rendered in connection with the Board's investigation of leaks in the heat exchangers at the K-Reactor, and the evaluation of an F-Canyon tank

corrosion issue at the Savannah River Site.

Finally, the Board is required under the OCI Regulations to initiate measures which attempt to mitigate an OCI where reasonably possible. The efforts of MPR will be overseen by experienced technical staff members of the Board to ensure that all resultant work products are impartial and reflect full support for any findings and recommendations contained therein.

Accordingly, on the basis of the determination described above and pursuant to the applicable provisions of 10 CFR 1706, the Chairman of the Board granted a Waiver of any conflicts of interests (and the pertinent provisions of the OCI Regulations) with the effort to be performed by MPR under contract to the Board that might arise out of the contractual relationships with DOE.

Dated: July 25, 1996.

Kenneth M. Pusateri,

General Manager.

[FR Doc. 96–19451 Filed 7–30–96; 8:45 am]

BILLING CODE 3670–01–M

DELAWARE RIVER BASIN COMMISSION

Notice of Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Wednesday, August 7, 1996. The hearing will be part of the Commission's regular business meeting which is open to the public and scheduled to begin at 11:00 a.m. in the Goddard Conference Room of the Commission's offices at 25 State Police Drive, West Trenton, New Jersey.

An informal conference among the Commissioners and staff will be held at 9:30 a.m. at the same location and will include discussion of proposed revisions to the Commission's Rules of Practice and Procedure and status reports on Blue Marsh Reservoir/Tulpehocken Creek water quality and the Commission's 35th anniversary.

The subjects of the hearing will be as follows:

Applications for Approval of the Following Projects Pursuant to Article 10.3, Article 11 and/or Section 3.8 of the Compact

1. *Fallsburg Consolidated Water District D–90–105 CP Renewal.* An application for the renewal of a ground water withdrawal project to supply up to 90 million gallons (mg)/30 days of water to the applicant's distribution system from Well Nos. Fallsburg 1–7, Woodbourne 1 and 2, Sheldrake 1, Hurleyville 1 and 2, and Brae 1. Commission approval on May 22, 1991 was limited to five years. The applicant requests that the total withdrawal from all wells remain limited to 90 mg/30 days. The project is located in the Town of Fallsburg, Sullivan County, New York.

2. *Warner Company D–91–26 RENEWAL.* An application for the renewal of a ground water withdrawal project to supply up to 6.23 mg/30 days of water to the applicant's quarrying operation from Well Nos. CH–4115 and CH–251. Commission approval on September 25, 1991 was limited to five years and will expire unless renewed. The applicant requests that the total withdrawal from all wells remain limited to 6.23 mg/30 days. The project is located in East Whiteland Township, Chester County, in the Southeastern Pennsylvania Ground Water Protected Area.

3. *United Water Delaware D–91–72 CP.* A resolution to extend the time limit for compliance with Conditions ''p.'' and ''q.'' of DRBC Docket No. D–91–72 CP to June 1, 1997. The project is located in New Castle County, Delaware.

4. *Westwood Golf Club D–96–3.* An application for approval of a ground water and surface water withdrawal project to supply up to 6 mg/30 days of water to the applicant's irrigation system from Well No. 2, existing Well No. 1, and a new intake on Matthews Branch; and to increase the existing withdrawal limit from all sources to 6 mg/30 days. The project is located in West Deptford Township, Gloucester County, New Jersey.

5. *Matrix Realty, Inc. (Commonwealth National Country Club) D–96–27.* An application to replace the withdrawal of water from Well No. 1 that has been sold as part of a property transfer. The applicant requests that the withdrawal from replacement Well No. 2 be limited to 5.0 mg/30 days and that the total withdrawal from all sources remain limited to 5.0 mg/30 days. The project is located in Horsham Township, Montgomery County, in the Southeastern Pennsylvania Ground Water Protected Area.

Documents relating to these items may be examined at the Commission's offices. Preliminary dockets are available in single copies upon request. Please contact George C. Elias concerning docket-related questions. Persons wishing to testify at this hearing are requested to register with the Secretary prior to the hearing.

Dated: July 23, 1996.

Susan M. Weisman,

Secretary.

[FR Doc. 96–19394 Filed 7–30–96; 8:45 am]

BILLING CODE 6360–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Nevada Test Site

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Nevada Test Site.

DATES: Wednesday, August 7, 1996: 5:30 p.m.–9:15 p.m.

ADDRESSES: Community College of Southern Nevada, Cheyenne Avenue Campus, High Desert Conference and Training Center, Las Vegas, Nevada 89030, 702–651–4294.

FOR FURTHER INFORMATION CONTACT: Kevin Rohrer, U.S. Department of Energy, Office of Environmental Management, P.O. Box 98518, Las Vegas, Nevada 89193–8513, phone: 702–295–0197.

SUPPLEMENTARY INFORMATION:

Purpose of the Board

The purpose of the Advisory Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

August Agenda

5:30 pm	Call to Order
5:40 pm	Presentations
7:00 pm	Public Comment/Questions
7:30 pm	Break
7:45 pm	Review Action Items
8:00 pm	Approve Meeting Minutes
8:10 pm	Committee Reports
8:45 pm	Public Comment
9:00 pm	Adjourn

Public Participation

The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Kevin Rohrer, at the telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the

meeting in a fashion that will facilitate the orderly conduct of business. This notice is being published less than 15 days in advance of the meeting due to programmatic issues that needed to be resolved.

Minutes

The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to Kevin Rohrer at the address listed above.

Issued at Washington, DC on July 24, 1996.

Rachel M. Samuel

Acting Deputy, Advisory Committee Management Officer.

[FR Doc. 96–19416 Filed 7–30–96; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. RP94–221–005]

ANR Pipeline Company; Notice of Compliance Filing

July 25, 1996.

Take notice that on July 1, 1996, ANR Pipeline Company (ANR) filed a GSR Revenue Collection Report pursuant to a Stipulation and Agreement (Agreement) approved by an order issued July 8, 1995. 72 FERC ¶ 61,130 (1995).

The Agreement, among other things, reduces the level of gas supply realignment (GSR) costs for which ANR had initially sought recovery. Pursuant to Article II of the Agreement, ANR agreed to submit to the Commission and parties on July 1 of each year a report showing cumulative progress regarding the amortization of the settled GSR recovery amount through the preceding March 31.

ANR states that this first annual report shows that as of March 31, 1996, ANR estimates that it has recovered $5,108,516 out of the settled GSR recovery amount of $7,414,919. Consistent with the terms of the Agreement, ANR states, the precise level of recovery is subject to the final reconciliation procedures contemplated by the provisions of Section 28.1(a)(3) of the General Terms and Conditions of ANR's Second Revised Volume No. 1 tariff. ANR states that the instant filing includes a copy of the Agreement, Section 28.1(a)(3) of the General Terms and Conditions of ANR's tariff, and a summary report.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, Washington, D.C. 20426, in accordance with Sections 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before August 1, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. 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. 96–19382 Filed 7–30–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MT96–19–000]

Colorado Interstate Gas Company; Notice of Compliance Filing

July 25, 1996.

Take notice that on July 11, 1996, Colorado Interstate Gas Company (CIG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Revised Tariff Sheet No. 346 and Original Tariff Sheet No. 346A, to be effective September 30, 1996.

CIG states that the filing is being filed to comply with the Commission's order issued June 26, 1996 in Docket Nos. CP96–41 *et al.* CIG states that the purpose of the filing is to put in place safeguards to prevent affiliate abuse and to ensure an arms' length relationship between CIG and its affiliated gathering company.

CIG requests an effective date of September 30, 1996 which is the proposed date of transfer of facilities approved in Docket Nos. CP96–41 *et al.* on June 26, 1996.

CIG states that copies of the filing are being served upon all parties in Docket Nos. CP96–41 *et al.*

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 Sections 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before August 1, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. 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. 96–19381 Filed 7–30–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–316–000]

Florida Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

July 25, 1996.

Take notice that on July 23, 1996, Florida Gas Transmission Company (FGT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, to become effective September 1, 1996.

FGT states that the instant filing proposes changes to FGT's Tariff which are generally intended to modify or clarify certain provisions in conformance with previous tariff changes filed and accepted by the Commission, to make minor corrections, and to update certain curtailment information.

FGT states that copies of the filing were mailed to all customers serviced under the rate schedules affected by the filing and the 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, NE, Washington, DC, 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–19380 Filed 7–30–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT96–78–000]

Granite State Gas Transmission, Inc.; Notice of Refund Report

July 25, 1996.

Take notice that on July 22, 1996, Granite State Gas Transmission, Inc.

(Granite State) tendered for filing a report of the disposition of refunds received from the Gas Research Institute (GRI) for overcollections of the GRI surcharge pursuant to the Commission's Order issued February 22, 1995. See Gas Research Institute, 70 FERC ¶ 61,205 (1995).

According to Granite State, it received a total refund of $196,247.00 from GRI, which Granite State allocated between its firm transportation customers, Bay State Gas Company (Bay State) and Northern Utilities, Inc. (Northern Utilities) and their proportionate shares were wire transferred to these customers on July 22, 1996. Granite State further states that Bay State and Northern Utilities are its only firm transportation customers.

According to Granite State, its filing has been served on Bay State and Northern Utilities and the regulatory agencies of the States of Maine, New Hampshire and Massachusetts.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 214 or 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions to intervene or protests should be filed on or before August 1, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and area available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–19383 Filed 7–30–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM96–15–29–000]

Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff

July 25, 1996.

Take notice that on July 22, 1996 Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing certain revised tariff sheets to its FERC Gas Tariff, Third Revised Volume No. 1 which tariff sheets are enumerated in Appendix A attached to the filing.

Transco states that the purpose of the instant filing is to track rate changes attributable to (a) transportation and storage service purchased from National Fuel Gas Supply Corporation (National Fuel) under its Rate Schedule X–42 and SS–1 the costs of which are included in the rates and charges payable under Transco's Rate Schedule LSS, (b) transportation and storage service purchased from National Fuel under its Rate Schedule X–54 and SS–1 the costs of which are included in the rates and charges payable under Transco's Rate Schedule SS–2, (c) transportation services purchased from National Fuel under its Rate Schedule X–58 the costs of which are included in the rates and charges payable under Transco's Niagara Import Point Project—System Expansion (NIPPs–SE), and (d) transportation service purchased from Texas Gas Transmission Corporation (Texas Gas) under its rate schedule FT the costs of which are included in the rates and charges payable under Transco's Rate Schedule FT–NT.

Transco states that the tracking filing is being made pursuant to Section 4 of Transco's Rate Schedule LSS, Section 4 of Transco's Rate Schedule SS–2, Section 8.01(i) of Transco's NIPPs–SE Rate Schedule X–315, and Section 4 of Transco's Rate Schedule FT–NT.

Transco states that included in Appendix B, C, and D attached to the filing are explanations of the rate changes and details regarding the computation of the revised Rate Schedule LSS, SS–2, NIPPs–SE, and FT–NT rates.

Transco states that copies of the filing are being mailed to each of its LSS, SS–2, NIPPs–SE, and FT–NT 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, Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Conference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–19384 Filed 7–30–96; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5545–7]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Beach Closing Survey

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et.seq.*) this notice announces that the following information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Beach Closing Survey, OMB Control No. 2090–0003, expiration date 8/31/96. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before August 30, 1996.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 260–2740, and refer to EPA ICR No. 0994.06.

SUPPLEMENTARY INFORMATION:

Title: Beach Closing Survey Report on the Great Lakes:

(OMB Control No. 2090–0003: EPA ICR No. 0994.06) expiring 8/31/96. This is an extention of a currently approved collection.

Abstract: U.S. EPA Region V Administrator requested a beach closing survey to determine the quality of the water of the Great Lakes as it affected public recreational bathing beach usage. Respondents are county or city public health agencies which maintain beach closing information. Beach closing summary information is used by the International Joint Commission and approximately 100 county or city public health agencies responsible for monitoring beach water quality. Public inquiries are answered based on this report. Responses are voluntary with almost 100 percent return of questionnaire. 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 numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15. The Federal Register Notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on March 21, 1996. (Volume 61, Number 56, pages 11635–11636, FRL–5443–6).

Burden Statement: The annual public reporting and record keeping burden for this collection of information is estimated to average one-half hour per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal Agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: 105.

Frequency of Response: One per year.

Estimated Total Annual Hour Burden: 52.5 hours.

Estimated Total Annualized Cost Burden: $0.

Send Comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 0994.06 and OMB Control No. 2090–0003 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE, Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460 and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503

Dated: July 25, 1996.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 96–19431 Filed 7–30–96; 8:45 am]

BILLING CODE 6560–50–M

[OPPTS–00190; FRL–5380–1]

Notice of Availability of Contractor Reports, Request for Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability and request for comment.

SUMMARY: Notice is hereby given that EPA is making available reports generated by the Georgia Department of Natural Resources, Illinois Environmental Protection Agency, New York State Department of Environmental Conservation, and Wisconsin Department of Natural Resources describing the utility of information directed to EPA through the Toxic Substances Control Act (TSCA), including confidential business information (CBI), to state environmental protection and public health efforts. EPA is also requesting public comment on the reports and the overall issue of state access to TSCA data, including CBI information.

DATES: Comments must be received by September 30, 1996. The reports are available as of July 31, 1996.

ADDRESSES: Submit three copies of all written comments to: TSCA Document Receipts (7407), Rm. NE-G99, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Attention: Docket No. 00190, Telephone 202-260-7099.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: ncic@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 ''OPPTS-00190.'' 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 in the SUPPLEMENTARY INFORMATION unit of this document.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-545, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD: (202) 554–0551, e-mail: TSCA-Hotline@epamail.epa.gov. Additional general information may be secured from Scott M. Sherlock at (202) 260-1536; e-mail:sherlock.scott@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: The Toxic Substances Control Act was enacted in 1976 to facilitate the development of data on the effect of chemical substances and mixtures on health and the environment and to regulate those substances and mixtures which present an unreasonable risk of injury to health and the environment.

Since 1977, EPA has collected through its TSCA authority a vast amount of information on chemicals in commerce. This information includes specific chemical health and safety studies, environmental exposure information, and company and manufacturing facility-specific data. This information is used throughout the Federal government for a wide variety of activities associated with protecting the public health and the environment.

Section 14 TSCA provides that certain information which is considered proprietary and confidential may be claimed as CBI. TSCA requires that EPA strictly limit access to CBI information, except under very limited circumstances, to the Federal government and its contractors who are performing work for the Federal government. The Federal government is required to and committed to protecting that information claimed as confidential.

Since the early 1980's, it has been recognized by many persons from industry, labor, states, and the Federal government that state public health and environmental organizations might benefit from access to TSCA derived data. This has been recognized because state public health and environmental programs in many ways mirror Federal ones: states also do chemical risk assessments and management and prepare for and address chemical emergencies. Yet states access to TSCA CBI data for their own use is barred by statute, irrespective of the level of security the states might provide or the need and utility of the information. In the past, numerous letters have been generated, and statements have been made in Congressional and other public hearings supporting the need for states to gain access to this data. However, no actions have taken place which resulted in states being able to access TSCA data claimed as CBI to address state public health and environmental concerns.

In the early 1990's with the widespread recognition and appreciation of the critical role states have in protecting public health and the environment, the issue of state access to TSCA data again was raised. EPA determined it was of programmatic importance to determine how states might benefit from access to TSCA data, including CBI. The Chemical Manufacturers Association (CMA) provided an important and supportive role in developing the strategy for exploring the issue. Subsequently in the fall of 1995, EPA, as permitted under TSCA section 14, entered into contracts

with the Georgia Department of Natural Resources, Illinois Environmental Protection Agency, New York State Department of Environmental Conservation, and Wisconsin Department of Natural Resources to determine the value of TSCA data, including CBI, to state programs.

By the terms of the contracts, the sole purpose of the project was to determine the value of TSCA data, including CBI, to state programs. Access to CBI was permitted only for the very limited purposes identified in the contracts. No CBI information utilized in this project could be used for any other purpose. Participating states had to adhere to modified TSCA security procedures. All personnel were thoroughly briefed on responsibilities associated with TSCA CBI access and procedures for protection of CBI.

In late May and early June 1996, reports were received from Georgia Department of Natural Resources, Illinois Environmental Protection Agency, New York State Department of Environmental Conservation, and Wisconsin Department of Natural Resources. In summary, the reports reflect that the state participants believed access to TSCA data, including CBI, would benefit state health and environmental protection programs. The extent of the benefit was determined significantly by the nature of the particular state's environmental protection program. The reports reflect that the TSCA data:

1. Provided new information on environmental and health effects of chemicals manufactured, processed, and used in the states.
2. Provided useful insights on manufacturing facilities and processes.
3. Provided information on how chemicals are used in specific manufacturing processes.
4. Provided information on exposure scenarios.
5. Provided information on the synergetic effects of complex mixtures of chemicals.

The state reports noted that access to TSCA information, including CBI, has the potential to:

1. Facilitate improved risk assessment and risk management decisions.
2. Be useful in the air and water permit process.
3. Identify specific situations where regulatory relief may be appropriate.
4. Foster greater state government to state government, Federal government to state government environmental protection and public health cooperation.

Over the next several months, EPA shall be carefully considering the papers and any public comment it receives on the issue of state access to TSCA data, including CBI, to determine appropriate next steps. EPA invites the interested public to review the submitted papers and any other publicly available information pertaining to the subject.

A record has been established for this action under docket number ''OPPTS–00190'' (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 noon to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in the TSCA Nonconfidential Information Center, Rm. NE-B607, 401 M St., SW., Washington, DC 20460.

Electronic comments can be sent directly to EPA at:

ncic@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 action, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in ADDRESSES at the beginning of this document.

List of Subjects

Environmental protection and Access to confidential business information.

Dated: July 24, 1996.

Lynn R. Goldman,

Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

[FR Doc. 96–19460 Filed 7–30–96; 8:45 am]

BILLING CODE 6560–50–F

[FRL–5545–5]

Meeting of the Local Government Advisory Committee

The Local Government Advisory Committee will conduct its next meeting on August 15–16, 1996. Members will hear presentations on local environmental issues from two panels plans, one presenting the view of the Environmental Protection Agency's (EPA) Region I Office and one presenting the views of New England local government officials. The Roles and Responsibilities Subcommittee will continue to work on their matrix of Federal, State, and local government environmental responsibilities and their resource guide for local officials. The Tools for Local Decision-Makers Subcommittee will examine existing resources and materials and suggest additional tools needed by local officials to implement environmental protection at the community level.

The meeting will be held at EPA's Region I Office located at 1 Congress Street in Boston, Massachusetts. The meeting will begin at 8:30 a.m. on Thursday, August 15th and conclude at 4:00 p.m. on the 16th. From 9:00–9:15 a.m. on the 15th, the Committee will hear comments from the public. Each individual or organization wishing to address the Committee will be allowed three minutes. Please contact the Designated Federal Officer at the number listed below to schedule agenda time. Time will be allotted on a first come, first serve basis.

The Designated Federal Officer (DFO) for this Committee is Denise Zabinski Ney. She is the point of contact for information concerning any Committee matters and can be reached by calling (202) 260–0419 or by writing to 401 M Street, S.W. (1502), Washington, DC 20460.

This is an open meeting and all interested persons are invited to attend. Meeting minutes will be available after the meeting and can be obtained by written request from the DFO. Members of the public are requested to call the DFO at the above number if planning to attend so that arrangements can be made to comfortably accommodate attendees as much as possible. However, seating will be on a first come, first serve basis.

Richard Brozen,

Acting Associate Administrator, Office of Regional Operations and State/Local Relations.

[FR Doc. 96–19433 Filed 7–30–96; 8:45 am]

BILLING CODE 6560–50–P

[OPP–30415; FRL–5379–9]

DeKalb Genetics Corp.; Application to Register a Pesticide Product

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of an application to register the product Corn Borer-Resistant Corn Containing Insecticidal Bt Protein II, containing a plant pesticide active ingredient not included in any previously registered product pursuant to the provisions of section 3(c)(4) of the Federal Insecticide,

Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments must be submitted by August 30, 1996.

ADDRESSES: By mail, submit written comments identified by the document control number [OPP–30415] to: Public Response and Program Resources Branch, Field Operations Divisions (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Environmental Protection Agency, Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., 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 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–30415]. 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 submission can be found below in this document.

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 holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Michael Mendelsohn, Biopesticides and Pollution Prevention Division (7501W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. CS51B6, Westfield Building North Tower, 2800 Crystal Drive, Arlington, VA 22202, (703) 308–8715; e-mail: mendelsohn.mike@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA received an application from DeKalb Genetics Corporation, 3100 Sycamore Rd., DeKalb, IL 60115–9600, to register the product Corn Borer-Resistant Corn Containing Insecticidal Bt Protein II (EPA File Symbol 69575–E), which contains the plant pesticide active ingredient *Bacillus thuringiensis* subspecies kurstaki CryIA(c) delta-endotoxin and the genetic material necessary for its production in corn at 100 percent, an active ingredient not included in any previously registered product pursuant to the provisions of section 3(c)(4) of FIFRA. The product is for full commercial use. Notice of receipt of the application does not imply a decision by the Agency on the application.

Notice of approval or denial of an application to register a pesticide product will be announced in the Federal Register. The procedure for requesting data will be given in the Federal Register if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

A record has been established for this notice under docket number [OPP–30415] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this 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.

Written comments filed pursuant to this notice, will be available in the Public Response and Program Resources Branch, Field Operations Division at the address provided from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. It is suggested that persons interested in reviewing the application file, telephone this office at (703–305–5805), to ensure that the file is available on the date of intended visit.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: July 17, 1996.

Janet L. Andersen,

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 96–19078 Filed 7–30–96; 8:45 am]

BILLING CODE 6560–50–F

[OPP–30392A; FRL–5367–5]

Certain Companies; Approval of Pesticide Product Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of applications to register the pesticide product Crymax Bioinsecticide, containing an active ingredient not included in any previously registered product and for Thinex Blossom Thinner which involves a changed use pattern pursuant to the provisions of section 3(c)(5) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: By mail: Michael Mendelsohn, Biopesticides and Pollution Prevention Division (7501W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. CS51B6, Westfield Building North Tower, 2800 Crystal Drive, Arlington, VA 22202, (703) 308–8715; e-mail: mendelsohn.mike@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued notices, published in the Federal Register of September 27, 1995 (60 FR 49838), which announced that Ecogen Inc., 2005 Cabot Blvd., P.O. Box Longhorne, PA, had submitted an application to register the product Crymax Bioinsecticide (55638–GU), containing the new active ingredient

Bacillus thuringiensis subspecies *kurstaki* strain EG7841 Lepidopteran active toxin at 15 percent, an active ingredient not included in any previously registered product. Also, included in this notice was an application submitted by Mycogen Corporation, 5501 Oberlin Drive, San Diego, CA 92121, to register the pesticide product Thinex Blossom Thinner (53219–RR) containing the ingredients pelargonic acid and related fatty acids (C6-C12) at 57.0 and 3.0 percent respectively, which involves a change use pattern of the product.

The applications were approved on February 15, 1996, and February 7, 1996, respectively, as Crymax Bioinsecticide for the control of lepidopteran pests on terrestrial crops (EPA Reg. No. 55638–34) and Thinex Blossom Thinner to add to the presently registered use of pelargonic acid, a new use as a blossom thinning agent on apples, pears, ornamental trees, and shrubs (EPA Reg. No. 53219–11).

The Agency has considered all required data on risks associated with the proposed use of *Bacillus thuringiensis* subspecies *kurstaki* strain EG7841, pelargonic acid with related fatty acids (C6-C12), and information on social, economic, and environmental benefits to be derived from use. Specifically, the Agency has considered the nature of the chemical and its pattern of use, application methods and rates, and level and extent of potential exposure. For Crymax, although recombinant DNA technology was used to produce the strain of bacteria used, the properties of the resultant product appeared to be no different from the range of properties of *Bacillus thuringiensis* strains found in the environment. Based on these reviews, the Agency was able to make basic health safety determinations which show that use of *Bacillus thuringiensis* subspecies *kurstaki* strain EG7841 and pelargonic acid with related fatty acids (C6-C12) when used in accordance with widespread and commonly recognized practice, will not generally cause unreasonable adverse effects to the environment.

More detailed information on these registrations is contained in an EPA Pesticide Fact Sheet on *Bacillus thuringiensis* subspecies *kurstaki* strain EG7841 and pelargonic acid.

A copy of these fact sheets, which provide a summary description of the pesticides, use patterns and formulations, science findings, and the Agency's regulatory position and rationale, may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved labels and the list of data references used to support the registrations are available for public inspection in the office of the Regulatory Action Leader. The data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are available for public inspection in the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 1132, CM #2, Arlington, VA 22202 (703-305–5805). Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A-101), 401 M St., SW., Washington, D.C. 20460. Such requests should: (1) Identify the product name and registration number and (2) specify the data or information desired.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: July 23, 1996.

Flora Chow,

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 96–19455 Filed 7–30–96; 8:45 am]

BILLING CODE 6560–50–F

[OPP–30370B/30397A; FRL–5366–9]

Certain Companies; Approval of Pesticide Product Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of applications to register the pesticide products Detur and Flowtron Octenol, containing active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(5) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: By mail: Michael Mendelsohn, Biopesticides and Pollution Prevention Division (7501W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. CS51B6, Westfield Building North Tower, 2800 Crystal Drive, Arlington, VA 22202, (703) 308–8715; e-mail: mendelsohn.mike@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the Federal Register of August 24, 1994 (59 FR 43577), which announced that IJO Products, Inc., P.O. Box 778, El Centra, CA 92244, had submitted an application to register the product Detur (68186–R), containing the active ingredient jojoba oil at 97.5 percent. A notice also published in the Federal Register of October 25, 1995 (60 FR 54686), which announced that Armatron International, Inc., Melrose, MA 02176, had submitted an application to register the product Flowtron Octenol (34473–U), containing the ingredient 1-octen-3-OL at 73 percent, active ingredients not included in any previously registered products.

The applications were approved on January 17, 1996, as Detur for use on all raw agricultural commodities (EPA Reg. No. 68186–1) and Flowtron Octenol for use as a mosquito attractant to make insect killers more effective in luring and killing certain mosquitoes and biting flies (EPA Reg. No. 34473–4).

The Agency has considered all required data on risks associated with the proposed use of jojoba oil and 1-octen-3-OL, and information on social, economic, and environmental benefits to be derived from use. Specifically, the Agency has considered the nature of the chemical and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health safety determinations which show that use of jojoba oil and 1-octen-3-OL when used in accordance with widespread and commonly recognized practice, will not generally cause unreasonable adverse effects to the environment.

More detailed information on these registrations is contained in an EPA Pesticide Fact Sheet on jojoba oil and 1-octen-3-OL.

A copy of this fact sheet, which provides a summary description of the chemical, use patterns and formulations, science findings, and the Agency's regulatory position and rationale, may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label and the list of data references used to support registration are available for public inspection in the office of the Product Manager. The data and other scientific information used to support

registration, except for material specifically protected by section 10 of FIFRA, are available for public inspection in the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 1132, CM #2, Arlington, VA 22202 (703-305–5805). Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A-101), 401 M St., SW., Washington, D.C. 20460. Such requests should: (1) Identify the product name and registration number and (2) specify the data or information desired.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: July 17, 1996.

Janet L. Andersen,

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 96–19077 Filed 7–30–96; 8:45 am]

BILLING CODE 6560–50–F

[OPP–64030; FRL 5383–7]

Cancellation of Pesticides for Non-Payment of 1996 Registration Maintenance Fees

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Since the amendments of October, 1988, the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) has required payment of an annual maintenance fee to keep pesticide registrations in effect. The fee due last January 15 has gone unpaid for about 1,126 registrations. Section 4(i)(5)(D) of FIFRA, provides that the Administrator may cancel these registrations by order and without a hearing; orders to cancel all but a few of them have been issued within the past few days. The Agency is deferring cancellation for certain of these registrations, however, to permit time for affected users to explore alternatives to cancellation directly with the registrants.

DATES: Reports of agreements to support continued registration or transfer of the registrations for which cancellation is being deferred must be received by October 29, 1996.

FOR FURTHER INFORMATION CONTACT: To report agreements to support continued registration of any of the products for which cancellation has been deferred, for instructions on payment of delinquent maintenance fees for these products, or for further information on the maintenance fee program in general, contact by mail: John Jamula, Office of Pesticide Programs (7502C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Room 226, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–6426; e-mail: jamula.john@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 4(i)(5) of FIFRA as amended in October, 1988, and again in December, 1991 requires that all pesticide registrants pay an annual registration maintenance fee, due by January 15 of each year, to keep their registrations in effect. This requirement applies to all registrations granted under section 3 as well as those granted under section 24(c) to meet special local needs. Registrations for which the fee is not paid are subject to cancellation by order and without a hearing.

The 1990 Farm Bill amended FIFRA to allow the Administrator to reduce or waive maintenance fees for minor agricultural use pesticides when she determines that the fee would be likely to cause significant impact on the availability of the pesticide for the use. The Agency has waived the fee for 63 minor agricultural use registrations at the request of the registrants.

In late November, 1995, all holders of either section 3 registrations or section 24(c) registrations were sent lists of their active registrations, along with forms and instructions for responding. They were asked to identify which of their registrations they wished to maintain in effect, and to calculate and remit the appropriate maintenance fees. Most responses were received by the statutory deadline of January 15. A notice of intent to cancel was sent in mid-March to companies who did not respond and to companies who responded, but paid for less than all of their registrations. Late payments of the fees were accepted until May 15, when the actual process of cancellation was begun.

Since mailing the notices, EPA has maintained a toll-free inquiry number through which the questions of affected registrants have been answered.Maintenance fees have been paid for about 16,493 section 3 registrations, or about 94 percent of the registrations on file in November. Fees have been paid for about 2,466 section 24(c) registrations, or about 86 percent of the total on file in November. Cancellations for non-payment of the maintenance fee affect about 812 section 3 registrations and about 314 section 24(c) registrations.

II. Product Cancellations not Affecting Status of Active Ingredient

In all cases but five section 3 registrations discussed in Section III below, the active ingredients will remain available in other registered products. We anticipate two types of impact for the bulk of these cancellations. First, some of these disappearing registrations will be survived in the market by substantially identical registrations. These substantially identical products may not, however, be readily available wherever a disappearing product was sold, so there may be local or regional disruptions while distribution patterns are adjusted. We expect these disruptions to be minor and temporary.

The cancellation orders generally permit registrants to continue to sell and distribute existing stocks of the canceled products until the due date for the next annual registration maintenance fee, January 15, 1997. Existing stocks already in the hands of dealers or users, however, can generally be distributed, sold or used legally until they are exhausted. Existing stocks are defined as those stocks of a registered pesticide product which are currently in the U.S. and which have been packaged, labeled and released for shipment prior to the effective date of the action.

The exceptions to these general rules are cases where more stringent restrictions on sale, distribution, or use of the products have already been imposed, through Special Reviews or other Agency actions. These general provisions for disposition of stocks should serve in most cases to cushion the impact of these cancellations while the market adjusts.

Second, in some cases unique non-agricultural uses will disappear, although the active ingredients will remain available for different uses in other products. When this situation occurs, there may be more serious impacts on users of the canceled products. Once again, existing stocks of the canceled products already in channels of trade will be usable to mitigate these impacts in the short term. For the longer term the mechanisms of section 3 amendments and 24(c) registrations will remain available to obtain replacement registrations.

Neither of these types of impact leaves users without the means to replace lost registrations; neither is considered to justify further deferral of cancellations for non-payment of the maintenance fee. Thus all these registrations for which the active ingredient will remain in other products have been canceled.

III. Cancellations Leading to Disappearance of Active Ingredients

A second type of impact arises if an active ingredient that is now or has recently been available in the marketplace disappears. The Agency believes there are five registered active ingredients in this category. Of these five active ingredients—none subject to prior regulatory action, and all likely to disappear as a consequence of these cancellations—one is a fungicide; one is a disinfectant; one is a microbiocide, and two are an insecticide. If the last section 3 registration for an ingredient disappears, the section 24(c) registration process cannot be used to bring back the canceled ingredient.

All active ingredients can potentially have registered uses which are critical minor uses. Determining whether a use is a critical minor use is a fact specific exercise that requires gathering substantial information and doing use and economic analyses, all of which would consume significant Agency resources. EPA has determined that high cost of conducting such analyses are not justified. Accordingly, the Agency has decided to defer cancellation in all instances of active ingredients that will disappear as a result of non-payment of maintenance fees. In this way the Agency can ensure that no critical minor use pesticides will be lost unnecessarily. In order to ensure that the public health and environment are not adversely affected by this policy, the Agency will not defer cancellations of products that the Agency has concerns that continued use may cause unreasonable adverse effects on the environment.

These five ingredients, grouped by these same general categories of use patterns, are listed along with the EPA Company Number of their registrants in the following Table 1.

TABLE 1. — ACTIVE INGREDIENTS WITH RECENT PRODUCTION PENDING CANCELLATION OF ALL PRODUCTS FOR NON-PAYMENT OF 1996 REGISTRATION MAINTENANCE FEES, IN SEQUENCE BY BROAD USE PATTERN

Chemical Name	Registration No.	Product Name
A. Fungicide:.		
Pseudomonas Fluorescens	055638–00005	Dagger G Biofungicide
EG1053	055638–00006	Dagger Manufacturing Concentrate
B. Disinfectant:.		
Octylphenoxypolyethoxy-ethanol - iodine complex.	010807–00105	REPCO Dyne Bowl Cleaner and Disinfectant
C. Microbiocide:.		
Cocoamine Acetate	010445–00019	X-2 Corrosion Inhibitor and Microbiocide
D. Insecticide:.		
Butoxycarboxim	035902–00001	Plant Pin
Sodium Carboxymethyl Cellulose	065262–00001	CELL-U-WET Insecticide

Because these active ingredients are likely to disappear with their product registration, the Agency has deferred for 90 days the cancellation of these 6 registrations. During that time those registrants or other affected persons may make arrangements to continue the registration.

We encourage individual users or user groups who are concerned about the potential loss of these active ingredients to work directly with the registrant identified by the first 6 digits of the Reg. No. in Table 1 to persuade them to continue to support the ingredient, or to identify third parties who would be willing to support the ingredient if the registration were transferred to them. The full names and addresses of current registrants appear in Table 2 below. We also encourage users to consult with the Cooperative Extension Service or other local sources to identify alternatives to these active ingredients.

If the fee is paid and the Agency is notified within 90 days of this notice at the address given above either (1) that the registrant will continue to support the registration, or (2) that an agreement has been reached to transfer the registration to another party, we will retain the registration in full active status. It should be emphasized, however, that any such registrations would still be subject to all requirements for reregistration, including reregistration fees (except as they may be reduced through the statutory provisions for small businesses or low volume uses).

TABLE 2. — REGISTRANTS OF SELECTED REGISTRATIONS PENDING CANCELLATION FOR NON-PAYMENT OF 1996 REGISTRATION MAINTENANCE FEE

EPA Company No.	Company Name & Address
010445	Calgon Corp., Calgon Center - P.O. Box 1346, Pittsburgh, PA 15230.
010807	AMREP Inc., 990 Industrial Dr., Marietta, GA 30062.
035902	Wacker Cheiie GMBH, HANNS-SEIDEL-PLATZ 4, D-81737 MUNICH.
055638	ECOGEN Inc., 2005 Cabot Blvd., West Langhorne, PA 19047.
065262	Creative Services Inc., 22 Bay Brook Lane, Oak Brook, IL 60521.

In addition to publishing this notice in the Federal Register, we are sending it directly to the States, to the U.S. Department of Agriculture, and to other parties who have previously expressed concern for minor uses. They should be receiving the notice at approximately the same time it is published. We hope that this extraordinary notification effort, and the deferral of cancellations for the most sensitive registrations, will serve to prevent any avoidable loss of critical minor use pesticides.

Because so many registrations are involved, it would be impractical to list those which have been canceled in this notice. Complete lists of registrations canceled for non-payment of the maintenance fee will, however, be available for reference during normal business hours in the OPP Public Docket, Room 1128, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington VA, and at each EPA Regional Office. Product-specific status inquiries may be made by telephone by calling toll-free 1–800–444–7255.

List of Subjects

Environmental protection, Agricultural commodities, Pesticides and pests.

Dated: July 15, 1996.

Daniel M. Barolo,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 96–19457 Filed 7–30–96; 8:45 am]

BILLING CODE 6560–50–F

[PF–664; FRL–5384–7]

Pesticide Tolerance Petition; Notice of Filing by AgrEvo USA Company

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of certain pesticide chemicals in or on various agricultural commodities.

DATES: Comments, identified by the docket number [PF–664], must be received on or before August 30, 1996.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA. Information submitted and any comment(s) concerning this notice may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment(s) that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. Information on the proposed test and any written comments will be available for public inspection in Rm. 1132 at the Virginia address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [PF–664]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Joanne Miller, Product Manager (PM) 23, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 237, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, 703–305–6224; e-mail: miller.joanne@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has received pesticide petition (PP) *5F4578* from the AgrEvo Company proposing to amend 40 CFR 180.473 by establishing tolerances for residues of the herbicide, glufosinate-ammonium: butanoic acid, 2-amino-4-(hydroxymethylphosphinyl)-, monoammonium salt and its metabolites: 2-acetamido-4-methylphosphinico-butanoic acid and 3-methylphosphinico-propionic acid expressed as glufosinate free acid equivalents in or on the following raw agricultaral commodities: field corn grain, at 0.2 parts per million (ppm), field corn forage, at 4.0 ppm, field corn fodder, at 6.0 ppm, soybeans, at 2.0 ppm, aspirated grain fractions, at 25.0 ppm, eggs, at 0.05 ppm, poultry, meat at 0.05 ppm, poultry, fat at 0.05 ppm, and poultry, mbyp (meat byproducts) at 0.10 ppm; and by establishing a maximum residue level for the same residues in or on the process commodity under section 701 of FFDCA: soybean hulls at 5.0 ppm.

A record has been established for this document under docket number [PF–664] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this document, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Authority: 7 U.S.C. 136a.

Dated: July 22, 1996.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 96–19332; Filed 7–30–96; 8:45 am]

BILLING CODE 6560–50–F

[PF–657A; FRL–5388–8]

Ciba-Geigy Coporation and ISK Biosciences Corporation; Notice of Filing of Pesticide Petitions, Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Correction.

SUMMARY: This notice corrects the initial filing of a pesticide petition from Ciba-Geigy Corporation (PP 6F4715) proposing to establish a tolerance for residues of the insecticide methidathion:*O,O*-dimethyl phosphorodithioate, *s*-ester with 4-(mercaptomethyl)-2-methoxy-1,3,4-thiadiazolin-5-one in or on the raw agricultural commodity grapes at 0.05 ppm and on pistachios at 0.05 ppm.

FOR FURTHER INFORMATION CONTACT: By mail: Dennis Edwards, Product Manager (PM) 19, Registration Division, (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 237, CM #2, 2801 Jefferson Davis Highway, Arlington, VA 22202, 703–305–6386; e-mail: edwards.dennis@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA announced in the Federal Register of June 28, 1996 (61 FR 33738) (FRL–5378–4) the receipt of a pesticide petition (PP) 6F4715 from Ciba-Geigy Corporation proposing the establishment of regulations for residues of the insecticide methidathion:*O,O*-dimethyl phosphorodithioate, *s*-ester with 4-(mercaptomethyl)-2-methoxy-1,3,4-thiadiazolin-5-one in or on the raw agricultural commodity grapes at 0.05 ppm and on pistachios at 0.05 ppm. The CFR section referenced in the notice of filing inadvertently referenced § 180.472 as the CFR section that would be amended to established this tolerance. This notice corrects that reference as follows:

In FR Doc. 96–16391, in the issue for Friday, June 28, 1996, at page 33738, the second column, in the description for pesticide petition PP 6F4715 for Ciba-Geigy Corporation, the reference to 40 CFR 180.472 is corrected to read 40 CFR 180.298.

List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 23, 1996.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 96–19453; Filed 7–30–96; 8:45 am]

BILLING CODE 6560–50–F

[PF–659; FRL–5378–9]

Rhone Poulenc Ag Company; Notice of Initial Filing of Pesticide Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces an initial filing of a pesticide petition and of a food/feed additive petition by Rhone Poulenc Ag Company of 2 T. W. Alexander Drive, in Research Triangle Park, NC for cyclanilide, a plant growth regulator used to aid in the harvest of cotton.

DATES: Comments, identified by the docket number PF–659, must be received on or before August 30, 1996.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA. Information submitted and any comment(s) concerning this notice may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment(s) that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. Information on the proposed test and any written comments will be available for public inspection in Rm. 1132 at the Virginia address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [PF–659]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Cynthia Giles-Parker, Product Manager (PM) 22, Registration Division, (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 247, CM #2, 2801 Jefferson Davis Highway, Arlington, VA 22202, 703–305–5540; e-mail: giles-parker.cynthia@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: *PP 6F4643 and FAP 6H5744*. Rhone Poulenc Ag Company, 2 T. W. Alexander Drive, Research Triangle Park, NC 27709, proposes to amend 40 CFR parts 180 and 186 by establishing a tolerance regulation and a feed additive tolerance to permit (2,4-dichlorophenylaminocarbonyl)-cyclopropanecarboxylic acid, and its metabolite 2,4-dichloroaniline in or on cottonseed at 0.75 part per million (ppm), milk at 0.03 ppm, liver of beef cattle, goat and sheep at 0.25 ppm, kidney of beef cattle, goat and sheep at 2.5 ppm, fat of beef cattle, goat and sheep at 0.07 ppm, meat byproducts of beef cattle, goat and sheep at 2.5 ppm, organ meats of beef cattle, goat and sheep at 2.5 ppm, lean (fat free) meat of beef cattle, goats and sheep at 0.03 ppm, horse meat at 0.03 ppm, and cotton gin trash at 25 ppm.

Scientific data and related documents cited by Rhone-Poulenc Ag Company in support of the petition inlcude:

1. A rat acute oral study with an LD_{50} of 315 mg/kg (male) and 208 mg/kg (female).

2. A rabbit acute dermal LD50 of > 2,000 mg/kg.

3. A rat acute inhalation LD50 of > 2.6 mg/L.

4. A primary eye irritation in the rabbit which showed a severe, but reversible reaction.

5. A primary dermal irritation study which showed slight irritation.

6. A dermal sensitization study which showed no sensitization.

7. An acute neurotoxicity study using dosage levels of 15, 50, 150 mg/kg by gavage with a NOEL of 50 mg/kg and no neuropathological findings at any dose.

8. A 28 day feeding study in the rat using dosage levels of 30, 100, 300, 1,000 and 3,000 with a NOEL of 1,000 ppm.

9. A 90 day feeding study in the rat with doses of 400, 800 and 1,600 ppm with a NOEL of 400 ppm.

10. A 21 day dermal toxicity in the rabbit study with a NOEL at > 1,000 mg/kg/day.

11. A 90 day subchronic oral toxicity study in the mouse with doses at 40, 200, 2,000 and 4,000 ppm and a NOEL of 200 ppm. At 2,000 and 4,000 ppm forestomach irritation, focal hepatocellular necrosis, increased serum alkaline phosphatase, increased liver weight, transient increase in body tone and some mortalities were observed.

12. A 90 day subchronic neurotoxicity study in the rat using dosage levels of 50, 450 and 1,200 ppm in the diet with a neurotoxicity NOEL of 1,200 ppm and an overall NOEL of 50 ppm with decreased body weight at 450 and 1,200 ppm. No histopathological effects on the peripheral or central nervous system were observed.

13. A 24 month chronic feeding/oncogenicity study in the rat with doses at 50, 150, 450 and 1,000 ppm showing a NOEL of 150 ppm and no evidence of an oncogenic response.

14. A 12 month feeding study in the dog with doses of 40, 160 and 640 ppm with a NOEL of 160 ppm. At 640 ppm, decreased body weight and decreased weight gain occurred with increased serum alanine aminotransferase and aspartate aminotransferase.

15. A mouse oncogenicity study using dosage levels at 0, 50, 250, 1,000 ppm with a NOEL of 250 ppm and no evidence of oncogenicity.

16. A teratogenicity study in the rat with doses at 3, 10 and 30 mg/kg by gavage with a maternal NOEL of 10 mg/kg/day (decreased body weight) and fetal NOEL of > 30 mg/kg/day.

17. A teratogenicity study in the rabbit with doses at 3, 10 and 30 mg/kg by gavage with a maternal NOEL of 10 mg/kg/day (decreased body weight, wobbly gait) and fetal NOEL of > 30 mg/kg/day.

18. A two-generation reproductive study in the rat with doses at 30, 300 and 1,000 ppm with a NOEL of 1,000 ppm for reproductive parameters. Decreased body weight at 300 and 1,000 ppm was observed with minimal increased mineralization of kidney papilla of F1 adult offspring with no apparent physiological effect.

19. A Modified Ames Test: Negative; HGPRT (CHO): Negative; Mouse Micronucleus: Negative.

20. A chromosomal aberration *in vitro* (CHO): Positive (These results were not reproduced in the *in vivo* test.)

21. Dermal penetration: with absorption of ≤ 4.24 percent after exposure to doses ≤ 5.16 mg/animal, (0.413 mg/cm²) for 10 hours.

The residue chemistry data submitted in support of the cyclanilide tolerance include:

22. A common moiety analytical method was submitted for enforcement purposes. This method hydrolyzes cyclanilide to 2,4-dichloroanaline with subsequent conversion to *N*-(2,4-dichlorophenyl)-2-chloropropylamide.

23. A description of the metabolism of cyclanilide in animal and plants. Metabolism in mature cotton plants is minimal. Esterification, cyclopropane ring cleavage, dechlorination and hydrolysis of the amide are the primary routes of metabolism in soil and rotational crops. Cyclanilide was rapidly excreted in rat, hen and goat studies. Very low residue levels were found in animal tissues at sacrifice. In the rat, cyclanilide was metabolized by conjugation or methylation. Cyclanilide did not undergo metabolism in the goat or hen.

24. Proposed tolerances, based on analyses performed using the common moiety method. Proposed tolerances are: cottonseed 0.75 ppm, gin trash 25.0 ppm, dairy cattle milk 0.03 ppm, and for beef cattle, goat and sheep: liver 0.25 ppm, kidney 2.5 ppm, fat 0.07 ppm, meat byproducts, 2.5 ppm, organ meats 2.5 ppm, lean (fat/free) 0.03 ppm and horse 0.03 ppm.

25. Dietary Exposure Margin of Safety Calculations. Levels of cyclanilide residues in cotton were: cotton seed meal < 0.05 ppm, crude cotton seed oil < 0.05 ppm, refined cotton seed oil < 0.05 ppm and cotton seed hulls 0.06 to 0.13 ppm. The proposed tolerance for cyclanlide is 0.75 ppm. The rat reproduction study defined the LOEL to be 30 ppm or 1.5 mg/kg/day (for a non reproductive end point). Assuming a 300X safety factor, the RfD would be 0.005 mg/kg/day. In a worse case scenario, assuming that cyclanilide is used on 100 percent of US cotton and assuming that residues on all treated cotton are at the proposed tolerance level of 0.75 ppm, the US population would be exposed to 6.2 percent and children 1 to 6 years would be exposed to 19.9 percent of the RfD. Under more realistic conditions assuming 45 percent market share and anticipated residue levels, the US population would be exposed to 0.4 percent and children 1 to 6 years would be exposed to 1.4 percent of the RfD. Both exposure scenarios demonstrate a margin of exposure well below 100 percent.

A record has been established for this document under docket number [PF–659] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-Docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this document, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

List of subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Authority: 7 U.S.C. 136a.

Dated: July 16, 1996.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 96–19081; Filed 7–30–96; 8:45 am]

BILLING CODE 6560–50–F

[OPP–181020; FRL 5387–3]

Carbofuran; Receipt of Application for Emergency Exemption, Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Missouri Department of Agriculture (hereafter referred to as the ''Applicant'') to use the pesticide flowable Carbofuran (Furadan 4F Insecticide/Nematicide) (EPA Reg. No. 279–2876) to treat up to 100,000 acres of cotton to control cotton aphids. The Applicant proposes the use of a chemical which has been the subject of a Special Review within EPA's Office of Pesticide Programs, and the proposed use could pose a risk similar to the risk assessed by EPA under the Special Review of granular carbofuran. 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 15, 1996.

ADDRESSES: Three copies of written comments, bearing the identification notation ''OPP–181020,'' 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–181020]. 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: David Deegan, 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) 308–8327; e-mail: deegan.dave@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 a specific exemption for the use of carbofuran on cotton to control aphids.

Information in accordance with 40 CFR part 166 was submitted as part of this request. As part of this request, the Applicant asserts that the state of Missouri is likely to experience a non-routine infestation of aphids during the 1996 cotton growing season. The applicant further claims that, without a specific exemption of FIFRA for the use of flowable carbofuran on cotton to control cotton aphids, cotton growers in much of the state will suffer significant economic losses. The applicant also details a use program designed to minimize risks to pesticide handlers and applicators, non-target organisms (both Federally-listed endangered species, and non-listed species), and to reduce the possibility of drift and runoff.

The applicant proposes to make no more than one application on older cotton (bloom to finish) at the rate of 0.25 lb. active ingredient (a.i.) [(8.0 fluid oz.)] in a minimum of 2 gallons of finished spray per acre by air, or 10 gallons of finished spray per acre by ground application. The total maximum proposed use during the 1996 growing season (July 10, 1996 until September 30, 1996) in Missouri would be 0.25 lb. a.i., (16 fluid oz.) per acre. The applicant proposes that the maximum acreage which could be treated under the requested exemption would be 100,000 acres. If all acres were treated at the proposed rate, then 25,000 lbs. a.i., (6,250 gallons Furadan 4F Insecticide/Nematicide) would be used.

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 chemical (i.e., an active ingredient) which has been the subject of a Special Review within EPA's Office of Pesticide Programs, and the proposed use could pose a risk similar to the risk assessed by EPA under the previous Special Review. Such notice provides for opportunity for public comment on the application.

A record has been established for this notice under docket number [OPP–181020] (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 exemption requested by the Missouri Department of Agriculture.

List of Subjects

Environmental protection, Pesticides and pests, Emergency exemptions.

Dated: July 23, 1996.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 96–19459 Filed 7–30–96; 8:45 am]

BILLING CODE 6560–50–F

[OPP–181017; FRL–5384–3]

Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted specific exemptions for the control of various pests to 20 States listed below. Four crisis exemptions were initiated by various States. These exemptions, issued during the month of May 1996, except for the one in April 1996, are subject to application and timing restrictions and reporting requirements designed to protect the environment to the maximum extent possible. EPA has denied a specific exemption request from the Idaho, Michigan, and Montana Departments of Agriculture. Information on these restrictions is available from the contact persons in EPA listed below.

DATES: See each specific and crisis, exemptions for its effective date.

FOR FURTHER INFORMATION CONTACT: See each emergency exemption for the name of the contact person. The following information applies to all contact persons: By mail: Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 6th Floor, CS 1B1, 2800 Jefferson Davis Highway, Arlington, VA (703–308–8417); e-mail: group.ermus@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has granted specific exemptions to the:

1. Arkansas State Plant Board for the use of imidacloprid on spinach to control the green peach aphid; May 2, 1996, to May 20, 1996. (Margarita Collantes)

2. Arkansas State Plant Board for the use of cypermethrin on mustard greens and kale to control the various insects; May 17, 1996, to November 15, 1996. (Libby Pemberton)

3. Colorado and Oklahoma Departments of Agriculture for the use of propazine on sorghum to control weeds; May 23, 1996, to August 1, 1996. A notice published in the Federal Register of April 17, 1996 (61 FR 16785; FRL–5362–4). For the past 3 years an emergency exemption has been requested and a complete application

for registration has not been submitted to the Agency. Additionally, propazine is an unregistered chemical. The situation appears to be urgent and nonroutine; with significant economic loss anticipated the benefits from this individual use should outweigh the risks. (Andrea Beard)

4. Florida Department of Agriculture and Consumer Services for the use of tebufenozide on cotton to control the beet armyworms; May 29, 1996, to October 31, 1996. (Margarita Collantes)

5. Florida Department of Agriculture and Consumer Services for the use of Pirate on cotton to control the beet armyworm and tobacco budworm; May 29, 1996, to October 31, 1996. (Margarita Collantes)

6. Florida Department of Agriculture and Consumer Services for the use of imidacloprid on citrus to control brown citrus aphid; May 3, 1996, to May 2, 1997. (Dave Deegan)

7. Florida Department of Agriculture and Consumer Services for the use of imidacloprid on citrus to control citrus leafminer; May 3, 1996, to May 2, 1997. (Dave Deegan)

8. Idaho and Washington Departments of Agriculture for the use of pirimicarb on alfalfa grown for seed to control aphids and lygus bugs; May 14, 1996, to August 31, 1996. A notice published in the Federal Register of April 24, 1996 (61 FR 18141; FRL–5362–3). Pirimicarb is the only known pesticide that provides control of aphids and lygus bugs without inflicting harm to Native Bee population following application. (Margarita Collantes)

9. Kentucky and North Carolina Departments of Agriculture for the use of dimethomorph on tobacco to control blue mold; May 31, 1996, to May 31, 1997. A notice published in the Federal Register of March 27, 1996 (61 FR 13493; FRL–5356–8). The situation appears to be urgent and nonroutine; use can be toxicologically supported. The uses are not expected to result in hazard to nontarget organisms or surface and groundwater based on information currently available. (Libby Pemberton)

10. Michigan Department of Agriculture for the use of chlorothalonil on asparagus to control purple spot; May 14, 1996, to November 1, 1996. (Dave Deegan)

11. Michigan Department of Agriculture for the use of vincozolin on snap beans to control gray and white mold; May 23, 1996, to October 31, 1996. (Libby Pemberton)

12. Minnesota Department of Agriculture for the use of 2,4-D on wild rice to control water plantain; April 19, 1996, to July 31, 1996. (Margarita Collantes)

13. Missouri Department of Agriculture for the use of propamocarb hydrochloride on potatoes to control late blight; May 28, 1996, to May 27, 1997. (Libby Pemberton)

14. New Mexico Department of Agriculture for the use of tebufenozide on cotton to control beet armyworms; May 29, 1996, to September 30, 1996. (Margarita Collantes)

15. New York Department of Environmental Conservation for the use of vinclozolin on snap beans to control gray and white mold; May 23, 1996, to September 30, 1996. (Libby Pemberton)

16. Oklahoma Department of Agriculture for the use of cypermethrin on mustard greens and kale to control various insects; May 17, 1996, to November 15, 1996. (Libby Pemberton)

17. Oklahoma Department of Agriculture for the use of imidacloprid on spinach to control green peach aphid; May 2, 1996, to May 20, 1996. (Margarita Collantes)

18. Oregon Department of Agriculture for the use of vinclozolin on snap beans to control gray and white mold; May 23, 1996, to October 31, 1996. (Libby Pemberton)

19. Pennsylvania Department of Agriculture for the use of dimethomorph on tobacco to control blue mold; May 31, 1996, to May 31, 1997. (Libby Pemberton)

20. Pennsylvania Department of Agriculture for the use of vinclozolin on snap beans to control gray and white mold; May 23, 1996, to October 31, 1996. (Libby Pemberton)

21. South Carolina Department of Fertilizer and Pesticide Control for the use of dimethomorph on tobacco to control blue mold; May 31, 1996, to May 31, 1997. (Libby Pemberton)

22. Tennessee Department of Agriculture for the use of cypermethrin on mustard greens and kale to control various insects; May 17, 1996, to November 15, 1996. (Libby Pemberton)

23. Tennessee Department of Agriculture for the use of dimethomorph on tobacco to control blue mold; May 31, 1996, to May 31, 1997. (Libby Pemberton)

24. Virginia Department of Agriculture and Consumer Services for the use of dimethomorph on tobacco to control blue mold; May 31, 1996, to May 31, 1997. (Libby Pemberton)

25. Washington Department of Agriculture for the use of pirimicarb on vegetables grown for seed to control aphids; May 24, 1996, to September 14, 1996. (Margarita Collantes)

26. West Virginia Department of Agriculture for the use of dimethomorph on tobacco to control blue mold; May 31, 1996, to May 31, 1997. (Libby Pemberton)

27. Wisconsin Department of Agriculture, Trade, and Consumer Protection for the use of sodium bentazon on succulent peas to control Canada thistle; May 17,1996 to July 15, 1996. (Andrea Beard)

Crisis exemptions were initiated by the:

1. Colorado Department of Agriculture on May 24, 1996, for the use of chlorpyrifos on barley to control the Russian wheat aphid. This program has ended. (Andrea Beard)

2. Montana Department of Agriculture on May 30, 1996, for the use of chlorpyrifos on barley to control the cereal leaf beetle. This program has ended. (Andrea Beard)

3. North Dakota Department of Agriculture on May 1, 1996, for the use of carboxin on lentils to control ascochyta blight. This program has ended. (Andrea Beard)

4. North Dakota Department of Agriculture on May 1, 1996, for the use of thiabendazole on lentils to control ascochyta blight. This program has ended. (Andrea Beard)

EPA has denied a specific exemption request from the:

1. Idaho and Montana Departments of Agriculture for the use of tralkoxydim on wheat, barley, and small grains to control wild oats. The Agency denied the exemption because the situation does not appear to be urgent and significant economic losses will not occur, since weeds can be controlled by the registered alternative diclofep-methyl. (Margarita Collantes)

2. Michigan Department of Agriculture for the use of fosetyl-al on blueberries to control fruit and root rot. The Agency denied the exemption because although crop losses of up to 20% to 30% have been reported, Michigan failed to document abnormal fluctuations in disease of the environment, any historical crop loss data relating to the specific problem, or evidence of non-efficacious registered alternatives, captan and benomyl's, comparative performance. (Margarita Collantes)

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Crisis exemptions.

Dated: July 19, 1996.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 96–19083 Filed 7–30–96; 8:45 am]

BILLING CODE 6560–50–F

[OPP–181019; FRL 5386–4]

Pyridaben; Receipt of Application for Emergency Exemption, Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Delaware State Department of Agriculture (hereafter referred to as the ''Applicant'') for use of the pesticide pyridaben, [2-tert-butyl-5-(4-tert-butylbenzylthio)-4-chloropyridazin-3-(2*H*)-one], CAS number 96489–71–3 to control European red mite and two-spotted spider mite on up to 800 acres of apples. The Applicant proposes the first food use of an active ingredient; 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 15, 1996.

ADDRESSES: Three copies of written comments, bearing the identification notation ''OPP–181019,'' should be submitted by mail 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. 1128, 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–181019]. 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: Pat Cimino, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 6th Floor, Crystal Station #1, 2800 Jefferson Davis Highway, Arlington, VA, (703) 308–8328; e-mail: cimino.pat@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 Applicants have requested the Administrator to issue a specific exemption for the use of the miticide pyramite which contains the registered active ingredient, pyridaben, to control European red mite and two-spotted spider mite on up to 800 acres of apples in Delaware. Information in accordance with 40 CFR part 166 was submitted as part of this request.

The Applicant states that European red mite is the most important acarine pest of apples in Delaware and neighboring states. Populations of European red mite and two-spotted spider mite build up during the growing season and are aggravated by hot, dry weather. Mites feed on apple leaves and can cause fruit size and color reduction and debilitation of tree health resulting in decreased yields in subsequent years. The primary cause of the emergency condition is the voluntary withdrawal of the use of propargite (Omite) on apples by Uniroyal Corporation. Propargite was the primary miticide of choice for mid to late season mite control because of its fit into Delaware Apple Integrated Pest Management (IPM) systems. Propargite was cost effective, efficacious, did not have mite resistance problems and fit well into IPM systems because it did not adversely impact mite predators. The applicant indicates that alternative, registered miticides are not recommended because either mite populations have developed resistance to them and/or they adversely impact mite predator populations and disrupt IPM apple systems.

This is the first year that the Applicant has requested this pesticide for any use. Delaware has approximately 800 acres of apples in production all of which are subject to mite infestations. Applications of pyramite would be made to apples via ground application methods (dilute or airblast sprayers) between July and early September 1996. Application rates range from 4.4 – 6.6 ounces formulated product/acre for European red mite control and 6.6 – 13.2 ounces formulated product/acre for two-spotted spider mite control. The use of pyramite is limited to 2 complete applications per acre per year (this includes 4 split applications using alternate row middle spray methods) and will not exceed 26.4 ounces of formulated product per acre per year.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require that the Agency publish notice of receipt in the Federal Register and solicit public comment on an application for a specific exemption if an emergency exemption proposes use of a new chemical (40 CFR 166.24).

A record has been established for this notice under docket number [OPP–181019] (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 exemption requested by the Delaware State Department of Agriculture.

List of Subjects

Environmental protection, Pesticides and pests, Emergency exemptions.

Dated: July 16, 1996.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 96–19079 Filed 7–30–96; 8:45 am]

BILLING CODE 6560–50–F

[PF–663; FRL–5384–6]

Pesticide Tolerance Petitions; Notice of Filings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filings of pesticide petitions (PP) and proposing the establishment of regulations for residues of certain pesticide chemicals in or on various agricultural commodities.

DATES: Comments, identified by the docket number [PF–663], must be received on or before August 30, 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. Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [PF–663]. 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 as a comment concerning this document may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, contact the PM named in each petition at the following office location/telephone number:

Product Manager	Office location/telephone number/email	Address
George LaRocca (PM 13).	Rm. 204, CM #2, 703–305–6100, e-mail: larocca.george@epamail.epa.gov.	1921 Jefferson Davis Hwy, Arlington, VA
Connie Welch (PM 21)	Rm. 227, CM #2, 703–305–6226, e-mail: welch.connie@epamail.epa.gov.	Do.

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions as follows proposing the amendment of regulations for residues of certain pesticide chemicals in or on various agricultural commodities.

Initial Filings

1. *PP 6F4738.* Gowan, P.O. Box 5569, Yuma, AZ 85366-5569, proposes to amend 40 CFR 180.448 by establishing tolerances for the combined residues of the acaricide hexythiazox, *trans*-5-(4-chlorophenyl)-*N*-cyclohexyl-4-methyl-2-oxothiazolidine-3-carboxamide and its metabolites containing the (4-chlorophenyl)-4-methyl-2-oxo-3-thiazolidine moiety (expressed as parts per million of the parent compound) in or on the following commodities: milk, at 0.05 parts per million (ppm), cattle, meat and cattle, fat at 0.05 ppm, cattle, mbyp (meat byproducts) at 0.1, almonds, nutmeat at 0.2 ppm, stone fruits (except plums) at 1 ppm and almonds, hulls at 10 ppm. (PM-13)

2. *PP 6F4707.* AgrEvo USA Company, 2711 Centerville Road, Wilmington, DE 19808, proposes to amend 40 CFR part 180 by establishing a tolerance for the combined residues of the fungicide Propamocarb Hydrochloride (propyl [3-(dimethylamino)propyl] carbamate hydrochloride) and its metabolites, determined as propamocarb free base (propyl [3-(dimethylamino)propyl] carbamate) in or on potatoes, meat, and milk raw agricultural commodities at 0.05 ppm. The analytical method for determining residues is by N-FID/GLC or MSD/GLC. (PM-21)

A record has been established for this notice under docket number [PF–663] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Authority: 7 U.S.C. 136a.

Dated: July 16, 1996.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 96–19080 Filed 7–30–96; 8:45 am]

BILLING CODE 6560–50–F

[PP 5G4495 and 6E4709/T695; FRL 5382–5]

Monsanto Agricultural Company; Establishment of Exemptions from Requirement of Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established exemptions from the requirement of tolerances for the combined residues of the plant pesticide *Bacillus thuringiensis* CryIA(b) delta-endotoxin and the genetic material necessary for its production and for the plant pesticide inert ingredient CP4 EPSPS protein and its regulatory regions in or on certain raw agricultural commodities.

DATES: These temporary exemptions from the requirement of tolerances expire April 25, 1997.

FOR FURTHER INFORMATION CONTACT: By mail: Michael Mendelsohn, Biopesticides and Pollution Prevention Division (7501W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. Crystal Station, 5th Fl., 2800 Crystal Drive, Arlington, VA, (703) 308–8712; e-mail: mendelsohn.mike@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Monsanto Agricultural Company, 700 Chesterfield Parkway North, St. Louis, MO 63198, has requested in pesticide petitions (PP) 5G4495 and 6E4709 the establishment of exemptions from the requirement of tolerances in or on certain raw agricultural commodities as follows:

1. Pesticide petition (PP) 5G4495 has established an exemption from the requirement of a tolerance for the combined residues of the plant pesticide *Bacillus thuringiensis* CryIA(b) delta-endotoxin and the genetic material necessary for its production in corn, when used as a plant pesticide in all raw agricultural commodities of field corn, sweet corn, and popcorn.

2. Pesticide petition (PP) 6E4709 has established an exemption from the requirement of a tolerance for the combined residues of the plant pesticide inert ingredient CP4 EPSPS protein and the genetic material necessary for its production in corn when used as a plant pesticide inert ingredient in all raw agricultural commodities of field corn, sweet corn, and popcorn.

These temporary exemptions from the requirement of tolerances will permit the marketing of the above raw agricultural commodities when treated in accordance with the provisions of experimental use permit 524–EUP–82, which is being issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (Pub. L. 95–396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that exemptions from the requirement of tolerances will protect the public health. Therefore, the temporary exemptions from the requirement of tolerances have been established on the condition that the pesticides be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredients to be use must not exceed the quantity authorized by the experimental use permit.

2. Monsanto Agricultural Company must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These temporary exemptions from the requirement of tolerances expire April 25, 1997. Residues remaining in or on all raw agricultural commodities after this expiration date will not be considered actionable if the pesticides are legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary exemptions from the requirement of tolerances. These temporary exemptions from the requirement of tolerances may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirement of section 3 of Executive Order 12866.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

Authority: 21 U.S.C. 346a(j).

List of Subjects

Environmental protection, Administative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 18, 1996.

Janet L. Andersen,

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 96–19456; Filed 7–30–96; 8:45 am]

BILLING CODE 6560–50–F

[PP 4G4409 and 5E4551/T694; FRL 5382–4]

Northrup King Corporation; Extension of Exemptions from Requirement of Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has extended exemptions from the requirement of tolerances for the combined residues of the plant pesticide *Bacillus thuringiensis* CryIA(b) delta-endotoxin and the genetic material necessary for its production (plasmid vector pZ01502) and for the plant pesticide inert ingredient *phosphinothricin acetyltransferase* and the genetic material necessary for its production (plasmid vector pZ01502) in or on certain raw agricultural commodities.

DATES: These temporary exemptions from the requirement of tolerances expire April 17, 1997.

FOR FURTHER INFORMATION CONTACT: By mail: Michael Mendelsohn, Biopesticides and Pollution Prevention Division (7501W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. Crystal Station, 5th Fl., 2800 Crystal Drive, Arlington, VA, (703) 308–8712; e-mail: mendelsohn.mike@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a notice, which was published in the Federal Register of February 14, 1996 (61 FR 5772), announcing the establishment of exemptions from the requirement of tolerances in or on certain raw agricultural commodities as follows:

1. Pesticide petition (PP) 4G4409 has extended an exemption from the requirement of a tolerance for the combined residues of the plant pesticide *Bacillus thuringiensis* CryIA(b) delta-endotoxin and the genetic material necessary for its production (plasmid vector pZ01502) in corn, when used as a plant pesticide in all raw agricultural commodities of field corn, sweet corn, and popcorn.

2. Pesticide petition(PP) 5E4551 has extended an exemption from the requirement of a tolerance for the combined residues of the plant pesticide inert ingredient *phosphinothricin acetyltransferase* and the genetic material necessary for its production (plasmid vector pZ01502) in corn, when used as a plant pesticide inert ingredient in all raw agricultural commodities of field corn, sweet corn, and popcorn. These tolerances were issued in response to pesticide petitions (PP) 4G4409 and 5E4551, submitted by Northrup King Corporation, 7500 Olson Memorial Hwy., Golden Valley, MN 55427.

These temporary exemptions from the requirement of tolerances have been extended to permit the continued marketing of the above raw agricultural commodities when treated in accordance with the provisions of experimental use permit 67979–EUP–1, which is being extended under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (Pub. L. 95–396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that the extension from the requirement of tolerances will protect the public health. Therefore, the temporary exemptions from the requirement of tolerances have been extended on the condition that the pesticides be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredients to be use must not exceed the quantity authorized by the experimental use permit.

2. Northrup King Corporation must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These temporary exemptions from the requirement of tolerances expire April 17, 1997. Residues remaining in or on the above raw agricultural commodities after this expiration date will not be considered actionable if the pesticides are legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary exemptions from the requirement of tolerances. These temporary exemptions from the requirement of tolerances may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirement of section 3 of Executive Order 12866.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

Authority: 21 U.S.C. 346a(j).

List of Subjects

Environmental protection, Administative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 18, 1996.

Janet L. Andersen,

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 96–19454; Filed 7–30–96; 8:45 am]

BILLING CODE 6560–50–F

[PP 9G3774/T699; FRL 5387–1]

Tralomethrin; Establishment of Temporary Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established temporary tolerances for residues of the insecticide tralomethrin in or on certain raw agricultural commodities. These temporary tolerances were requested by AgrEvo USA Company.

DATES: These temporary tolerances expire June 1, 1997.

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. 202, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–6100; e-mail: larocca.george@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: AgrEvo USA Co., Little Falls Center One, 2711 Centerville Rd., Wilmington, DE 19808, has requested in pesticide petition (PP) 9G3774, the establishment of temporary tolerances for residues of the insecticide tralomethrin (1*R*, 3*S*) 3 [(1' *RS*) (1' ,2' ,2' ,2'-tetrabrp, petju;)]-2, 2-dimethylcyclopropanecarboxylic acid (*s*)-α-cyano-3-phenoxybenzyl ester in or on the raw agricultural commodities tomato at 0.20 parts per million (ppm); fat of cattle, goats, hogs, horses, and sheep at 0.10 ppm; meat of cattle, goats, hogs, horses, and sheep at 0.01 ppm; meat byproducts of cattle, goats, hogs, horses, sheep at 0.01 ppm and milk at 0.02 ppm, and a food/feed additive petition is being established for tomato products (puree) at 1.0 ppm; tomato pomace (wet) at 1.50 ppm, and tomato pomace (dry) at 4.0 ppm. These temporary tolerances will permit the marketing of the above raw agricultural commodities when treated in accordance with the provisions of the experimental use permit 34147-EUP-2, which is being issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (Pub. L. 95–396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that establishment of the temporary tolerances will protect the public health. Therefore, the temporary tolerances have been established on the condition that the insecticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. AgrEvo USA Co., must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized

officer or employee of the EPA or the Food and Drug Administration.

These tolerances expire June 1, 1997. Residues not in excess of these amounts remaining in or on the raw agricultural commodities after this expiration date will not be considered actionable if the insecticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerances. These tolerances may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this insecticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirement of section 3 of Executive Order 12866.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

Authority: 21 U.S.C. 346a(j).

List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 22, 1996.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 96–19329 Filed 7–30–96; 8:45 am]

BILLING CODE 6560–50–F

[PP 3G4256/T698; FRL 5386–9]

Tralomethrin and its Metabolites; Establishment of Temporary Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established temporary tolerances for residues of the combined insecticide tralomethrin and its metabolites in or on certain raw agricultural commodities. These temporary tolerances were requested by AgrEvo USA Company.

DATES: These temporary tolerances expire June 1, 1997.

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. 202, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–6100; e-mail: larocca.george@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: AgrEvo USA Co., Little Falls Center One, 2711 Centerville Rd., Wilmington, DE 19808, has requested in pesticide petition (PP) 3G4256, the establishment of temporary tolerances for residues of the combined insecticide tralomethrin (1*R*, 3*S*) 3 [(1'*RS*) (1', 2', 2', 2'-tetrabromoethyl)]-2, 2-dimethylcyclopropanecarboxylic acid (*s*)-α-cyano-3-phenoxybenzyl ester and its metabolites *cis-deltamethrin* (*S*)-alpha-cyano-3-phenoxybenzyl (1*R*, 3*R*)-3-(2, 2-dibromovinyl)-2, 2-dimethylcyclopranecarboxylate] and *trans-deltamethrin [(S)*-alpha-cyano-3-phenoxybenzyl (1*S*, 3*R*)-3-(2, 2-dibromovinyl)-2, 2-dimethylcyclopropanedcarboxylate in or on the raw agricultural commodities sorghum grain at 0.5 part per million (ppm); sorghum fodder at 1.0 ppm and sorghum forage at 0.5 ppm. These temporary tolerances will permit the marketing of the above raw agricultural commodities when treated in accordance with the provisions of the experimental use permit 34147-EUP-6, which is being issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (Pub. L. 95–396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that establishment of the temporary tolerances will protect the public health. Therefore, the temporary tolerances have been established on the condition that the insecticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. AgrEvo USA Co., must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These tolerances expire June 1, 1997. Residues not in excess of these amounts remaining in or on the raw agricultural commodities after this expiration date will not be considered actionable if the insecticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerances. These tolerances may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this insecticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirement of section 3 of Executive Order 12866.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

Authority: 21 U.S.C. 346a(j).

List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 22, 1996.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 96–19328 Filed 7–30–96; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collections Being Reviewed by the Federal Communications Commission

July 26, 1996.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it

displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarify of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comment on this information collection should submit comments September 30, 1996.

ADDRESSES: Direct all comments to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M St., N.W., Washington, DC 20554 or via internet to dconway@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Dorothy Conway at 202–418–0217 or via internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval No.: None.

Title: 47 CFR Section 64.1510—Billing Disclosure Requirements for Pay-Per Call and Other Information Services.

Form No.: N/A.

Type of Review: New Collection.

Respondents: Businesses or other for profit, including small businesses.

Number of Respondents: 1,350.

Estimated Hour Per Response: 40 hours per response (avg.).

Total Annual Burden: 54,000.

Needs and Uses: 47 CFR 64.1510 imposes requirements on common carriers that bill telephone subscribers for pay-per-call and other information services. The requirements are intended to ensure that consumers understand their rights and responsibilities with respect to these services.

OMB Approval No.: None.

Title: 47 CFR 64.1504—Disclosure Requirements for Information Services Provided Through Toll-Free Numbers.

Form No.: N/A.

Type of Review: New Collection.

Respondents: Businesses or other for profit, including small businesses.

Number of Respondents: 3750.

Estimate Hour Per Response: 2.8 Hours (avg.).

Total Annual Burden: 10,500.

Needs and Uses: 47 CFR 64.1504 imposes disclosure requirements on entities that use toll-free numbers to provide information services. The requirements are intended to ensure that callers to toll-free numbers are (1) informed if charges will be levied and (2) receive the information necessary to make an informed decision whether to purchase an information service.

OMB Approval No.: None.

Title: 47 CFR 64.1509—Disclosure and Dissemination of Pay-Per-Call Information.

Form No.: N/A.

Type of Review: New Collection.

Respondents: Businesses or other for profit, including small businesses.

Number of Respondents: 25.

Estimate Hour Per response: 410 hours (avg.).

Total Annual Burden: 10,250.

Needs and Uses: 47 CFR 64.1509 imposes requirements on common carriers that assign telephone numbers to pay-per-call services. The requirements are intended to ensure that consumers understand their rights and responsibilities with respect to these services.

OMB Approval No.: 3060–0168.

Title: Section 43.43—Reports of proposed Changes in Depreciation Rates.

Form No.: N/A.

Type of Review: Extension.

Respondents: Businesses or other for profit.

Number of Respondents: 12.

Estimated Time Per Response: 7,500 hours.

Total Annual Burden: 90,000.

Needs and Uses: Dominant communication common carriers with annual operating revenues of $100 million or more are required to file a report showing any proposed changes to their depreciation rates schedule pursuant to 47 CFR Section 43.43. The information filed is used by the Commission to establish the proper depreciation rates to be charged by the carriers.

OMB Approval No.: 3060–0165.

Title: Records to be Maintained and Reports to be Filed—Part 41 Franks, Section 41.31.

Form No.: N/A.

Type of Review: Extension.

Respondents: Businesses or other for-profit.

Number of Respondents: 68.

Estimated Time Per Response: 6 hours.

Total Annual Burden: 408.

Needs and Uses: Subject carriers are required to maintain records in such manner so that if ordered by the Federal Communications Commission, the carriers could furnish a report showing every person holding a telephone or telegraph frank. This data reports every person who has received free service. The regulated carriers are the affected public.

OMB Approval No.: 3060–0147.

Title: Section 64.804—Extension of Unsecured Credit for Interstate and Foreign Communications Services to Candidates for Federal Office.

Form No.: N/A.

Type of Review: Extension.

Respondents: Businesses or other for-profit.

Number of Respondents: 13.

Estimated Time Per Response: 8 hours.

Total Annual Burden: 208 hours.

Needs and Uses: Communications common carriers with operating revenues exceeding $1 million who extend unsecured credit to a candidate or person on behalf of such candidates for Federal office must file with the FCC a report including due and outstanding balances. The information is used for monitoring purposes.

OMB Approval No.: 3060–0056.

Title: Registration of Telephone and Data Terminal Equipment.

Form No.: FCC Form 730.

Type of Review: Revised Collection.

Respondents: Businesses or other for-profit, including small businesses.

Number of Respondents: 2,400.

Estimated Time Per Response: 24 hours (avg.).

Total Annual Burden: 57,600 hours.

Needs and Uses: FCC Form 730 is used by equipment manufacturers to register telephone and data terminal equipment. The information is used by the Commission staff to identify improperly designed equipment which may harm the nation's telephone network.

OMB Approval No.: 3060–0579.

Title: Expanded Interconnection with Local Telephone Company Facilities for Interstate Switched Transport Services.

Form No.: N/A.

Type of Review: Extension.

Respondents: Businesses or other for-profit.

Number of Respondents: 16.

Estimated Time Per Response: 124.75 hours.

Total Annual Burden: 1,996 hours.

Needs and Uses: Local exchange carriers are required to make tariff filings (1) to provide new switched transport expanded interconnection services, and (2) to comply with new Commission standards governing nonrecurring charges.

OMB Approval No.: 3060–0577.
Title: Expanded Interconnection with Local Telephone Company Facilities.
Form No.: N/A.
Type of Review: Extension.
Respondents: Businesses or other for-profit.
Number of Respondents: 16.
Estimated Time Per Response: 15 hours.
Total Annual Burden: 240 hours.
Needs and Uses: Local exchange carriers are required to make tariff filings (1) to provide public notice of ''fresh look'' opportunity at their offices, and (2) to comply with new Commission standards governing nonrecurring reconfiguration charges, expanded interconnection connection charge rate structure and fresh look.

OMB Approval No.: 3060–0076.
Title: Annual Employment Report for Common Carriers.
Form No.: FCC Report 395.
Type of Review: Extension.
Respondents: Businesses or other for-profit, including small businesses.
Number of Respondents: 1,200.
Estimated Time Per Response: 1 hour.
Total Annual Burden: 1,200 hours.
Needs and Uses: The Annual Employment Report is submitted by certain common carrier licensees and permittees. The data is intended to assess compliance with equal employment opportunity requirements. Data is used by the FCC, Congress, the U.S. Commission on Civil Rights, EEOC, NTIA and public interest groups.

Federal Communications Commission
William F. Caton,
Acting Secretary.
[FR Doc. 96–19499 Filed 7–30–96; 8:45 am]
BILLING CODE 6712–01–P

Notice of Public Information Collections Submitted to OMB for Review and Approval

July 26, 1996.

SUMMARY: The Federal Communications, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commissions burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before August 30, 1996. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Dorothy Conway, Federal Communications, Room 234, 1919 M St., N.W., Washington, DC 20554 or via internet to dconway@fcc.gov and Timothy Fain, OMB Desk Officer, 10236 NEOB 725 17th Street, N.W., Washington, DC 20503 or fain__t@a1.eop.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Dorothy Conway at 202–418–0217 or via internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–0641.
Title: Notification to File Progress Report.
Form No.: FCC 218–I.
Type of Review: Revision of an Existing Collection.
Respondents: Individuals and households; Business or other for-profit.
Number of Respondents: 587.
Estimated Time Per Response: 1 hour.
Total Annual Burden: 587 hours.
Total Annual Cost: $0 per respondent to provide the information.
Needs and Uses: Section 95.833 requires that each IVDS licensee file a progress report at the conclusion of each benchmark period to inform the Commission of the construction status of the system. The data is used by the Commission staff to determine whether the licensee is entitled to their authorization to operate. From this data, the Commission is able to confirm that service has been made available to at least 50 percent of the population, or land area within 5 years of the grant of the license. The Commission rules were recently revised to eliminate the requirement for submission of progress reports at the conclussion of the one year benchmark. Submissions are now required only at the conclusion of the three and five year benchmark periods.

Federal Communications Commission
William F. Caton,
Acting Secretary.
[FR Doc. 96–19498 Filed 7–30–96; 8:45 am]
BILLING CODE 6712–01–P

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 23, 1996.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. Collective Bancorp, Inc., Cologne, New Jersey; to become a bank holding company by acquiring 100 percent of the voting shares of Continental Bancorporation, Laurel Springs, New Jersey, and thereby indirectly acquire Continental Bank of New Jersey, Laurel Springs, New Jersey.

In connection with this application Collective Bancorp, Inc., has applied to acquire Collective Bank, Egg Harbor, New Jersey, and thereby engage in operating a savings association pursuant to § 225.25(b)(9) of the Board's Regulation Y; Collective Mortgage Services, Inc., Egg Harbor, New Jersey, and thereby engage in making and servicing loans pursuant to § 225.25(b)(1) of the Board's Regulation Y; Collective Financial Services, Egg Harbor, New Jersey, and thereby engage in securities brokerage activities and insurance agency activities in a town of less than 5,000 and underwriting activities pursuant to §§ 225.25(b)(15) and 225.25(b)(8)(iii) & (i) of the Board's Regulation Y.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Norwest Corporation, Minneapolis, Minnesota; to acquire 100 percent of the voting shares of American Bank Moorhead, Moorhead, Minnesota.

Board of Governors of the Federal Reserve System, July 25. 1996.

Jennifer J. Johnson

Deputy Secretary of the Board

[FR Doc. 96–19352 Filed 7–30–96; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Notice of Interest Rate on Overdue Debts

Section 30.13 of the Department of Health and Human Services' claims collection regulations (45 CFR Part 30) provides that the Secretary shall charge an annual rate of interest as fixed by the Secretary of the Treasury after taking into consideration private consumer rates of interest prevailing on the date that HHS becomes entitled to recovery. The rate generally cannot be lower than the Department of Treasury's current value of funds rate or the applicable rate determined from the ''Schedule of Certified Interest Rates with Range of Maturities.'' This rate may be revised quarterly by the Secretary of the Treasury and shall be published quarterly by the Department of Health and Human Services in the Federal Register.

The Secretary of the Treasury has certified a rate of 13½% for the quarter ended June 30, 1996. This interest rate will remain in effect until such time as the Secretary of the Treasury notifies HHS of any change.

Dated: July 23, 1996.

George Strader,

Deputy Assistant Secretary, Finance.

[FR Doc. 96–19491 Filed 7–30–96; 8:45 am]

BILLING CODE 4150–04–M

Agency for Health Care Policy and Research

Health Care Policy and Research Special Emphasis Panel Meeting

In accordance with section 10(a) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2) announcement is made of the following special emphasis panel scheduled to meet during the month of August 1996:

Name: Health Care Policy and Research Special Emphasis Panel.

Date and Time: August 20, 1996, 8 a.m.

Place: Key Bridge Marriott, 1401 Lee Highway, Conference Room TBA, Arlington, Virginia 22209.

Open August 20, 8 a.m. to 8:15 a.m.

Closed for remainder of meeting.

Purpose: This Panel is charged with conducting the initial review of grant applications proposing to design and conduct collaborative, multisite, randomized controlled trials to compare the effectiveness and outcomes of hysterectomy to those of other common treatments for non-cancerous uterine conditions.

Agenda: The open session of the meeting on August 20, from 8 a.m. to 8:15 a.m., will be devoted to a business meeting covering administrative matters. During the closed session, the panel will be reviewing and discussing grant applications dealing with health services research issues. In accordance with the Federal Advisory Committee Act, section 10(d) of 5 U.S.C., Appendix 2 and 5 U.S.C. 552b(c)(6), the Administrator, AHCPR, has made a formal determination that this latter session will be closed because the discussions are likely to include personal information concerning individuals associated with the grant applications. This information is exempt from mandatory disclosure.

Anyone wishing to obtain a roster of members or other relevant information should contact Linda Blankenbaker, Agency for Health Care Policy and Research, Suite 400, 2101 East Jefferson Street, Rockville, Maryland 20852, Telephone (301) 594–1437 x1603.

Agenda items for this meeting are subject to change as priorities dictate.

Dated: July 25, 1996.

Clifton R. Gaus,

Administrator.

[FR Doc. 96–19506 Filed 7–30–96; 8:45 am]

BILLING CODE 4160–90–M

Food and Drug Administration

[Docket No. 96M–0254]

CIBA Vision Corp.; Premarket Approval of SOLO-care brand MULTI-PURPOSE SOLUTION

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by CIBA Vision Corp., Duluth, GA, for premarket approval, under the Federal Food, Drug, and Cosmetic Act (the act), of SOLO-care brand MULTI-PURPOSE SOLUTION. FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of April 25, 1996, of the approval of the application.

DATES: Petitions for administrative review by August 30, 1996.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: James F. Saviola, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1744.

SUPPLEMENTARY INFORMATION: On December 22, 1994, CIBA Vision Corp., Duluth, GA 30136–1518, submitted to CDRH an application for premarket approval of the SOLO-care brand MULTI-PURPOSE SOLUTION. The device is a cleaning, rinsing, disinfecting, and storing solution and is indicated for cleaning, rinsing, disinfecting, and storing soft (hydrophilic) contact lenses and for dissolving enzyme tablets.

In accordance with the provisions of section 515(c)(2) of the act (21 U.S.C.

360e(c)(2)) as amended by the Safe Medical Devices Act of 1990, this premarket approval application (PMA) was not referred to the Ophthalmic Devices Panel of the Medical Devices Advisory Committee, an FDA advisory committee, for review and recommendation because the information in the PMA substantially duplicates information previously reviewed by this panel.

On April 25, 1996, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act authorizes any interested person to petition, under section 515(g) of the act, for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the Federal Register. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before August 30, 1996, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: June 5, 1996.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 96–19507 Filed 7–30–96; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of an Environmental Assessment and Receipt of an Application for an Incidental Take Permit for Pacific Gas and Electric Company's Blackhawk Distribution Feeder Main Natural Gas Pipeline, Contra Costa County, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: This notice advises that the Pacific Gas and Electric Company has applied to the U.S. Fish and Wildlife Service (Service) for an incidental take permit pursuant to of the Endangered Species Act of 1973, as amended (Act). The application has been assigned permit number PRT–817075. The proposed permit would authorize the incidental take of the federally threatened California red-legged frog (*Rana aurora draytonii*) and/or its habitat during the installation and operation of a natural gas distribution pipeline. The permit would be in effect for three years.

The Service also announces the availability of an environmental assessment for the incidental take permit application, which includes the proposed Habitat Conservation Plan (HCP) fully describing the proposed project and mitigation, and the accompanying Implementing Agreement. This notice is provided pursuant to section 10(a) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6). All comments, including names and addresses, received will become part of the official administrative record and may be made available to the public.

DATES: Written comments on the permit application, environmental assessment and Implementing Agreement should be received on or before August 30, 1996.

ADDRESSES: Comments regarding the application or adequacy of the environmental assessment and Implementing Agreement should be addressed to, U.S. Fish and Wildlife Service, Sacramento Field Office, 3310 El Camino, Suite 130, Sacramento, California 95821–6340. Please refer to permit number PRT–817075 when submitting comments. Individuals wishing copies of the application, environmental assessment or Implementing Agreement for review should immediately contact the above office. Documents will also be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Horton or Ms. Tiki Baron, Sacramento Field Office, 916–979–2725.

SUPPLEMENTARY INFORMATION: Section 9 of the Act prohibits the ''taking'' of a species listed as threatened or endangered. However, the Service, under limited circumstances, may issue permits to take listed species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for threatened species are promulgated at 50 CFR 17.32.

Background

Pacific Gas and Electric Company proposes to install and operate a 4-mile-long buried natural gas pipeline within a 50-foot-wide right-of-way in the vicinity of San Ramon, Contra Costa County, California. The site is located east and south of San Ramon, California. Pacific Gas and Electric Company seeks coverage for the temporary disturbance of habitat and potential direct take of the California red-legged frog on approximately 5 acres of the project site. To compensate for project impacts, Pacific Gas and Electric Company will develop and implement a plan to acquire, enhance, maintain, restore and/or create and monitor approximately 10 acres of suitable California red-legged frog habitat (two acres of compensation habitat for every one acre of habitat disturbed) within the San Francisco Bay/Suisun Bay watershed. In addition, the approximately 5 acres of temporarily disturbed habitat would be restored to suitable California red-legged frog habitat. Other measures are specified in the Habitat Conservation Plan to minimize the potential for take during installation activities.

The environmental assessment considers the environmental consequences of four alternatives. The no project alternative would result in no

immediate environmental impacts. However, this alternative does not satisfy the purpose and need of the proposed project (to supply natural gas in a safe and reliable manner) and may adversely impact the local economy if natural gas service was curtailed or limited. This alternative was rejected because it would prevent Pacific Gas and Electric Company from meeting its customer demands, its legal mandate and the California Public Utilities Commission's mandate to provide safe, adequate and reliable natural gas service. Alternative 2 would utilize an existing utility right-of-way to install and operate the proposed natural gas pipeline. This alternative alignment is longer than the proposed alignment and therefore more expensive to install. In addition, this alignment would require additional seismic fault protection and may encounter future land use conflicts. Although this alternative would likely result in fewer initial impacts to the California red-legged frog, the potential for significant long-term impacts is greater than with the proposed alternative. Alternative 3 would utilize an existing road franchise along Dougherty Road for pipeline installation. This currently unpaved road would be closed to traffic during pipeline installation and portions of the road would need to be reconstructed and improved following installation. Thus, while Alternative 3 would entail fewer initial impacts to the California red-legged frog, the potential long-term impacts resulting from increased traffic and contaminants from road runoff would likely be greater than with the proposed alternative. Alternative 4, the proposed alternative, was selected because: (1) It best satisfies the needs and purpose of the proposed project; (2) it is likely to result in a relatively low level of incidental take; and (3) impacts are minimized and mitigated by the conservation of suitable California red-legged frog habitat and other measures specified in the Habitat Conservation Plan.

This notice is provided pursuant to section 10(a) of the Act and National Environmental Policy Act of 1969 regulations (40 CFR 1506.6). The Service will evaluate the application, associated documents, and comments submitted thereon to determine whether the application meets the requirements of National Environmental Policy Act regulations and section 10(a) of the Act. If it is determined that the requirements are met, a permit will be issued for the incidental take of the listed species. The final permit decision will be made following a review of all comments received in response to this notice.

Dated: July 25, 1996.

David L. McMullen,

Acting Regional Director, Region 1, Portland, Oregon.

[FR Doc. 96–19405 Filed 7–30–96; 8:45 am]

BILLING CODE 4310–55–P

Availability of Environmental Assessment and Receipt of Application and Intent to Issue Incidental Take Permit for Development of Industrial Complex in Cedar City, Iron County, Utah

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Connel Gower Construction, Inc. (Applicant) has applied to the Fish and Wildlife Service (Service) for an incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The Applicant has been assigned permit number PRT–817340. The requested permit, which is for a period of 20 years, would authorize incidental take of the threatened Utah Prairie Dog (*Cynomys parvidens*). The proposed take would occur as a result of development of a 63-acre industrial complex located on private property within Cedar City, Iron County, Utah.

The Service has prepared the Environmental Assessment for issuance of the incidental take permit. The Applicant has prepared a habitat conservation plan as part of the incidental take permit application. A determination of whether jeopardy to the species will occur, or a Finding of No Significant Impact (FONSI), will not be made before 30 days from the date of publication of this notice. This notice is provided pursuant to section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments on the permit application must be received on or before August 30, 1996.

ADDRESSES: Persons wishing to review the permit application may obtain a copy by writing to the Assistant Field Supervisor, Utah Field Office, U.S. Fish and Wildlife Service, 145 East 1300 South Street, Suite 404, Salt Lake City, Utah 84115. Documents will be available for public inspection by written request, or by appointment only, during business hours (8 a.m.to 4:30 p.m.) at the above address.

Written data or comments concerning the permit application should be submitted to the Assistant Field Supervisor, Utah Field Office, U.S. Fish and Wildlife Service Salt Lake City, Utah (See **ADDRESSES** above). Please refer to permit number PRT–817340 in all correspondence regarding these documents.

FOR FURTHER INFORMATION CONTACT: Robert D. Williams, Assistant Field Supervisor or Marilet A. Zablan, Wildlife Biologist, at the above U.S. Fish and Wildlife Service Office in Salt Lake City, Utah (see **ADDRESSES** above) (telephone: (801) 524–5001, facsimile: (801) 524–5021).

SUPPLEMENTARY INFORMATION: Section 9 of the Act prohibits the ''taking'' of any threatened or endangered species, such as the threatened Utah Prairie Dog. However, the Service, under limited circumstances, may issue permits to take threatened or endangered wildlife species when such taking is incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for threatened and endangered species are at 50 CFR 17.22.

Applicant

Connel Gower Construction, Inc. plans to develop an approximately 63-acre industrial park, located in portions of sections 3, 4, 9 and 10 in Township 36 South, Range 11 West, Salt Lake Base and Meridian, within Cedar City, Iron County, Utah. Development is planned to include development of streets, parking areas and drainage facilities as well as installation of natural gas, sewer, water, electrical power, and telephone service in preparation for construction of commercial and industrial buildings and facilities. The construction will impact 63 acres of Utah Prairie Dog habitat, and the Applicant foresees an incidental take of an estimated 116 Utah Prairie Dogs through trapping and relocation and the potential incidental take of no more than two Utah Prairie Dogs per five acres of developed land as a result of direct mortality during construction. The Applicant proposes to compensate for this habitat loss by payment of $900 per acre for each acre developed, to be used for public land management actions for Utah Prairie Dog conservation and to implement recover actions for conservation of the Utah Prairie Dog, through a Utah Prairie Dog Conservation Fund.

A no-action alternative to the proposed action was considered, consisting of foregoing the development of the 63-acre area of Utah Prairie Dog habitat. The no-action alternative was rejected for reasons including loss of use of the private property, resulting in significant economic loss to the Applicant.

Authority: The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et. seq.*) and the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et. seq.*).

Dated July 24, 1996.

Wilbur N. Ladd, Jr.,

Acting Regional Director, Denver, Colorado.

[FR Doc. 96–19407 Filed 7–30–96; 8:45 am]

BILLING CODE 4310–55–M

Bureau of Land Management

[AK–910–0777–51]

Alaska Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Alaska Resource Advisory Council will conduct an open meeting Thursday, September 12, 1996, from 9 a.m. to 5 p.m. and Friday, September 13, 1996, from 8:30 a.m. until 4:30 p.m. in Anchorage, Alaska. The meeting will be held in the Denali Room on the 4th floor of the Anchorage Federal Building. Public comments will be taken from 1:30 p.m. to 3 p.m. Thursday, September 12. Written comments may be submitted at the meeting. The council will discuss findings of a June 27–28 field tour of the Fortymile Wild and Scenic River and possible recommendations.

ADDRESSES: Inquiries about the meeting should be sent to External Affairs, Bureau of Land Management, 222 W. 7th Ave., #13, Anchorage, Alaska 99513–7599.

FOR FURTHER INFORMATION CONTACT: Teresa McPherson at (907) 271–5555.

Dated: July 17, 1996.

Tom Allen,

State Director.

[FR Doc. 96–19406 Filed 7–30–96; 8:45 am]

BILLING CODE 4310–JA–P

[AZ–933–05–5410–00–A139; AZA 29711]

Arizona, Conveyance of Federally-Owned Mineral Interests

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Pursuant to section 209 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1719), George T. and Kris E. Pingitore have applied to purchase the mineral estate on the following lands (also described as parcel 59, Pleasant Country Ranches Unit 5):

Gila and Salt River Meridian, Arizona,

T. 8 N., R. 1 W.,

Sec. 23, Portion of SE¼.

The area described contains approx. 43.9 acres.

EFFECTIVE DATE: Upon publication of this notice in the Federal Register, the mineral interests described above will be segregated from the mining and the mineral leasing laws. The segregative effect of the application shall terminate upon issuance of a patent, upon final rejection of the application, or 2 years from the publication date, whichever occurs first.

FOR FURTHER INFORMATION CONTACT: Evelyn Stob, Land Law Examiner, Arizona State Office, P.O. Box 16563, Phoenix, AZ 85011–6563, (602) 650–0518.

Dated: July 15, 1996.

Mary Jo Yoas,

Chief, Lands and Minerals Adjudication.

[FR Doc. 96–19397 Filed 7–30–96; 8:45 am]

BILLING CODE 4310–32–P

[NV–930–1430–01; N–60242]

Notice of Realty Action; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Direct sale of public lands in Eureka County, Nevada.

SUMMARY: The following described land in Eureka County, Nevada, has been examined and identified as suitable for disposal by direct sale under Section 203 and Section 209 of the Federal Land Policy and Management Act (FLPMA) of October 21, 1976 (43 U.S.C. 1713 and 1719) at no less than fair market value:

Mount Diablo Meridian, Nevada

T. 19 N., R. 53 E.,

Section 11, NE¼NE¼, E½E½NW¼NE¼, E½E½SW¼NE¼, W½SE¼SW¼NE¼, NE¼SE¼, E½E½NW¼SE¼, W½SE¼SE¼, W½E½SE¼SE¼.

Comprising 145 acres, more or less.

The land is being offered as a direct sale to Eureka County. The land will not be offered for sale until at least 60 days after the date of publication of this notice in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Mary Craggett, Realty Specialist, Bureau of Land Management, Battle Mountain District Office, 50 Bastian Road, P.O. Box 1420, Battle Mountain, Nevada, 89820.

SUPPLEMENTARY INFORMATION: The land has been identified as suitable for disposal by the Shoshone-Eureka Resource Management Plan. The land is not needed for any resource program and is not suitable for management by the Bureau or another Federal department or agency. The Eureka Board of County Commissioners requested the sale to provide for community expansion resulting from increased mining activity in the area.

Acceptance of the sale offer will constitute application for conveyance of the available mineral interests. The sale proponent will be required to submit a $50.00 nonrefundable filing fee for conveyance of the available mineral interests with the purchase price for the land. Failure to submit the nonrefundable fee for the mineral estate within the time frame specified by the authorized officer will result in cancellation of the sale.

Upon publication of this Notice of Realty Action in the Federal Register, the lands will be segregated from all forms of appropriation under the public land laws, including the mining laws, but not the mineral leasing laws or disposals pursuant to Sections 203 and 209 of FLPMA. The segregation shall terminate upon issuance of a patent or other document of conveyance, upon publication in the Federal Register of a termination of segregation, or 270 days from date of this publication, which ever occurs first.

Patent, when issued, will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890, (43 U.S.C. 945);
2. Right-of-way N–50249, for a water pipeline serving the Bureau of Land Management Eureka Administrative Site;

And will be subject to:

1. Right-of-way grant NEV–04979, issued to the Nevada Department of Highways, its successors or assigns, under the Act of November 9, 1921, for highway purposes;
2. Right-of-way grant NEV–067106, issued to Nevada Bell, its successors or assigns, under the Act of March 4, 1911, for a buried telephone line;
3. Right-of-way grant N–5638, held by Mt. Wheeler Power Company, its successors or assigns, under authority of the Act of October 21, 1976, for a power transmission line;
4. Right-of-way grant N–50847, issued to Mt. Wheeler Power Company, its successors or assigns, for a power distribution line; and
5. All other valid existing rights.

Upon patent issuance to Eureka County, the prospective purchaser, rights to the portions of the following rights-of-way on the subject land will merge with the title. Should the purchaser be other than Eureka County, the patent would be subject to the following listed rights-of-way.

1. Right-of-way grant NEV–065179, for a buried sewer line, authorized under the Act of February 15, 1901;

2. Right-of-way grant N–46712, for a water pipeline, authorized under the Act of October 26, 1976;

3. Right-of-way grant N–48618, for a water pipeline, well house, and booster pump station, authorized under the Act of October 21, 1976.

Should Eureka County not purchase the parcel, the public lands in this sale proposal would remain for sale, over the counter at no less than appraised fair market value, until the segregation terminates 270 days from publication of this Notice in the Federal Register. Interested parties may inquire about the parcel at the Bureau of Land Management, 50 Bastian Road, Battle Mountain, Nevada, 89820 during the office hours of 7:30 a.m. to 4:30 p.m., Monday through Friday.

For a period of 45 days from the date of publication in the Federal Register, interested parties may submit comments to the District Manager, Battle Mountain District, 50 Bastian Road, P.O. Box 1420, Battle Mountain, Nevada, 89820. Any adverse comments will be evaluated by the State Director, who may sustain, vacate or modify this realty action and issue a final determination. In the absence of timely filed objections, this realty action will become a final determination of the Department of the Interior.

Dated: July 15, 1996

Gerald M. Smith,

District Manager.

[FR Doc. 96–19398 Filed 7–30–96; 8:45 am]

BILLING CODE 4310–HC–P

[NV–930–1430–01; Nev–061133]

Notice of Realty Action; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Direct Sale of Public Lands in Eureka County, Nevada.

SUMMARY: The following described land in Eureka County, Nevada, patented to the Board of County Commissioners of Eureka County under provisions of the Recreation and Public Purposes Act, as amended, has been examined and found suitable for elimination of the reversionary clause in the patent and for conveyance of the available mineral estate, under provisions of Section 203 and Section 209 of the Federal Land Policy and Management Act (FLPMA) of October 21, 1976 (43 U.S.C. 1713 and 1719).

Mount Diablo Meridian, Nevada

T. 19 N., R. 53 E.,

Section 11, SE¼NE¼.

Comprising 40 acres, more or less.

The above-described interests in the land would be conveyed directly to the present owner of record, the Eureka County Board of Commissioners. These interests will not be conveyed until at least 60 days after the date of publication of this notice in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Mary Craggett, Realty Specialist, Bureau of Land Management, Battle Mountain District Office, 50 Bastian Road, P.O. Box 1420, Battle Mountain, Nevada, 89820.

SUPPLEMENTARY INFORMATION: The land was patented in 1965 for use as a sewage treatment plant site. The patent (number 27–65–0255) includes a clause providing for title to the land to revert to the United States if the approved plan of development is not followed.

The land is not needed for any resource program, is not suitable for management by the Bureau or another Federal department or agency, and would be difficult and uneconomic to manage. if title reverted to the United States

The Eureka County Board of Commissioners has requested full title to the subject parcel. In addition, Eureka County has requested the sale of adjacent land to provide for community expansion resulting from increased mining activity in the area. These proposals are being processed concurrently.

The application to purchase the reversionary interest of the United States constitutes an application for conveyance of the available mineral interests. The applicant will be required to submit a $50.00 nonrefundable filing fee for conveyance of the available mineral interests with the purchase price for the reversionary interest.

Upon publication of this Notice of Realty Action in the Federal Register, the lands will be segregated from all forms of appropriation under the public land laws, including the mining laws, but not the mineral leasing laws or disposals pursuant to Sections 203 and 209 of FLPMA. The segregation shall terminate upon issuance of a supplemental patent or other document of conveyance, upon publication in the Federal Register of a termination of segregation, or 270 days from date of this publication, which ever occurs first.

Patent, when issued, will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890, (43 U.S.C. 945);

2. Any minerals of prospective value;

And will be subject to all other valid existing rights.

For a period of 45 days from the date of publication in the Federal Register, interested parties may submit comments to the District Manager, Battle Mountain District, 50 Bastian Way, P. O. Box 1420, Battle Mountain, Nevada, 89820. Any adverse comments will be evaluated by the State Director, who may sustain, vacate or modify this realty action and issue a final determination. In the absence of timely filed objections, this realty action will become a final determination of the Department of the Interior.

Dated: July 15, 1996.

Gerald M. Smith,

District Manager.

[FR Doc. 96–19399 Filed 7–30–96; 8:45 am]

BILLING CODE 4310–HC–P

[UT–040–1430–01; UTU–71351]

Notice of Realty Action; Recreation and Public Purposes (R&PP) Act Classification; Utah

AGENCY: Bureau of Land Management (BLM), Interior.

SUMMARY: The following public land, located in Washington County, Utah near the community of St. George, has been examined and found suitable for classification for lease or conveyance to Washington County under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et. seq.):

Salt Lake Meridian, Utah

T. 42 S., R. 14 W.,

Sec. 3, Lot 14.

Containing 41.46 acres, more or less.

SUPPLEMENTARY INFORMATION: Washington County proposes to use the land to construct, operate and maintain a correctional facility. The land is not needed for Federal purposes. Leasing or conveying title to the affected public land is consistent with current BLM land use planning and would be in the public interest.

The lease or patent, when issued, would be subject to the following terms, conditions, and reservations:

1. Provisions of the Recreation and Public Purposes Act and all applicable regulations of the Secretary of the Interior.

2. A right-of-way for ditches and canals constructed by the authority of the United States.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.

Detailed information concerning this action is available at the office of the Bureau of Land Management, Dixie Resource Area Office, 345 E. Riverside Drive, St. George, Utah 84790.

Upon publication of this notice in the Federal Register, the land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for leasing or conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws. For a period of 45 days from the date of publication of this notice in the Federal Register, interested persons may submit comments regarding the proposed classification, leasing or conveyance of the land to the Area Manager, Dixie Resource Area Office.

Classification Comments: Interested parties may submit comments involving the suitability of the lands for a correctional facility. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments: Interested parties may submit comments regarding the specific use proposed in the County's application and amended plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or nay other factor not directly related to the suitability of the land for correctional facility purposes.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice.

Dated: July 17, 1996.

James D. Crisp,

Area Manager.

[FR Doc. 96–18991 Filed 7–30–96; 8:45 am]

BILLING CODE 4310–DQ–M

[NV–930–1992–01; N–60594]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes to withdraw approximately 17,892 acres from location and entry under the United States mining laws to protect scenic, recreation, and wildlife values. This notice closes the lands for up to 2 years from settlement, sale, location, and entry under the general land laws, including the mining laws.

DATES: Comments and requests for meeting should be received on or before October 29, 1996.

ADDRESSES: Comments and meeting requests should be sent to the Nevada State Director, BLM, 850 Harvard Way, P.O. Box 12000, Reno, Nevada 89520.

FOR FURTHER INFORMATION CONTACT: Dennis J. Samuelson, BLM Nevada State Office, 702–785–6532.

SUPPLEMENTARY INFORMATION: On July 15, 1996, a petition was approved allowing the Bureau of Land Management to file an application to withdraw the following described public lands from location and entry under the United States mining laws, subject to valid existing rights:

Mount Diablo Meridian

T. 14 N., R. 20 E.,
- Sec. 1, lots 5 to 8, inclusive, and N½S½;
- Sec. 2, W½ lot 2 in NW¼, NE¼SW¼, S½SW¼, and SE¼;
- Sec. 3, lots 1 and 2 in NE¼, lots 1 and 2 in NW¼, N½SW¼, and NW¼SE¼;
- Sec. 4, E½ lot 1 in NE¼, E½ lot 2 in NE¼, and NE¼SE¼;
- Sec. 9, SE¼SE¼;
- Sec. 10, E½NE¼, SW¼NE¼, SE¼NW¼, and S½;
- Sec. 11;
- Sec. 12.

T. 14 N., R. 21 E.,
- Sec. 7.

T. 15 N., R. 20 E.,
- Sec. 1, lots 1 and 2 in NE¼, lot 2 in NW¼, E½ lot 1 in NW¼, N½W½ Lot 1 in NW¼, SE¼W½ lot 1 in NW¼, and SE¼;
- Sec. 4, W½ lot 2 in NW¼;
- Sec. 5, E½ Lot 2 in NE¼;
- Sec. 8, (3 metes and bounds parcels within SW¼SE¼);
- Sec. 11, SE¼;
- Sec. 12, N½NE¼, SW¼NE¼, NE¼NW¼, S½NW¼NW¼, W½SW¼, and NE¼SW¼;
- Sec. 13, NW¼NE¼, S½NE¼, W½, and SE¼;
- Sec. 14, NE¼, E½NE¼SW¼, W½SE¼, and SE¼SE¼;
- Sec. 15, lots 1 and 2;
- Sec. 21: SE¼NE¼ and E½SE¼;
- Sec. 22: lots 1 and 2, SW¼NW¼, W½SW¼, SE¼, and SW¼;
- Sec. 23: NE¼NE¼NE¼NE¼, SW¼NE¼NE¼NE¼, SE¼NW¼NE¼NE¼, and SE¼NE¼NE¼, SW¼NE¼NW¼NE¼, S½NW¼NW¼NE¼, NE¼NE¼SE¼NE¼, E½NW¼SE¼NE¼, NE¼SW¼SE¼NE¼, N½SE¼SE¼NE¼, E½SE¼, E½E½NW¼SE¼, E½SE¼SW¼SE¼, and SW¼SE¼SW¼SE¼;
- Sec. 24;
- Sec. 25;
- Sec. 26, E½E½;
- Sec. 27, W½, W½SE¼, and SE¼SE¼;
- Sec. 28, lots 26, 27, 32 to 37, inclusive, and 41 to 43, inclusive, E½E½, SW¼NE¼, NE¼SW¼, and NE¼SE¼SE¼;
- Sec. 32, W½NW¼NE¼SW¼, NE¼NW¼SW¼, and E½NW¼NW¼SW¼;
- Sec. 33, lots 20, 33 to 36, inclusive, 45, 46, 49 to 52, inclusive, 55, 56, 61, 62, 67, 68, 78, 107, E½E½, E½SW¼NW¼, and E½SW¼;
- Sec. 34;
- Sec. 35, E½NE¼ and W½W½;
- Sec. 36.

T. 15 N., R. 21 E.,
- Sec. 6, lots 1 and 2 in NE¼, lots 1 and 2 in NW¼, lots 1 and 2 in SW¼, and W½SE¼;
- Sec. 7, N½ lot 1 in NW¼, S½S½N½ lot 2 in NW¼, S½ lot 2 in NW¼, and SE¼;
- Sec. 18, S½ Lot 1 in NW¼, S½ lot 2 in NW¼, lots 1 and 2 in SW¼, and E½;
- Sec. 19;
- Sec. 30;
- Sec. 31.

T. 16 N., R. 20 E.,
- Sec. 14, the irregular Carson City portion within SW¼;
- Sec. 22, E½, NE¼NE¼NW¼, SE¼SE¼NW¼, and SW¼;
- Sec. 25, the irregular Carson City portion within SW¼;
- Sec. 26, the irregular Carson City portion
- Sec. 27, S½;
- Sec. 28, N½, N½S½, and SE¼SW¼;
- Sec. 29, S½NE¼, S½SW¼, NE¼SE¼, and SW¼SE¼;
- Sec. 31, E½E½, SW¼NE¼, SE¼NW¼, N½NE¼SW¼, N½S½NE¼SW¼, S½SW¼NE¼SW¼, SW¼SE¼NE¼SW¼, NW¼SW¼, NW¼SE¼, and NE¼NW¼SE¼ (portion north of Highway 395, protracted);
- Sec. 32, N½, N½SW¼, and NW¼SE¼;
- Sec. 33, E½NE¼ and N½NW¼;
- Sec. 34, N½, N½S½, SE¼SW¼, and S½SE¼;
- Sec. 35, N½ and E½SE¼;
- Sec. 36, W½NW¼NE¼, W½, and SE¼SE¼ (Carson City portion, protracted).

T. 16 N., R. 21 E.,
- Sec. 31, the irregular Carson City portion within S½ (protracted).

The areas described aggregate 17,891.68 acres in Carson City. In addition, if any of the non-Federal lands within the area described below are acquired by the United States in the future by exchange, donation, or purchase, those lands will be subject to the withdrawal:

- T. 16 N., R. 19 E., Section 36;
- T. 14 N., R. 20 E., Sections 1–5 and 9–12;
- T. 15 N., R. 20 E., Sections 1–6, 8–17, 20–29, and 31–36;

T. 16 N., R. 20 E., Sections 14, 21–23, 25–29, and 31–36;
T. 14 N., R. 21 E., Sections 6 and 7;
T. 15 N., R. 21 E., Sections 6, 7, 18, 19, 30, and 31; and
T. 16 N., R. 21 E., Section 31.

The non-Federal lands described aggregate 15,792 acres in Carson City.

The purpose of the withdrawal is to protect scenic, recreation, and wildlife values located in the open and mountainous terrain surrounding the Carson City urban area.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the Nevada State Director of the Bureau of Land Management.

Notice is hereby given that a public meeting in connection with the proposed withdrawal will be held at a later date. A notice of the time and place will be published in the Federal Register and a newspaper in the general vicinity of the lands to be withdrawn at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR Part 2300.

For a period of 2 years from the date of publication of this notice in the Federal Register, the lands will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary uses which will be permitted during this segregative period are rights-of-way, leases, and permits.

Dated: July 25, 1996.

William K. Stowers,

Lands Team Lead.

[FR Doc. 96–19408 Filed 7–30–96; 8:45 am]

BILLING CODE 4310–HC–P

Minerals Management Service

Environmental Documents Prepared for Proposed Oil and Gas Operations on the Gulf of Mexico Outer Continental Shelf (OCS)

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the availability of environmental documents prepared for OCS mineral proposals on the Gulf of Mexico OCS.

SUMMARY: The Minerals Management Service (MMS), in accordance with Federal Regulations (40 CFR Section 1501.4 and Section 1506.6) that implement the National Environmental Policy Act (NEPA), announces the availability of NEPA-related Environmental Assessments (EA's) and Findings of No Significant Impact (FONSI's), prepared by the MMS for the following oil and gas activities proposed on the Gulf of Mexico OCS. This listing includes all proposals for which the FONSI's were prepared by the Gulf of Mexico OCS Region in the period subsequent to publication of the preceding notice.

Activity/Operator	Location	Date
Mobil Exploration & Producing U.S. Inc., NORM Disposal Operations, SEA No. NORM–84.	Vermilion Area, Block 46, Lease OCS 079, 9 miles south of Vermilion Parish, Louisiana.	07/02/93
Murphy Exploration & Production Company, NORM Disposal Operations, SEA No. NORM–114.	Ship Shoal Area, Block 118, Lease OCS 068, 20 milies south of Terrebonne Parish, Louisiana.	05/11/94
Delmar Operating, Inc., NORM Disposal Operations, SEA No. NORM–125.	South Timbalier Area, Block, 146, Lease OCS–G 3176, 30 miles south of Lafourche Parish, Louisiana.	08/01/94
Shell Offshore Inc., NORM Disposal Operations, SEA No. NORM–154.	Eugene Island Area, Block 158, Lease OCS–G 1220, 35 miles south of the nearest landfall in St. Mary Parish, Louisiana.	05/02/96
Oryx Energy Company, Exploration Activity, SEA No. R–2992UA	High Island Area, East Addition, South Extension, Block A–379, Lease OCS–G 13808, approximately 112 miles southeast of the nearest coastline on Galveston Island, Texas.	03/24/95
Anadarko Petroleum Corporation, Development Operations, SEA No. R–3011.	High Island Area, East Addition, South Extension, Block A–376, Lease OCS–G 2754, 114 miles southeast of the nearest coastline in Texas.	03/15/95
Oryx Energy Company, Exploration Activity, SEA No. S–3011C	High Island Area, East Addition, South Extension, Block A–379, Lease OCS–G 13808, approximately 110 miles southeast of the nearest coastline on Galveston Island, Texas.	08/23/93
Oryx Energy Company, Exploration Activity, SEA No. S–3060 ...	High Island Area, East Addition, South Extension, Blocks A–379 and A–384, Leases OCS–G 13808 and 3316, approximately 112 miles southeast of the nearest coastline on Galveston Island, Texas.	11/17/93
Kerr-McGee Corporation, Exploration Activity, SEA No. N–4994UB.	Garden Banks Area, Block 134, Lease OCS–G 13366, 138 miles south of the nearest coastline in Texas.	07/28/95
Oryx Energy Company, Exploration Activity, SEA No. N–5069 ...	High Island Area, East Addition, South Extension, Blocks A–362 and A–379, Leases OCS–G 14199 and 13808, approximately 112 miles southeast of the nearest coastline on Galveston Island, Texas.	06/02/95
Anadarko Petroleum Corporation, Pipeline Activity, SEA Nos. P–10196 and P–10197.	High Island Area, East Addition, South Extension, Block B–376, Lease OCS–G 2754, approximately 112 miles southeast of the nearest coastline in Texas.	07/22/94
Aquila Energy Resources Corporation, Structure Removal Operations, SEA No. ES/SR 94–099A.	Vermilion Area, Block 122, Lease OCS–G 3807, 33 miles south of Vermilion Parish, Louisiana.	02/15/95
Samedan Oil Corporation, Structure Removal Operations, SEA Nos. ES/SR 95–111A and 95–112.	West Cameron Area, South Addition, Blocks 457 and 459, Leases OCS–G 5331 and 3383, 82 miles south of Cameron Parish, Louisiana.	06/20/96
Murphy Exploration & Production Company, Structure Removal Operations, SEA No. ES/SR 95–118A.	West Cameron Area, Block 187, Lease OCS–G 5290, 28 miles south of Cameron Parish, Louisiana.	06/20/96
Pennzoil Exploration and Production Company, Structure Removal Operations, SEA No. ES/SR 96–01/S.	South Marsh Island Area, Block 118, Lease OCS–G 5465, 97 miles south of Intracoastal City, Louisiana.	04/30/96

Activity/Operator	Location	Date
Kerr-McGee Corporation, Structure Removal Operations, SEA No. ES/SR 96–017A.	High Island Area, South Addition, Block A–532, Lease OCS–G 2380, 77 miles southeast of Brazoria County, Texas.	06/07/96
Norcen Explorer, Inc., Structure Removal Operations, SEA No. ES/SR 96–020.	Ship Shoal Area, Block 205, Lease OCS–G 1521, 46 miles south of Terrebonne Parish, Louisiana.	03/28/96
The Louisiana Land and Exploration Company, Structure Removal Operations, SEA No. ES/SR 96–037.	Vermilion Area, Block 187, Lease OCS–G 6673, 50 miles south of Vermilion Parish, Louisiana.	05/01/96
Kerr-McGee Corporation, Structure Removal Operations, SEA Nos. ES/SR 96–044 through 96–046.	Vermilion Area, Block 114, Lease OCS–G 5191, 30 miles south of Vermilion Parish, Louisiana.	04/18/96
Conoco Inc., Structure Removal Operations, SEA No. ES/SR 96–047.	West Delta Area, Block 69, Lease OCS 0181, 28.5 miles southeast from Leeville, Louisiana.	05/28/96
Mobil Exploration & Producing U.S. Inc., Structure Removal Operations, SEA Nos. ES/SR 96–049 and 96–050.	West Cameron Area, Block 101, Lease OCS 0246, 14 miles south of Cameron Parish, Louisiana.	05/07/96
Seagull Energy E&P, Inc., Structure Removal Operations, SEA No. ES/SR 96–052.	Galveston Area, Block 392, Lease OCS–G 4567, 24 miles southeast of Brazoria County, Texas.	04/30/96
Murphy Exploration & Production Company, Structure Removal Operations, SEA Nos. ES/SR 96–053, through 96–058.	Ship Shoal Area; Blocks 93, 114, and 120; Leases OCS 063, 064, and 038; 10 to 18 miles south of Terrebonne Parish, Louisiana.	05/10/96
Murphy Exploration & Production Company, Structure Removal Operations, SEA No. ES/SR 96–059.	South Timbalier Area, Block 86, Lease OCS 0605, 46 miles southeast of Cocodrie, Louisiana.	05/09/96
Chevron U.S.A., Structure Removal Operations, SEA Nos. ES/SR 96–060 through 96–063, and 96–095.	Mobile Area, Block 861, Lease OCS–G 5062, 6 miles south of Petit Bois Island, off Jackson County, Mississippi.	05/13/96
Chevron U.S.A, Structure Removal Operations, SEA Nos. ES/SR 96–064, through 96–066.	Ship Shoal Area; Blocks 108, 98, and 168; Leases OCS 0814, 0819, and OCS–G 5542; 21 to 30 miles south of Terrebonne Parish, Louisiana.	05/01/96
Santa Fe Energy Resources, Structure Removal Operations, SEA No. ES/SR 96–067.	West Cameron Area, Block 379, Lease OCS–G 5016, 63 miles south of Cameron Parish, Louisiana.	03/27/96
Chevron U.S.A., Structure Removal Operations, SEA No. ES/SR 96–068.	West Delta Area, Block 29, Lease OCS 0385, 9 miles south of Plaquemines Parish, Louisiana.	05/15/96
Century Offshore Management Corporation, Structure Removal Operations, SEA No. ES/SR 96–069A.	South Timbalier Area, Block 107, Lease OCS–G 5601, 24 miles south of Terrebonne Parish, Louisiana.	06/21/96
The Louisiana Land and Exploration Company, Structure Removal Operations, SEA No. ES/SR 96–070.	Eugene Island Area, Block 97, Lease OCS–G 5489, 19 miles south of St. Mary Parish, Louisiana.	04/30/96
Meridian Oil Company, Structure Removal Operations, SEA No. ES/SR 96–071.	Main Pass Area, Block 126, Lease OCS–G 4833, 19 miles northwest of Plaquemines Parish, Louisiana.	04/22/96
UNOCAL Corporation, Structure Removal Operations, SEA No. ES/SR 96–073.	Vermilion Area, Block 39, Lease OCS 0206, 33 miles southwest of Intracoastal City, Louisiana.	05/23/96
Seagull Energy E&P Inc., Structure Removal Operations, SEA No. ES/SR 96–075.	Galveston Area, Block 384, Lease OCS–G 4069, 24 miles southeast of the Texas Coastline.	05/28/96
Union Oil Company of California, Structure Removal Operations, SEA No. ES/SR 96–076.	Mobile Area, Block 916, Lease OCS–G 5753, 10 miles south of Baldwin County, Alabama.	04/18/96
Shell Offshore Inc., Structure Removal Operations, SEA No. ES/SR 96–077.	Eugene Island Area, Block 188, Lease OCS 0443, 39 miles south of St. Mary Parish, Louisiana.	06/13/96
Amerada Hess Corporation, Structure Removal Operations, SEA No. ES/SR 96–078 and 96–079.	Vermilion Area, South Addition, Block 310, Lease OCS–G 3400, 87 miles south of Vermilion Parish, Louisiana.	06/06/96
Union Oil Company of California, Structure Removal Operations, SEA No. ES/SR 96–080.	Ship Shoal Area, Block 209, Lease OCS 0827, 36 miles south of Terrebonne Parish, Louisiana.	05/16/96
Santa Fe Energy Resources, Structure Removal Operations, SEA No. ES/SR 96–085.	East Cameron Area, Block 36, Lease OCS–G 10608, 6 miles south of Cameron Parish, Louisiana.	05/06/96
Dalen Resources Oil & Gas Company, Structure Removal Operations, SEA No. ES/SR 96–086.	West Cameron Area, Block 247, Lease OCS–G9407, 50–51 miles south of Cameron Parish, Louisiana.	05/03/96
Chevron U.S.A. Structure Removal Operations, SEA Nos. ES/SR 96–093 and 96–094.	Mobile Area, Block 861, Lease OCS–G 5062, 5 miles south of Jackson County, Mississippi.	06/13/96
Phillips Petroleum Company, Structure Removal Operations, SEA No. ES/SR 96–096.	West Cameron Area, Block 118, Lease OCS 0757, 16 miles south of Cameron Parish, Louisiana.	06/20/96
Gulfstream Resources, Inc., Structure Removal Operations, SEA No. ES/SR 96–099.	Eugene Island Area, Block 90, Lease OCS 0229, 55.7 miles southeast of Amelia, Louisiana.	05/20/96
Exxon U.S.A., Structure Removal Operations, SEA Nos. ES/SR 96–101.	West Delta Area, Block 42, Lease OCS–G 1495, 13 miles south of Plaquemines Parish, Louisiana.	06/13/96
Union Pacific Resources Co., Structure Removal Operations, SEA No. ES/SR 96–102.	Brazos Area, Block A–2, Lease OCS–G 9025, 33 miles southeast from the Texas shoreline.	06/13/96
Union Pacific Resources Company, Structure Removal Operations, SEA No. ES/SR 93–193.	Ship Shoal Area, Block 180, Lease OCS–G 12946, 32 miles south of Terrebonne Parish Louisiana.	06/07/96
UNOCAL Corporation, Structure Removal Operations, SEA No. ES/SR 96–107.	Vermilion Area, Block 26, Lease OCS 0297, 3 miles south of Vermilion Parish, Louisiana.	06/13/96
Texaco Exploration and Production, Inc., Structure Removal Operations, SEA Nos. ES/SR 96–108 through 96–110.	South Marsh Island Area; Blocks 212, 222, and 230; Lease OCS 0310; 18.5 miles south of the Louisiana shoreline.	06/13/96
Chevron U.S.A. Structure Removal Operations, SEA No. ES/SR 96–120.	Eugene Island Area, Block 133, Lease OCS–G 4445, 38 miles south of Iberia Parish, Louisiana.	06/06/96
Seneca Resources Corporation, Structure Removal Operations, SEA No. ES/SR 96–121.	West Cameron Area, Block 230, Lease OCS–G 10560, 42 miles south from the Louisiana coastline.	06/13/96
Chevron U.S.A., Structure Removal Operations, SEA Nos. ES/SR 96–124 and 96–125.	South Timbalier Area, Block 23, Lease OCS 0386, 4 miles south of Lafourche Parish, Louisiana.	06/17/96

Activity/Operator	Location	Date
Phillips Petroleum Company, Structure Removal Operations, SEA No. ES/SR 96–126.	West Cameron Area, Block 118, Lease OCS 0757, 43 miles southwest of Grand Chenier, Louisiana.	06/14/96
Amerada Hess Corporation, Structure Removal Operations, SEA Nos. ES/SR 96–127 through 96–130.	Eugene Island Area, Block 10, Lease OCS–G 2892, 3 miles south of St. Mary Parish, Louisiana.	06/21/96
W & T Offshore, Inc., Structure Removal Operations, SEA Nos. ES/SR 96–135 through 96–139.	Ship Shoal Area, Blocks 146 and 133, Leases OCS–G 3582 and 4228, 23 miles south-southwest of Terrebonne Parish, Louisiana.	07/07/96
Texaco Exploration and Production, Inc., Structure Removal Operations, SEA No. ES/SR 96–140.	South Marsh Island Area, Block 219, Lease OCS 0310, 11 miles south of Vermilion Parish, Louisiana.	07/08/96

Persons interested in reviewing environmental documents for the proposals listed above or obtaining information about EA's and FONSI's prepared for activities on the Gulf of Mexico OCS are encouraged to contact the MMS office in the Gulf of Mexico OCS Region.

FOR FURTHER INFORMATION CONTACT: Public Information Unit, Information Services Section, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, Telephone (504) 736–2519.

SUPPLEMENTARY INFORMATION: The MMS prepares EA's and FONSI's for proposals which relate to exploration for and the development/production of oil and gas resources on the Gulf of Mexico OCS. The EA's examine the potential environmental effects of activities described in the proposals and present MMS conclusions regarding the significance of these effects. Environmental Assessments are used as a basis for determining whether or not approval of the proposals constitutes major Federal actions that significantly affect the quality of the human environment in the sense of NEPA Section 102(2)(C). A FONSI is prepared in those instances where the MMS finds that approval will not result in significant effects on the quality of the human environment. The FONSI briefly presents the basis for that finding and includes a summary or copy of the EA.

This notice constitutes the public notice of availability of environmental documents required under the NEPA Regulations.

Dated: July 23, 1996.

Chris C. Oynes,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 96–19435 Filed 7–30–96; 8:45 am]

BILLING CODE 4310–MR–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Oil Pollution Act

Notice is hereby given that a proposed consent decree in *United States, et al.,* v. *ARCO Pipe Line Co., et al.,* Civil Action No. 1:96 CV 0280, was lodged on July 18, 1996, with the United States District Court for the Northern District of Indiana. The consent decree settles an action brought under Section 1006 of the Oil Pollution Act, 33 U.S.C. § 2706, for natural resource damages resulting from an oil spill in which a pipeline ruptured and discharged approximately 30,000 gallons of diesel fuel that flowed into Fish Creek, DeKalb County, Indiana, and spread downstream into Williams County, Ohio. The consent decree requires ARCO Pipe Line Co. and NORCO Pipeline, Inc., to pay the past assessment costs of the natural resource trustees and to pay $2,507,500 for restoring, rehabilitating, replacing, or acquiring the equivalent of the damaged natural resources.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States, et al.,* v. *ARCO Pipe Line Co., et al.,* DOJ Ref. #90–5–1–1–4146.

The proposed consent decree may be examined at the office of the United States Attorney, Fort Wayne Division, 1300 South Harrison Street, Room 3128, Fort Wayne, Indiana, 46802; the Bloomington Field Office of the U.S. Fish and Wildlife Service, 620 South Walker Street, Bloomington, Indiana, 47403; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $9.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Bruce S. Gelber,

Deputy Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 96–19395 Filed 7–30–96; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on July 16, 1996, a proposed Consent Decree in *United States* v. *Rhode Island Solid Waste Management Corporation,* Civil No. 96–408P, was lodged with the United States District Court for the District of Rhode Island to resolve this matter. The proposed Consent Decree concerns the response to the existence of hazardous substances at the Central Landfill Site located in Johnston, Rhode Island, pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, as amended.

Under the terms of the Consent Decree, Rhode Island Solid Waste Management Corporation will perform the remedial design and remedial action for Operable Unit 1 at the Site. In addition, Rhode Island Solid Waste Management Corporation agrees to pay $250,000 in past costs incurred through May 25, 1994, and to pay costs incurred in connection with Operable Unit 1 after May 25, 1994.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Ben Franklin Station, Washington, D.C.

20044, and should refer to *United States* v. *Rhode Island Waste Management Corporation*, D.J. Ref. 90–11–2–827.

The proposed Consent Decree may be examined at the Region 1 Office of the Environmental Protection Agency, One Congress Street, Boston Massachusetts. Copies of the Consent Decree may be examined at the Environmental Enforcement Section Document Center, 1120 G Street, N.W., 4th Floor, Washington D.C. 20005, (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Document Center. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $26.25 (25 cents per page reproduction cost, excluding appendices) made payable to Consent Decree Library.

Joel M. Gross,

Section Chief, Environmental Enforcement Section.

[FR Doc. 96–19404 Filed 7–30–96; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Petroleum Environmental Research Forum Project No. 95–12

Notice is hereby given that, on July 1, 1996, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* (''Act''), the Petroleum Environmental Research Forum (''PERF'') Project No. 95–12, titled ''Monitoring of Composting and Soil Bioremediation'', has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are: Chevron Research and Technology Company, Richmond, CA; BP Oil Company, Cleveland, OH; Exxon Production Research Company, Houston, TX; and Atlantic Richfield Company, Plano, TX. The nature and objective of this project is to improve the methods that can be used to monitor composting and soil bioremediation projects. Research and development work required in furtherance of the project is to be carried out by Bioremediation Consulting, Inc.

Participation in this project will remain open to interested persons and organizations until the Project Completion Date, which is presently anticipated to occur approximately August 31, 1997, but no later than December 31, 1998. The participants intend to file additional written notifications disclosing all changes in its membership. Information regarding participation in the project may be obtained from Ms. Sara J. McMillen, Chevron Research and Technology Company, 100 Chevron Way, Richmond, CA 94802–1627, telephone (510) 242–3485, Fax (510) 242–1954.

Constance K. Robinson,

Director of Operations Antitrust Division.

[FR Doc. 96–19396 Filed 7–30–96; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

Importation of Controlled Substances; Notice of Application

Pursuant to Section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with Section 1311.42 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on July 9, 1996, Bridgeway Trading Corporation, 7401 Metro Blvd., Suite 480, Minneapolis, Minnesota 55439, made application to the Drug Enforcement Administration to be registered as an importer of marihuana (7360) a basic class of controlled substance listed in Schedule I.

The firm plans to import marihuana seed which will be rendered non-viable and used as bird food.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than (30 days from publication).

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42(b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import basic classes of any controlled substances in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42 (a), (b), (c), (d), (e), and (f) are satisfied.

Dated: July 25, 1996.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 96–19442 Filed 7–30–96; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Notice of Application

Pursuant to Section 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on April 29, 1996, Guilford Pharmaceuticals, Inc., Attn: Ross S. Laderman, 6611 Tributary Street, Baltimore, Maryland 21224, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the Schedule II controlled substance cocaine (9041).

The firm plans to manufacture methyl-3-beta-(4-trimethylstannylphenyl)-tropane-2-carboxylate as a final intermediate for the production of dopascan injection.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than September 30, 1996.

Dated: July 25, 1996.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 96–19443 Filed 7–30–96; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated April 9, 1996, and published in the Federal Register on April 19, 1996, (61 FR 17322), Knoll Pharmaceuticals, 30 North Jefferson Road, Whippany, New Jersey 07981, made application to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of hydromorphone (9150), a basic class of controlled substance listed in Schedule II.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Knoll Pharmaceuticals to manufacture hydromorphone is consistent with the public interest at this time. Therefore, pursuant to 21 U.S.C. § 823 and 28 CFR §§ 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: July 25, 1996.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 96–19444 Filed 7–30–96; 8:45 am]

BILLING CODE 4410–09–M

Importer of Controlled Substances; Notice of Registration

By Notice dated April 30, 1996, and published in the Federal Register on May 6, 1996, (61 FR 20275), Penick Corporation, 158 Mount Olivet Avenue, Newark, New Jersey 07114, made application to the Drug Enforcement Administration (DEA) to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Coca Leaves (9040)	II
Opium, raw (9600)	II
Opium poppy (9650)	II
Poppy Straw Concentrate (9670)	II

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Penick Corporation to import the listed controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. Therefore, pursuant to Section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, Section 1311.42, the above firm is granted registration as an importer of the basic classes of controlled substances listed above.

Dated: July 25, 1996.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Division Control, Drug Enforcement Administration.

[FR Doc. 96–19445 Filed 7–30–96; 8:45 am]

BILLING CODE 4410–09–M

Importer of Controlled Substances; Notice of Registration

By Notice dated April 30, 1996, and published in the Federal Register on May 6, 1996, (61 FR 20276), Roberts Laboratories, Inc., 4 Industrial Way West, Eatontown, New Jersey 07724, made application to the Drug Enforcement Administration (DEA) to be registered as an importer of propiram (9649), a basic class of controlled substance listed in Schedule I.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Roberts Laboratories, Inc. to import propiram is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. Therefore, pursuant to Section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, Section 1311.42, the above firm is granted registration as an importer of the basic class of controlled substance listed above.

Dated: July 25, 1996.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 96–19446 Filed 7–30–96; 8:45 am]

BILLING CODE 4410–09–M

Importer of Controlled Substances; Notice of Registration

By Notice dated May 22, 1996, and published in the Federal Register on May 30, 1996, (61 FR 27099), Roche Diagnostic Systems, Inc., 1080 U.S. Highway 202, Somerville, New Jersey 08876, made application to the Drug Enforcement Administration (DEA) to be registered as an importer of tetrahydrocannabinols (7370), a basic class of controlled substance listed in Schedule I.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Roche Diagnostic Systems, Inc. to import tetrahydrocannabinols is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. Therefore, pursuant to Section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, § 1311.42, the above firm is granted registration as an importer of the basic class of controlled substance listed above.

Dated: July 25, 1996.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 96–19447 Filed 7–30–96; 8:45 am]

BILLING CODE 4410–09–M

Importer of Controlled Substances; Notice of Registration

By Notice dated May 22, 1996, and published in the Federal Register on May 30, 1996, (61 FR 27100), Wildlife Laboratories, Inc., 1401 Duff Drive, Suite 600, Ft. Collins, Colorado 80524, made application to the Drug Enforcement Administration (DEA) to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Etorphine Hydrochloride (9059)	II
Carfentanil (9743)	II

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Wildlife Laboratories, Inc. to import the listed controlled substances is consistent with the public interest and with United States

obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. Therefore, pursuant to Section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, Section 1311.42, the above firm is granted registration as an importer of the basic classes of controlled substances listed above.

Dated: July 25, 1996.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 96–19448 Filed 7–30–96; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 96-62; Application No. D–10031]

Class Exemption To Permit Certain Authorized Transactions Between Plans and Parties in Interest

AGENCY: Pension and Welfare Benefits Administration (PWBA), Department of Labor.

ACTION: Grant of class exemption.

SUMMARY: This document contains a final exemption from the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA), the Federal Employees' Retirement System Act of 1986 (FERSA) and the Internal Revenue Code of 1986 (the Code). The exemption applies to certain prospective transactions between employee benefit plans and parties in interest where such transactions are specifically authorized by the Department and are subject to terms, conditions and representations which are substantially similar to exemptions previously granted by the Department. The exemption affects plans, participants and beneficiaries of such plans and certain persons engaging in such transactions.

Discussion of the Exemption

As part of the Department's continuing efforts to reduce regulatory burdens associated with processing individual exemptions for transactions prohibited under ERISA, this class exemption permits a plan to engage in a transaction following a demonstration to the Department that the transaction: (1) Is substantially similar to those described in two prior individual exemptions granted by the Department; and (2) presents little, if any, opportunity for abuse or risk of loss to a plan's participants and beneficiaries. Under the class exemption, a party may proceed with a transaction in as little as 78 days from the acknowledgment of receipt by the Department of a written submission filed in accordance with the terms of the class exemption. The time-frames contained in the exemption enable the Department to fully consider the written submission for compliance with the terms of the class exemption and provide interested persons with a reasonable opportunity to comment on the proposed transaction following the receipt of notification.

EFFECTIVE DATE: July 31, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. Allison Padams, Mr. Ronald Willett, or Mr. Louis Campagna, Office of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor, telephone (202) 219–8971 (This is not a toll-free number.); or Mr. William Taylor, Plan Benefits Security Division, Office of Solicitor, U.S. Department of Labor (202) 219–4592. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On November 27, 1995, the Department of Labor (the Department) published a notice in the Federal Register (60 FR 58376) of the pendency of a proposed class exemption from the restrictions of sections 406 (a), 406(b)(1) and 406(b)(2) of ERISA and from the taxes imposed by section 4975(a) and (b) of the Internal Revenue Code (the Code), by reason of section 4975(c)(1) (A) through (E) of the Code.

The Department proposed the class exemption on its own motion pursuant to section 408(a) of ERISA and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR part 2570, subpart B, (55 FR 32836, August 10, 1990).[1]

The notice of pendency gave interested persons an opportunity to comment or request a public hearing on the proposal. No requests for a public hearing with respect to the proposed class exemption were received by the Department. Six public comments were received by the Department. Upon consideration of the record as a whole, the Department has determined to grant the proposed class exemption subject to certain modifications. These modifications and the comments are discussed below.

Discussion of Comments Received

One commenter urged the Department to modify the final exemption to provide relief from section 8477(c)(2) of FERSA which parallels section 406(b) of ERISA.[2] The commenter stated that the scope of the class exemption should be expanded to enable the Thrift Savings Plan for federal employees to take advantage of the relief provided by the exemption. The Department sees merit in this comment and believes that providing such relief is consistent with the policy and safeguards embodied in this exemption. Accordingly, the Department has modified section II of the final exemption to provide relief from section 8477(c)(2) of FERSA.

Another commenter requested that the Department clarify that the relief provided in the class exemption applies to transactions involving multiemployer plans. The Department notes that the exemption applies to transactions which are substantially similar to transactions described in at least two individual exemptions granted by the Department within the 60-month period prior to the written submission filed in accordance with the class exemption. In this regard, the conditions of the exemption do not include a requirement of substantial similarity between the type of plan involved in the proposed transaction under the class exemption and the type of plans involved in the previously granted individual exemptions (i.e., single employer or multiemployer plans). Accordingly, it is the view of the Department that sections I(a) and II(b) will be satisfied in the case of a multiemployer plan, if such plan relies on two substantially similar individual exemptions involving single employer plans.

A commenter requested clarification regarding sections I(b) and II(b) of the exemption which require that there be little, if any, risk of abuse or loss to the plan participants and beneficiaries as a result of the transaction. The commenter expressed concern that this condition may require that the party who is to engage in the transaction guarantee that a plan never experience a loss as a result of the subject transaction. As a result, the commenter requested that the Department clarify this condition to provide that, if a transaction is prudent when entered into, the relief provided by the class exemption will not be

[1] Section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) generally transferred the authority of the Secretary of the Treasury to issue administrative exemptions under section 4975(c)(2) of the Code to the Secretary of Labor.

[2] The Department is authorized to grant exemptive relief from the restrictions of FERSA section 8477(c)(2) pursuant to section 8477(c)(3) of FERSA. The restrictions of FERSA section 8477(c)(2) parallel section 406(b) of ERISA.

retroactively revoked should there be some future decline in the value of the asset. It was not the intent of the Department that this condition act as a guarantee of the future performance of the transaction. The Department notes that, for purposes of determining whether a transaction poses little, if any, risk of abuse or loss to the plan, the party should examine the facts and circumstances surrounding the transaction as of the date that the transaction is to be entered into.

Two commenters requested that the Department expand the relief provided by the exemption to include relief from section 406(b)(3) of ERISA. One of the commenters noted that section 406(b)(3) relief would only be available if such relief was provided in the two substantially similar individual exemptions granted by the Department within the prior 60-month period. The Department sees merit in these comments and has modified the final exemption accordingly. In this regard, the Department notes that any of the relief from specific ERISA restrictions provided by the class exemption for a particular transaction is available only to the extent that the same relief is provided in the two substantially similar individual exemptions previously granted by the Department.

A commenter requested that the term ''independent fiduciary'' as used in section II be defined in the final exemption.[3] Another commenter urged that the Department be flexible in determining who may serve as independent fiduciary and suggested that the sponsoring employer or other existing plan fiduciary be permitted to act in that capacity. Because of the variety and constantly evolving nature of the products and service arrangements presented to the Department for its consideration under ERISA section 408(a), the Department does not believe that it would be appropriate to adopt a definition that, in effect, would require compliance with certain enumerated standards. Rather, the Department generally has adopted a flexible approach with respect to the qualification of a party to act as an independent fiduciary in any particular situation. In this regard, individual exemptions granted by the Department have required that there be no affiliation between the independent fiduciary and the party or its affiliates seeking to engage in the transaction and that the independent fiduciary receive no more than a *de minimis* amount of compensation from the party seeking to engage in the subject transaction, including amounts received for services as independent fiduciary. In certain cases, such as a transaction between a plan and a party unrelated to the plan sponsor, the plan sponsor may qualify to act as independent fiduciary on behalf of the plan. In addition, as noted in the preamble to the proposed exemption, ''* * * the independent fiduciary should be knowledgeable and experienced with respect to the type of transaction.'' The Department encourages parties to consider, when retaining an independent fiduciary, any unique qualifications of the independent fiduciaries utilized in the two or more individual exemptions being relied upon.

One commenter requested that the Department delete the requirement under the proposed exemption relating to the distribution of notice to interested persons. According to the commenter, the requirement of notice and a comment period does not seem to serve a useful purpose and prolongs the approval process. The Department notes that the proposed exemption provides broad relief for various party in interest transactions that do not come within the scope of relief provided by existing statutory or class exemptions. In this regard, comments submitted to the Department by interested persons in response to the publication of a proposed individual exemption in the Federal Register may raise substantive factual, legal or policy issues which are not apparent from the information contained in the exemption application. Under the proposed class exemption, publication of notice in the Federal Register would not be required. Accordingly, the Department believes that the distribution of notice affording interested persons the opportunity to comment on a proposed transaction is an important safeguard under the class exemption. As a result, the Department has determined not to modify the exemption in this regard.

The commenter also suggested that the term ''completion of distribution of the notice'' contained in the definition of ''comment period'' under section IV(e) of the proposal should be modified to permit the party who is to engage in the transaction to make a reasonable estimate of the time necessary for completion of notice such as three days after sending notice by first-class mail. The Department notes that, under section IV(e), the comment period expires 25 days following the completion of the distribution of notice to interested persons. Accordingly, the expiration date of the comment period is necessarily dependent upon the date that distribution of the notice is completed. The Department is of the view that the requirements of the exemption relating to the comment period as defined under section IV(e) will be met if the party makes a good faith estimate of the time necessary to complete distribution of the notice. In this regard, the Department has modified section IV(e) to specifically provide that a party may assume that distribution of notice will be complete three business days following the date of first class mailing of such notice.

The commenter also suggested that the class exemption contain a requirement that the party wishing to engage in the transaction must inform interested persons of the date of the expiration of the comment period. The commenter noted that the preamble to the proposed class exemption referred to the responsibility of the party to notify interested persons of the date of the expiration of the comment period, but that such notification was not specifically included as a condition of the proposed class exemption. The commenter stated that such a requirement should appear among the terms and conditions of the class exemption. The Department sees merit in this comment and has modified section IV(b) to provide that the notice to interested persons include the date of the expiration of the comment period.

One of the commenters requested that the Department delete the 60-month requirement described in sections I(a) and II(a) of the class exemption. Sections I(a) and II(a) require that a transaction be substantially similar to transactions described in at least two individual exemptions that were granted by the Department within the 60-month period ending on the date a written submission is filed. The Department notes that the 60-month requirement was developed to ensure that the two substantially similar individual exemptions that the party compares to its proposed transaction reflect the current exemption policies of the Department. Therefore, the Department is unable to conclude that deletion of this requirement is warranted.

A commenter urged the Department to adopt a more liberal definition of the term ''substantially similar.'' Section IV(a) defines the term ''substantially similar'' as alike in all material respects. The commenter suggested that the precedential exemptions be considered

[3] In making a finding that an exemption is administratively feasible under section 408(a) of ERISA, in that it requires no continuing administrative burden on behalf of the Department, the Department generally has required the involvement of an independent fiduciary to represent the plan for transactions that require relief from section 406(b) of ERISA.

substantially similar where, in the Department's judgement, there presents little possibility of abuse due to the difference in facts. The Department is not persuaded by the argument submitted in favor of an expanded definition of the term ''substantially similar''. The proposed exemption's premise was that the Department could provide expedited consideration of a party's written submission within the timeframes delineated in the proposal only if the transaction was substantially similar, as defined under the exemption, to two other transactions previously considered by the Department. The Department believes that the commenter's suggestion for a more liberal definition of ''substantially similar'' is inconsistent with the underlying premise of the class exemption. For this reason, the Department has determined not to modify this definition.

One commenter requested a number of modifications to the proposal based upon its belief that the class exemption should be applicable to generic transactions that would otherwise be the subject of a class exemption. The Department notes that the preamble to the proposal indicates that the party wishing to take advantage of the exemption must demonstrate that the transaction is substantially similar to at least two individual exemptions previously granted by the Department. The Department notes that it determined to propose relief based, in part, on its observation that many of the individual applications contain nearly identical transactions, terms and conditions as those previously granted. Accordingly, because the proposal limits relief to identifiable individual transactions and the parties thereto, not generic transactions, the modifications requested by the commenter are beyond the scope of this proceeding. Lastly, the Department notes that the great majority of class exemption requests considered by the Department over the previous 20 years presented unique facts and circumstances that were not substantially similar to prior exemptions granted by the Department.

The same commenter also urged the Department to extend the relief provided by the class exemption to include transactions that have taken place prior to the submission required under part III of the exemption. Another commenter urged the Department to consider retroactive relief to the date of the written submission under the class exemption. The Department noted in the preamble to the proposal that ''* * * in light of the broad scope of relief provided under the proposal, the class exemption is only available with respect to prospective transactions.'' It appears to the Department that providing retroactive relief under the class exemption could result in the completed transaction not being in compliance with one or more of the requirements of the class exemption, including the requirement that the transaction be substantially similar to two previously granted exemptions. In addition, the Department continues to believe that providing interested persons with the opportunity to comment on a contemplated transaction is an important safeguard under the class exemption. Accordingly, the Department has decided not to adopt this comment.

Conditions

The exemption contains conditions, as described below, which are necessary to support a finding that the exemption meets the statutory standards of section 408(a) of ERISA.[4]

Under section I of the exemption, relief is provided for transactions, as discussed below, from certain of the restrictions described in section 406(a) of ERISA. In this regard, section I(a) requires that the transaction be substantially similar to transactions described in at least two individual exemptions that were granted by the Department, and which provided relief from the same restrictions as requested by the party, within the 60-month period ending on the date a written submission is filed. ''Substantially similar'' is defined in section IV(a) as alike in all material respects.

Section I(b) of the exemption requires that there be little, if any, risk of abuse or loss to the plan participants and beneficiaries as a result of the transaction. Section I(c) further provides that prior to the execution of a transaction, the authorizing requirements of section III must be satisfied (as discussed below).

Under section II of the exemption, additional relief is provided from certain of the restrictions described in sections 406(b) of ERISA and the parallel restrictions described in section 8477(c)(2) of FERSA provided that: (a) the transaction is substantially similar (as defined in section IV(a)) to transactions described in at least two individual exemptions that were granted by the Department, and which provided relief from the same restrictions or, if FERSA relief is requested, the ERISA relief provided parallels the restriction of section 8477(c)(2) of FERSA, within the 60-month period ending on the date of filing of the written submission; (b) there is little, if any, risk of abuse or loss to the plan participants and beneficiaries as a result of the transaction; and (c) prior to its execution, the transaction has met the requirements described in section III (as discussed below.)

In considering the availability of this class exemption, the party who is to engage in the transaction should carefully determine whether the contemplated transaction contains terms and conditions which closely parallel the transaction delineated in the prior exemptions granted by the Department and the material facts and representations supporting such exemptions. In particular, the Department wishes to note that the relief provided by the class exemption is available for a specific transaction only to the extent that the relief from the same restrictions has been provided in the two substantially similar individual exemptions that were submitted to the Department by the party that wishes to engage in the transaction.

As a precondition for a grant of relief from the fiduciary self-dealing and conflict of interest restrictions of section 406(b) of ERISA, section II(d) and (e) require that prior to execution of such transaction, an independent fiduciary has reviewed the proposed transaction and determined that the transaction would be in the interests and protective of the plan and its participants and beneficiaries, and later represents the interests of the plan in the execution of the transaction. Under section II(f), for those transactions that are continuing in nature, such as leases and loans, the independent fiduciary must: (1) represent the interests of the plan for the duration of the transaction; (2) monitor the transaction on behalf of the plan; (3) enforce compliance with all conditions and obligations imposed on any party dealing with the plan with respect to the transaction; and (4) ensure that the transaction remains in the interests of the plan.[5]

The Department notes that any relief from section 406(b) provided under section II of the proposal required the involvement of an independent

[4] References to sections 408(a) and 406(a) and (b) of ERISA incorporate the corresponding provisions of section 4975 of the Code.

[5] The written submission referred to section III should include specific information regarding the methods proposed by the independent fiduciary for: monitoring the transaction; enforcing compliance with all the conditions and obligations imposed on the parties dealing with the plan; and ensuring that the transaction remains in the interests and protective of the participants and beneficiaries of the plan.

fiduciary. Section II required that the independent fiduciary review and approve the transaction and, where the transaction was continuing in nature, monitor the transaction and represent the interests of the plan throughout the duration of the transaction. However, it was brought to the attention of the Department that certain types of exemptions which provided section 406(b) relief for transactions such as sales of property by the plan to certain parties in interest or loans from the individually directed accounts of participants in plans to those participants, may not have required the involvement of an independent fiduciary. Accordingly, the Department has modified the final exemption to clarify that the involvement of an independent fiduciary as described in section II is required only if the exempted transactions described in either of the two previously granted exemptions cited by the party required the involvement of an independent fiduciary. If an independent fiduciary is required for the contemplated transaction, then the fiduciary's involvement must comply with the requirements of section II.

The Department notes that the independent fiduciary should be knowledgeable and experienced with respect to the type of transaction. In this regard, any unique qualifications of the independent fiduciaries utilized in the substantially similar individual exemptions should be considered when retaining an independent fiduciary. Further, in determining a potential fiduciary's independence from the parties to the transaction, consideration should be given to such person's relationship to the other parties involved in the contemplated transaction in terms of any affiliation between such person and the other parties to the transaction, as well as whether such person derives more than a *de minimis* amount of compensation from the other parties to the transaction.

Section III of the exemption contains the authorization requirements for a transaction. Section III(a)(1) requires that the party who will be engaging in such transaction file a written submission with the Department containing a specific statement to demonstrate compliance with the conditions of the class exemption. The purpose of the authorization requirements of section III is to enable the Department to examine the written submission to determine whether the transaction, in fact, complies with the requirements of the class exemption. The written submission must clearly state that it is made pursuant to the class exemption rather than under the Department's procedures for considering individual exemptions.[6]

Section III(a)(2) requires that the submission include the same information that is required to be submitted with an individual exemption application. The Department believes this condition will assure a full and comprehensive file upon which the Department can base its conclusions concerning the availability of this class exemption. The Department's experience in considering individual exemption requests has demonstrated that it is difficult to approve an exemption for a particular transaction without the ability to examine the surrounding facts and circumstances. In a number of instances, examination of the facts and circumstances has revealed past or potential violations of the provisions of Title I of the Act or other significant issues which must be resolved prior to granting an exemption. Similarly, the Department believes that it is important to examine the supporting documentation for a transaction, such as appraisals and independent third party representations regarding the transaction. This information frequently discloses additional issues which must be addressed by the applicants and is required under the individual exemption procedures to be submitted to the Department in an individual exemption application. Rather than developing a separate set of requirements under this class exemption for the submission of relevant information, the Department believes that reference to the individual exemption procedure, already an established and familiar procedure, was a more appropriate approach. The information required by the procedure, which is published at 29 CFR 2570.34 and .35 is designed to minimize the need to subject applicants to repeated requests for additional information after the application is filed. As an additional consideration, this condition will permit the written submission to be considered under the Department's individual exemption procedures in the event that the Department is unable to conclude from the written submissions that the conditions of the class exemption would be met.

Under section III(a)(3), the party who will be engaging in the transaction must demonstrate that the proposed transaction presents little, if any, risk of abuse or loss to the plan participants and beneficiaries given the terms and conditions of the transaction. The Department interprets section III(a)(3) as requiring that the party demonstrate that the facts and circumstances surrounding the transaction at the time the transaction is entered into present little, if any, risk of abuse or loss to the plan participants and beneficiaries. It was not the intention of the Department to make the party who engaged in the transaction responsible for all unforeseen events that occur at some later date. Section III(a)(4) requires that the party compare the proposed transaction to those previously exempted transactions identified by the party as substantially similar. In this regard, any comparison must include a description of any material differences between the proposed transaction and the identified exemptions.

Section III(a)(5) requires that a complete and accurate draft of the notice which will be distributed to interested persons be submitted to the Department. The Department believes that it is necessary to review the notice prior to its distribution to interested persons in order to assure that a completely objective summary of the proposed transaction has been prepared by the party. The purpose of the notice requirement is to afford interested persons with the opportunity to provide the Department with relevant information based upon an objective description of the transaction to assist the Department in its consideration of the proposed transaction. The term ''notice'' is defined in section IV(b) as a written notification to interested persons which includes an objective description of the transaction, the approximate date on which the transaction will occur, a statement that the proposed transaction has met the requirements for tentative authorization under this class exemption, a statement apprising interested persons of their right to comment, the Federal Register citations for the prior exemptions identified by the party as substantially similar to the contemplated transaction and the expiration date of the comment period. The expiration date of the comment period obviously cannot be determined as of the date of the written submission, but must be included when notice is distributed to interested persons. The notice must also contain a statement directing interested persons to submit comments to the Department for consideration. In order to simplify the submission of comments, the Department has modified the final exemption to require that the notice contain the address of the Department. The address is as follows: Office of Exemption Determinations, U.S.

[6] See 29 CFR part 2570, subpart B.

Department of Labor, 200 Constitution Avenue, N.W., Room N–5649, Washington, D.C. 20210.

With respect to a transaction described in section II of this exemption, section III(b) provides that the written submission must also contain the following additional information: (1) the identity of the independent fiduciary; (2) a description of such fiduciary's independence from the parties in interest involved in the subject transaction; (3) a statement by the independent fiduciary containing an explanation as to why the subject transaction is in the interests and protective of the participants and beneficiaries of the plan; (4) an agreement by the independent fiduciary to represent the interests of the plan; and (5) a description of the procedures for replacement of the independent fiduciary, if necessary, during the term of the transaction. As previously explained in response to a comment, the description of the independence of the fiduciary may be accomplished by a brief discussion in the written submission describing any relationship between the fiduciary and the other parties to the contemplated transaction in terms of any affiliation and the amount of any income derived by the fiduciary from the other parties.

The written submissions will be reviewed by the Department to ensure that the conditions of this class exemption are met. If the Department determines that a submission does not meet the requirements for the class exemption, the Department will notify the party and, if the party so desires, the Department will consider the submission under the Department's exemption procedure for individual exemptions.

The exemption requires, under section III(c), that the transaction meet the requirements for tentative authorization. ''Tentative authorization'' is defined under section IV(c) as occurring upon the earlier of: (1) the expiration of the 45-day period following acknowledgement by the Department of the receipt of the written submission with respect to the proposed transaction, unless the Department has notified the party who is to engage in the transaction during this period that the transaction is not eligible for authorization under the terms of this class exemption, or (2) the issuance of a written determination by the Department during the 45-day period that the proposed transaction meets the requirements for tentative authorization.[7] In view of the broad scope of relief provided under the exemption, and the need to protect the interests of the plan's participants and beneficiaries, the Department believes it necessary to retain the authority to determine, prior to the execution of the transaction, whether the transaction is substantially similar to previously exempted transactions and presents little, if any, risk of abuse or loss to the plan participants and beneficiaries. This determination will be made within 45 days from the Department's acknowledgement of the receipt of the written submission. In order to protect the interests of participants and beneficiaries, the Department believes that the 45-day period is the minimum amount of time necessary for a thorough review of the written submission, and a comparison of the facts and circumstances surrounding the transaction under consideration to the transactions contained in the two prior exemptions cited by the party as substantially similar. Although in some cases, the Department expects that it will be able to complete its review and issue a determination letter in less than 45 days, the Department believes that a shorter time limit for this process would not be workable. Starting the review period from the date of the Department's acknowledgement of receipt of the written submission assures that the Department will have the full 45-day period in which to complete its review. Under the class exemption, the party seeking to engage in the transaction will also receive quick assurance that the Department has received its submission and that the 45-day period is running.

The Department will send a letter to each party acknowledging receipt of the written submission. Generally, the acknowledgement letter will be sent within three to five days of actual receipt of the written submission by the Department. The 45-day period for tentative authorization will commence as of the date of the acknowledgement letter. In this regard, the Department notes that the party may not assume receipt of the written submission by the Department until the party receives an acknowledgement letter. Since the acknowledgement letter may be the only formal written communication between the party and the Department, the acknowledgement letter will also contain a brief summary of the requirements for tentative authorization and final authorization of the transaction, to assist the party in understanding the requirements of the class exemption.

Section III(d) provides that, following tentative authorization, the party who is to engage in the transaction provides written notice (as defined in section IV(b)) to interested persons. Tentative authorization, in effect, permits the party to begin the distribution of written notice to interested persons. The exemption does not specify the manner in which written notice must be provided to interested persons. However, section III(d) requires that notice be given in a manner that is reasonably calculated to result in the receipt of such notice by interested persons. It is the responsibility of the party who is to engage in the transaction to promptly distribute notice after tentative authorization is obtained, because the 25-day comment period, as defined under section IV(e), will not commence until the notification to all interested persons is complete. The notice must also inform interested persons of the date of expiration of the comment period in accordance with section IV(b)(5). Since the date of completion of the notification is within the control of the party who is to engage in the transaction, the Department expects the party who provides written notice to take this into account in determining the expiration date of the comment period. It is also the responsibility of the party to inform the Department of the date upon which notification was completed and the date the comment period expires. In order to avoid unnecessary delay, the Department strongly encourages parties to notify it regarding the expiration of the comment period as soon as possible following tentative authorization, but in no event later than the expiration of the 25-day comment period.

The Department recognizes that there may be difficulties in determining the completion date for notification and, thus, the expiration of the comment period. To ease compliance with the requirements of the class exemption, the Department is of the view that distribution of notice will be deemed complete under section IV(e) on a date the party determines through a good faith estimate of the time necessary to complete distribution of notice. In the case of notification by first-class mail, the Department specifically has modified section IV(e) to provide that completion of the distribution of the notice will be deemed satisfied three business days following the date of the first class mailing to interested persons.

In addition, section III(d) requires that the party who is to engage in the

[7] The Department does not intend to issue written determinations of tentative authorization except in unusual situations where the Department deems it appropriate to do so.

transaction resolve all substantive adverse comments submitted to the Department to the satisfaction of the Department. The term ''substantive adverse comments,'' as defined in section IV(f), means those comments submitted by interested persons to the Department within the prescribed comment period which raise significant factual, legal or policy issues regarding the transaction as determined by the Department.

''Final authorization'' is defined in section IV(d) as the end of the five-day period immediately following the expiration of the comment period unless the Department notifies the party within that period that the transaction is not eligible for authorization, or the expiration of a period of time extending beyond the five-day period as mutually agreed to by the Department and the party in order to resolve any substantive adverse comments submitted to the Department. The five-day period between the expiration of the comment period and final authorization is intended to allow consideration by the Department of comments received within the 25-day comment period. If mutual agreement between the Department and the party who is to engage in the transaction is not reached regarding the period of time in which such comments must be resolved, the party will be notified that the transaction fails to comply with the conditions of the class exemption, and the written submission will be considered by the Department in accordance the Department's exemption procedures at 29 CFR 2570, subpart B.

The Department will not consider a proposed transaction to satisfy the conditions of this proposed class exemption unless the material facts and representations contained in the written submission and in any materials and documents submitted in support of the written submission are true and complete. In this regard, with respect to transactions that are continuing in nature, such as a loan or a lease, any change in the material facts described in the written submission with respect to the transaction may result in the prospective unavailability of the class exemption for the transaction. In the event of any such change, the parties involved in the transaction have the option of applying for a new exemption, either pursuant to this class exemption or under the Department's exemption procedures at 29 CFR 2570, subpart B.

The Department has determined to include in the exemption, as a new section V, an optional checklist of the information required to be submitted to the Department under section III of the exemption. The Department recognizes that, because of oversight, items required for the written submission described in section III may be accidentally omitted causing potential delay to the party who wishes to engage in the transaction. The Department believes that utilization of the checklist by the party during its preparation of the written submission will help avoid such omissions and assure that the submission is complete. However, the Department notes that use of the checklist described in section V is completely optional and need not be prepared as part of the written submission.

Examples

The application of the exemption may be illustrated by the following examples:

Example (1): ABC Company files a written submission under the class exemption for a loan of money from a plan for which it currently provides accounting services. Because the loan would be prohibited under section 406(a), ABC needs an exemption for the loan. ABC cites in its written submission two prior exemptions for loans whose terms are substantially similar to those proposed in the ABC Company submission. However, one loan is from a plan to the plan's non-discretionary broker and the other loan is to the plan's actuary. Both loans are for twice the amount proposed in the ABC Company submission, but are for less than 25 percent of the assets of the plans involved. Provided the amount of the ABC Company loan is less than 25 percent of the assets of the plan, these distinctions would not cause the proposed transaction to fail the substantially similar test of section I(a). In addition, the substantially similar test is applied with respect to the transactions described in the two prior exemptions and not the parties involved in the transactions.

Example (2): An exemption application is submitted to the Department by applicant X, the sponsor of plan Y, for a lease of office space by plan Y to X. The transaction proposed is similar in all material respects to four other exemptions granted by the Department within the last five years. Applicant X, however, does not make a specific declaration that the application is submitted with the intention of demonstrating compliance with the class exemption, and there is no information which otherwise complies with sections I, II and III of the class exemption. The application may be considered by the Department pursuant to individual exemption procedures unless the applicant amends its original written submission and provides the required information. At that point, the Department will acknowledge receipt of the written submission requesting expedited authorization under the class exemption.

Example (3): In 1994, two exemptions were granted for loans by pension plans to Corporation A and Corporation B, respectively, the sponsoring employers. The loan to Corporation A was for $50,000. The loan to Corporation B was for $75,000. Among the conditions and material representations contained in both exemptions were the following: the loans would be approved and monitored by an independent fiduciary; the term of the loans could extend no more than five years; regular installment payments of principal and interest had to be made during the term; the collateral consisting of real property had to be maintained at all times at a value of at least 150 percent of the outstanding balance of the loan; and no more than 25 percent of the assets of the plan would be involved in loans to the sponsoring employer. In 1996, X Corporation makes a written submission pursuant to the class exemption with respect to a proposed loan from its plan. The proposed transaction, including the terms and conditions of the loan and the creditworthiness of the borrower, is substantially similar to the exemptions granted to Corporation A and Corporation B, except that the loan is for $400,000 and the term is seven years. X Corporation cites the previously granted exemptions in its submission and demonstrates that the 25 percent limitation on the amount of assets involved in loans to the employer would be met. These differences in dollar amounts and loan term would not cause the transaction to fail the ''substantially similar'' test under sections I(a) and II(a).

If, however, in addition to these differences (i.e., dollar amounts and loan term), the loan transaction proposed by X Corporation also included different repayment provisions requiring monthly payments of interest only during the loan term and a balloon payment of principal at the end of the term, the relief afforded by the class exemption would not be available because the terms of the proposed loan are not alike in all material respects within the meaning of sections I(a) and II(a) to the previous loan exemptions granted by the Department and cited by the applicant.

Example (4): In 1994, Investment Adviser X is granted a conditional exemption which permits plans for which it provides investment

management services to purchase units of a limited partnership for which X is the general partner. In 1996, the assets of X are sold to Y. Y subsequently makes a written submission pursuant to the class exemption for the same transactions which were the subject of the exemption granted to X. In addition to the exemption granted to X, Y cites in its submission one other substantially similar exemption granted by the Department within the last five years. The relief afforded by the exemption would be available because the terms and conditions of the transaction are substantially similar to previous exemptions granted by the Department.

Example (5): Firm C makes a written submission pursuant to the class exemption for the sale of property by its plan to C. The written submission is received by the Department on April 1. On April 3, the Department sends an acknowledgement letter to C. Forty-five days elapse from April 3, the date of the acknowledgement letter, without notification from the Department that the transaction is not eligible for authorization under the terms of the class exemption. Pursuant to the exemption, C proceeds to distribute notice to interested persons by first class mail. Completion of notice is deemed to occur three days following the date of a first class mailing. On the 24th day following completion of notice, the Department receives a comment from an interested person raising significant factual concerns regarding the sale. At this point, if the comment cannot be resolved within the five-day period following the expiration of the comment period, the Department and C can mutually agree, pursuant to section IV(d) of the exemption, to a date beyond this period, at which time the comment must be resolved to the Department's satisfaction in order for the transaction to be authorized under the terms of the exemption. If the Department and C cannot agree to an extended date, the transaction will not receive final authorization and the exemption will not be available for such transaction.

Paperwork Reduction Act Analysis

The collection of information contained in this final class exemption has been approved by the Office of Management and Budget after review under section 3507(d) of the Paperwork Reduction Act of 1995, and has been given OMB control number 1210–0098.

Comments were solicited on the Department's need for this information; an explanation of how the collection of information contained in the final class exemption was amended in response to any comments received from OMB or the public is contained in the preamble, above. This discussion includes the identification and explanation of those modifications made in the class exemption, and an explanation of why certain comments were rejected.

Persons who are to respond to this collection of information are not required to respond to the collection of information unless it displays a currently valid OMB control number. The OMB control number displayed above is valid through September 1998.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of ERISA and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person with respect to a plan from certain other provisions of ERISA and the Code to which the exemption does not expressly apply and the general fiduciary responsibility provisions of section 404 of ERISA. Section 404 requires, in part, that a fiduciary discharge his or her duties respecting the plan solely in the interests of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of ERISA. This exemption does not affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code, and based upon the entire record, the Department finds that the exemption is administratively feasible, in the interests of plans and of their participants and beneficiaries and protective of the rights of the participants and beneficiaries.

(3) The exemption is supplemental to, and not in derogation of other provisions of ERISA and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The exemption is applicable to a transaction only if the conditions specified in the class exemption are satisfied.

Exemption

Accordingly, the following exemption is granted under the authority of section 408(a) of ERISA, section 4975(c)(2) of the Code, and section 8477(c)(3) of FERSA and in accordance with the procedures set forth in 29 CFR 2570, subpart B (55 FR 32836, August 10, 1990).

Section I—General Exemption. Effective July 31, 1996, a restriction described in section 406(a) of ERISA, and the taxes imposed by sections 4975(a) and (b) of the Code, by reason of a parallel provision described in section 4975(c)(1)(A) through (D) of the Code, shall not apply to a transaction between a plan and a party in interest with respect to such plan, provided the following conditions are met:

(a) The transaction is substantially similar (as defined in section IV(a)) to transactions described in at least two individual exemptions that were granted by the Department, and provided relief from the same restriction, within the 60-month period ending on the date of filing of the written submission referred to in section III(a);

(b) There is little, if any, risk of abuse or loss to the plan participants and beneficiaries as result of the transaction; and

(c) Prior to its execution, the transaction has met the requirements described in section III.

Section II—Specific Exemption. Effective July 31, 1996, a restriction described in sections 406(b) of ERISA or a parallel restriction described in section 8477(c)(2) of FERSA, and the taxes imposed by sections 4975(a) and (b) of the Code, by reason of a parallel provision described in section 4975(c)(1)(E) and (F) of the Code, shall not apply to a transaction between a plan and a party in interest with respect to such plan, provided the following conditions are met:

(a) The transaction is substantially similar (as defined in section IV(a)) to transactions described in at least two individual exemptions that were granted by the Department, and provided relief from the same restriction or, if FERSA relief is requested, the ERISA relief provided parallels the restrictions of section 8477(c)(2) of FERSA, within the 60-month period ending on the date of filing of the written submission referred to in section III(a);

(b) There is little, if any, risk of abuse or loss to the plan participants and beneficiaries as a result of the transaction;

(c) Prior to its execution, the transaction has met the requirements described in section III;

(d) Where either of the previously granted exemptions identified in the written submission described in section III, required the involvement of an

independent fiduciary, an independent fiduciary has reviewed the proposed transaction and determined that the transaction would be in the interests and protective of the plan and its participants and beneficiaries;

(e) The independent fiduciary described in section II(d) represents the interests of the plan in the execution of the transaction; and

(f) If the transaction is continuing in nature, the independent fiduciary described in section II(d)—

(i) Represents the interests of the plan for the duration of the transaction and monitors the transaction on behalf of the plan;

(ii) enforces compliance with all conditions and obligations imposed on any party dealing with the plan with respect to the transaction; and

(iii) ensures that the transaction remains in the interests of the plan.

Section III: Authorization Requirements. The requirements for this section are met if:

(a) A written submission is filed with the Department with respect to the transaction which contains the following information:

(1) A separate written declaration by the party who is to engage in the transaction that the written submission is made with the intention of demonstrating compliance with the conditions of this class exemption;

(2) All information required to be submitted with an individual exemption application in accordance with the procedures set forth in 29 CFR 2570 subpart B;

(3) A specific statement demonstrating that the proposed transaction poses little, if any, risk of abuse or loss to the plan participants and beneficiaries;

(4) A comparison of the proposed transaction to at least two substantially similar transactions which were the subject of individual exemptions granted by the Department within a sixty month period ending on the date of the filing of the written submission and an explanation as to why any differences should not be considered material for purposes of this exemption; and

(5) A complete and accurate draft of the notice (as defined in section IV(b)) prepared for distribution to interested persons and a description of the proposed method of distribution for such notice.

(b) With respect to transactions described in section II of this exemption, the written submission referred to in section (a) above contains the following additional information:

(1) the identity of the independent fiduciary;

(2) A description of such fiduciary's independence from the parties in interest involved in the subject transaction;

(3) A statement by the independent fiduciary containing an explanation as to why the subject transaction is in the interests and protective of the participants and beneficiaries of the plan(s) involved;

(4) An agreement by the independent fiduciary to represent the interests of the plan(s) involved in the transaction; and

(5) A description of the procedures for replacement of the independent fiduciary, if necessary, during the term of the transaction.

(c) The transaction meets the requirements for tentative authorization (as defined in section IV(c)) from the Department.

(d) Following tentative authorization, the party who is to engage in the transaction provides written notice (as defined in section IV(b)) to interested persons in a manner that is reasonably calculated to result in the receipt of such notice by interested persons, informs interested persons of the date of the expiration of the comment period, and resolves all substantive adverse comments (as defined in section IV(f)) to the satisfaction of the Department.

(e) The transaction meets the requirements for final authorization (as defined in section IV(d)).

Section IV: Definitions

(a) The term *substantially similar* means alike in all material respects as determined by the Department, in its sole discretion.

(b) The term *notice* means written notification to interested persons which includes—

(1) an objective description of the transaction, including all material terms and conditions,

(2) the approximate date on which the transaction will occur,

(3) A statement that the proposed transaction has met the requirements for tentative authorization under this exemption,

(4) A statement apprising interested persons of their right to comment to the Department on the proposed transaction at the following address: Office of Exemption Determinations, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room N–5649, Washington, D.C. 20210,

(5) the expiration date of the comment period, and

(6) the Federal Register citations for the prior exemptions identified by the party as substantially similar to the contemplated transaction.

(c) For purposes of this exemption, ''tentative authorization'' occurs upon the earlier of:

(1) the expiration of the 45-day period following an acknowledgement by the Department of receipt of the written submission with respect to the transaction under this exemption unless the Department has notified the party who is to engage in the transaction during that period that the transaction is not eligible for authorization under the terms of this exemption; or

(2) the issuance of a written determination by the Department during the 45-day period that the proposed transaction meets the requirements for tentative authorization.

(d) For purposes of this exemption ''final authorization'' occurs upon the expiration of:

(1) The five (5) day period immediately following the comment period (as defined in section IV(e)), unless the Department notifies the party that the transaction is not eligible for authorization under the terms of this exemption, and

(2) If necessary in order to resolve any substantive adverse comments received by the Department from interested persons within the comment period, a period of time extending beyond the five-day period immediately following the comment period as mutually agreed between the Department and the party.

(e) The term *comment period* means the 25-day period following the completion of distribution of the notice to interested persons by the party who is to engage in the transaction. For this purpose, distribution of notice by first class mail will be deemed complete three business days following the date of mailing to interested persons.

(f) The term *substantive adverse comments* means those comments submitted by interested persons to the Department within the prescribed comment period which raise significant factual, legal or policy issues regarding the transaction as determined by the Department.

Section V—Optional Checklist. Completion and submission of the following optional checklist to accompany the written submission described in section III(a) will assist the Department in the consideration of the transaction under the class exemption.

The written submission filed with the Department contains the following information:

[ ] A separate written declaration of intent to comply with the conditions of the class exemption.

[ ] All information required to be submitted with an individual

exemption application under 29 CFR 2570 subpart B.

[ ] A statement demonstrating that the transaction poses little, if any, risk of abuse or loss to the plan participants and beneficiaries.

[ ] A comparison of the proposed transaction to at least two substantially similar transactions which were the subject of individual exemptions granted within the 60 month period ending on the date of the filing and an explanation why any differences should not be considered material.

[ ] A complete and accurate draft of the notice to interested persons (as defined in section IV(b)).

[ ] A description of the proposed method of distribution of for such notice.

If either of the previously granted exemptions identified in the written submission required the involvement of an independent fiduciary, the written submission must contain the following additional information:

[ ] The identity of the independent fiduciary responsible for reviewing the proposed transaction, and representing the interests of the plan in the execution of the transaction. (If the transaction is continuing in nature, the independent fiduciary represents the interests of the plans for the duration of the transaction and takes all necessary action on behalf of the plan.)

[ ] A description of such fiduciary's independence from the parties involved in the transaction.

[ ] A statement from the independent fiduciary explaining why the transaction is in the interests and protective of the plan participants and beneficiaries.

[ ] An agreement by the independent fiduciary to represent the interests of the plan.

[ ] A description of the procedures for the replacement of the independent fiduciary, if necessary, during the term of the transaction.

The notice to interested persons filed with the Department includes the following information:

[ ] An objective description of the transaction, including all material terms and conditions.

[ ] The approximate date on which the transaction will occur.

[ ] A statement that the transaction has met the requirements for tentative authorization under the exemption.

[ ] A statement apprising interested persons of their right to comment on the proposed transaction at the address contained in the exemption.

[ ] The expiration date of the comment period.

[ ] The Federal Register citations for the two prior exemptions identified as substantially similar to the contemplated transaction.

Signed at Washington, D.C., this 26th day of July 1996.

Olena Berg,

Assistant Secretary for Pension and Welfare Benefits, U.S. Department of Labor.

[FR Doc. 96–19483 Filed 7–30–96; 8:45 am]

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[Exemption Application D–09707]

Proposed Class Exemption for the Receipt of Certain Investment Services by Individuals for Whose Benefit Individual Retirement Accounts or Retirement Plans for Self-Employed Individuals Have Been Established or Maintained

AGENCY: Pension and Welfare Benefits Administration, U. S. Department of Labor

ACTION: Notice of Proposed Class Exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed class exemption from the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA) and the Internal Revenue Code of 1986 (the Code). The proposed class exemption would permit the receipt of services at reduced or no cost by an individual for whose benefit an individual retirement account (IRA) or, if self-employed, a Keogh Plan is established or maintained, or by members of his or her family, from a broker-dealer, provided that the conditions of the exemption are met. If granted, the exemption would affect individuals with beneficial interests in such plans who receive such services as well as the broker-dealers who provide such services.

DATES: Written comments and requests for a public hearing must be received by the Department on or before September 16, 1996.

ADDRESSES: All written comments (at least three copies) and requests for a public hearing should be sent to: Office of Exemption Determinations, Pension and Welfare Benefits Administration, Room N–5649, U. S. Department of Labor, 200 Constitution Avenue, N.W., Washington, DC 20210, (Attn: D–09707). The application for exemption and comments received from interested persons will be available for public inspection in the Public Documents Room, Pension and Welfare Benefits Administration, U. S. Department of Labor, room N–5638, 200 Constitution Avenue, N.W., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Allison Padams, Office of Exemption Determinations, Pension and Welfare Benefits Administration, U. S. Department of Labor, (202) 219–8971, (This is not a toll-free number); or Paul D. Mannina, Plan Benefits Security Division , Office of Solicitor, U. S. Department of Labor (202) 219–9141, (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of a proposed exemption from the restrictions of sections 406(a)(1)(D) and 406(b) of ERISA and the sanctions resulting from the application of sections 4975(a) and (b), 4975(c)(3) and 408(e)(2) of the Code by reason of section 4975(c)(1)(D), (E) and (F) of the Code. This exemption was requested in an exemption application filed on behalf of the Securities Industry Association (the SIA or the Applicant). The Applicant is a securities industry trade association representing the business interests of more than 700 securities firms in North America which collectively account for ninety percent of the securities firm revenue in the United States. The members of the SIA are, among other things, engaged in the business of providing brokerage and investment advisory services to the public. The Applicant represents that IRAs and Keogh Plans constitute approximately less than one-third of assets of the accounts managed by broker-dealers.

The application was filed pursuant to section 408(a) of ERISA and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B, (55 FR 32836, August 10, 1990.)[1]

Background

Section 4975(c)(1) (D), (E) and (F) of the Code prohibits the transfer to, or use by or for the benefit of, a disqualified person of the income or assets of a plan; an act by a disqualified person who is a fiduciary whereby he deals with the income or assets of the plan in his own interest or for his own account; and the receipt of any consideration for his own personal account by any disqualified person who is a fiduciary from any party dealing with the plan in

[1] Section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) generally transferred the authority of the Secretary of the Treasury to issue administrative exemptions under section 4975(c)(2) of the Code to the Secretary of Labor.

connection with a transaction involving the income or assets of the plan.[2]

The term ''disqualified person'' as defined in section 4975(e)(2) of the Code includes a fiduciary and a person providing services to the plan. Persons who exercise discretionary authority or control over the assets of the plan are subject to the prohibitions contained in section 4975 of the Code.[3] The receipt of reduced or no cost services by an individual under an arrangement in which plan assets are taken into account for purposes of pricing the services is a prohibited transaction.[4] Such prohibited transactions are generally subject to taxation under section 4975 of the Code or the loss of exemption from tax by reason of section 408(e)(2)(A) of the Code. In the absence of an exemption, the individual who receives reduced or no cost services as a result of establishing or maintaining his or her IRA or Keogh Plan would benefit from the use of his or her plan's assets in violation of section 4975 of the Code.

In recognition of the business practice of banks offering services at reduced or no cost to encourage individuals to establish IRAs and Keogh Plans, the Department granted PTE 93–33 (58 FR 31053, May 28, 1993, as amended, 59 FR 22686, May 2, 1994).[5] PTE 93–33 permits the receipt of reduced or no cost banking services by individuals for whose benefit individual retirement accounts or Keogh Plans are established or maintained pursuant to an arrangement in which the account balance of the IRA or Keogh Plan is taken into account for purposes of determining eligibility to receive such services provided the conditions of the exemption are met. The conditions of PTE 93–33 require that: (a) the IRA or Keogh Plan, the account balance of which is taken into account for purposes of determining eligibility to receive services at reduced or no cost, is established and maintained for the exclusive benefit of the participant covered under the IRA or Keogh Plan, his or her spouse or their beneficiaries; (b) the services must be of the type that the bank itself could offer consistent with applicable federal and state banking law; (c) the services are provided by the bank (or affiliate of the bank) in the ordinary course of the bank's business to customers who qualify for reduced or no cost banking services but do not maintain an IRA or Keogh Plan with the bank; (d) for purposes of determining eligibility to receive services at reduced or no cost, the account balance required by the bank for the IRA or Keogh Plan is equal to the lowest balance required for any other type of account which the bank includes to determine eligibility to receive reduced or no cost services; and (e) the rate of return on the IRA or Keogh Plan investment is no less favorable than the rate of return on an identical investment that could have been made at the same time at the same branch of the bank by a customer of the bank who is not eligible for (or who does not receive) reduced or no cost services.

Summary of the Application

According to the Applicant, broker-dealers have also developed the capacity to view accounts on an aggregate basis as a result of enhanced computer capabilities, and in response to customer demands. The Applicant represents that broker-dealers have offered premium brokerage service arrangements to customers who maintain total accounts equaling a minimum value or generating a minimum amount of commissions or fees. Under a typical ''relationship'' brokerage arrangement, all of an individual's accounts including those established by members of the individual's family are viewed on an aggregate basis, rather than individually.

The Applicant represents that broker-dealers are limited in the types of services they may offer to customers. Both the New York Stock Exchange (NYSE) and the National Association of Securities Dealers (NASD) (and corresponding requirements of other exchanges) require that broker-dealers ''know their customer''[6] such that any investments recommended by a broker-dealer to a customer must be suitable for the customer in light of, among other things, his investment experience, financial condition and age. In addition, broker-dealers have an obligation to act in the customer's best interests with respect to the customer's investment in securities effected through the broker-dealer. In this regard, the Applicant states that by causing a customer to make a particular securities investment by offering incentives, the broker-dealer could be deemed to have violated the NYSE or NASD suitability rules unless the investment was in all respects suitable for the customer.

The Applicant further represents that, although each broker-dealer firm establishes its own programs, services provided under a relationship brokerage program typically have investment oriented components. Services often include financial planning services, direct deposit/debit and automatic fund transfer privileges, enhanced account statements, toll-free access to a client service center, check writing privileges, debit/credit cards, special newsletters and reduced brokerage and asset management fees.

The Applicant believes that including IRAs and Keogh Plans in relationship brokerage programs would be beneficial to IRAs and Keoghs. For example, a broker-dealer may choose to offer customers reduced brokerage fees as part of its relationship brokerage program. Under such an arrangement, IRAs and Keogh Plans may be able to realize the benefits derived from economies of scale. Fees such as commissions and professional asset management fees often decline in relative terms as the size of the assets under management increases. Thus, including the assets of an IRA or Keogh Plan would lower the cost to the IRA or Keogh Plan compared to the cost it would pay for the same service on an independent basis.

Additionally, IRA and Keogh Plans also may benefit if a broker-dealer provides a customer with a combined account statement or other account management tools (automatic transfers and telephone access) because the individual can easily view the assets of all of his or her various accounts at the same time. This in turn could enable the individual to formulate a total investment strategy taking into account the retirement needs of the individual. Further, because many of the additional services provided under relationship brokerage arrangements are investment oriented, an individual may be able to more effectively and efficiently invest his or her assets. Thus, the Applicant states that such services provide a benefit which is equally important and useful to the individual in his or her capacity as the manager of the investments of the IRA or Keogh Plan.

Discussion of the Proposed Exemption

1. Scope

The exemption proposed herein by the Department would provide relief from the restrictions of sections 406(a)(1)(D) and 406(b) of ERISA and the sanctions resulting from the application of sections 4975 (a) and (b)

[2] With respect to those IRAs that are part of a Simplified Employee Pension described in section 408(k) of the Code, references to section 4975(c)(1)(D), (E) and (F) should be read to refer as well to the parallel provisions of ERISA.

[3] See section 4975(e)(3) of the Code.

[4] See Advisory Opinion 89–12A (July 14, 1989.)

[5] PTE 93–33 amended and redesignated PTE 93–2 (58 FR 3561, January 11, 1993).

[6] See NYSE Rule 406 and NASD Article III, Section 2 of the Rules of Fair Practice.

of the Code, including the loss of exemption of an individual retirement account (IRA) pursuant to section 408(e)(2)(A) of the Code, by reason of section 4975(c)(1) (D), (E) and (F) of the Code for the receipt of services at reduced or no cost by an individual for whose benefit an IRA or Keogh Plan is established or maintained, or by members of his or her family, from a broker-dealer registered under the Securities Exchange Act of 1934 pursuant to an arrangement in which the IRA or Keogh Plan account value or the service fees generated by the IRA or Keogh Plan are taken into account for purposes of determining eligibility to receive such services.[7]

2. Proposed Conditions

The proposed exemption contains conditions (described below) which are viewed by the Department as necessary to ensure that the retirement income of IRA and Keogh Plan participants is not jeopardized by relationship brokerage programs.

Under the proposal, the IRA or Keogh Plan whose account value or service fees generated by the IRA or Keogh Plan is taken into consideration for purposes of determining eligibility to receive services at reduced or no cost, must be established and maintained for the exclusive benefit of the participant covered under the IRA or Keogh Plan, his or her spouse or their beneficiaries. The term ''account value'' is defined in section III(d) as investments in cash or securities held in the account for which market quotations are readily available. The term ''account value'' does not include investments offered by the broker-dealer (or affiliate) exclusively to IRAs and Keogh Plans.

The proposed exemption limits the services that may be offered by broker-dealers under a relationship brokerage program to those services that the broker-dealer itself may offer consistent with all applicable federal and state laws regulating broker-dealers. This condition would exclude the provision of services that are not investment oriented. For example, broker-dealers could not offer restaurant or travel discounts under this class exemption. However, the term ''service'' is defined in section III(g) to include incidental products of a de minimis value. The Department notes that this definition would permit broker-dealers to provide such products as free debit/credit cards.

The Investment Company Institute (ICI) requested that the Department clarify that the proposed exemption would provide relief for a relationship brokerage program whereby a broker-dealer offers reduced sales charges with respect to the purchase of investment company shares as the size of the purchase increases. In this regard, a broker-dealer would aggregate total purchases of all of a customer's accounts, including IRAs and Keogh Plans. Thus, a broker-dealer would set a schedule of commission rates that vary according to the size of the transaction. For example, for transactions totaling an amount of less than $10,000, the sales charge would be 6.5%; for a transaction of $10,000 but less than $25,000, the sales charge would be 6.0%, and for a transaction of $25,000 but less than $50,000, the sales charge would be 5.00%. The Department notes that such programs would be covered by the proposed exemption provided that all of the conditions of the proposal are met.[8]

Under the proposal, the services must be provided by the broker-dealer (or an affiliate of the broker-dealer) in the ordinary course of the broker-dealer's business to customers who are eligible for reduced or no cost services, but do not maintain IRAs or Keogh Plans with the broker-dealer. Thus, no relief would be provided for a service that was offered solely to customers who maintain IRAs or Keogh Plans with the broker-dealer.

Under the proposal, the determination of eligibility to receive services at reduced or no cost must be based on the value of the customer's accounts or on the amount of fees generated by the customer's accounts. For eligibility requirements based on account values, the eligibility requirement based on the account value of the IRA or Keogh Plan must be as favorable as any requirement imposed by the broker-dealer on any account whose value the broker-dealer includes to determine eligibility. For example, if a broker-dealer establishes a $10,000 threshold for the receipt of certain reduced or no cost services, any combination of accounts (such as personal accounts, IRAs or Keogh Plans) that equal $10,000 would be sufficient to satisfy the threshold requirement. In this regard, a broker-dealer could not set a threshold amount of $10,000 for a customer with a personal account and a $20,000 threshold for customers maintaining IRAs and Keogh Plans with the broker-dealer.

For eligibility requirements based on the amount of fees generated, the proposal requires that the minimum amount of fees which must be generated by an IRA or Keogh plan be equal to the lowest amount of fees generated by any other type of account which the broker-dealer includes to determine eligibility for such programs.[9]

The proposal also requires that the combined total of all service fees or commissions received by the broker-dealer from the IRA or Keogh Plan must be reasonable within the meaning of sections 4975(d)(2) of the Code.[10] The Department wishes to note that the scope of relief provided by the proposal is limited to the arrangement under which the account value of the IRA or Keogh Plan, or the fees generated by the IRA or Keogh Plan, is taken into account for purposes of determining eligibility to receive services at reduced or no cost. Thus, no relief would be provided under the proposed exemption for the provision of services to the IRA or Keogh Plan or for any self-dealing arising in connection with the provision of such services. In this regard, see section 4975(d)(2) of the Code and applicable regulations.

Under the proposed exemption, the IRA or Keogh Plan customer who becomes eligible for relationship brokerage services must be eligible to receive the same services that are provided to non-IRA or non-Keogh Plan customers with either account values of the same amount or the same amount of fees generated. The proposal also requires that the investment performance of the IRA and Keogh Plan be no less favorable than the investment performance of identical investments which could have been made at the same time by a customer of the broker-dealer who is not eligible for (or who does not receive) reduced or no cost investment services. This condition

[7] The exemption if granted, would apply only to IRAs and Keogh Plans that are not ''employee benefit plans'' covered by title I of ERISA except for Simplified Employee Pensions (SEPs) described in section 408(k) of the Code which provide the participants with the unrestricted authority to transfer their SEP balances to IRAs sponsored by different financial institutions. See 29 CFR 2510.3–2(d) and 29 CFR 2510.3–3(b).

[8] In this regard, the Department notes that the programs described by the ICI as ''letter of intent programs,'' in which broker-dealers reduce sales commissions based on the aggregate of a customer's actual purchases and anticipated purchases, as agreed to by the customer, raise additional issues that are outside the scope of this proposed exemption.

[9] The Applicant describes the following fees as applicable to relationship brokerage programs: administrative fees (charges for maintaining an account with the broker-dealer), brokerage fees (fees for execution of an order to buy or sell securities), wrap fees (bundled fees under which customers receive more than one service), service fees (fees for research concerning investment opportunities, postage and handling charges or ancillary charges such as ATM fees), custodial fees (fees for serving as IRA or Keogh Plan custodian), and investment management fees (fees for managing assets).

[10] Also, the Applicant represents that a broker-dealer is subject to the NASD Rule set forth in Article III, Section 3 which provides that charges for services performed must be reasonable.

ensures that the investment performance of an IRA or Keogh Plan will not be affected due to the inclusion of the IRA or Keogh Plan in the relationship brokerage program. Thus, under the proposal, a broker-dealer could not offer an investment to an IRA or Keogh Plan of a customer who receives reduced or no cost services unless the IRA or Keogh Plan earns no less than that which could be earned on an identical investment available to customers of such broker-dealer who are not eligible for receiving such services.

Notice to Interested Persons

Because many participants in IRAs or Keogh Plans and broker-dealers sponsoring IRAs or Keogh Plans could be considered interested persons, the only practical form of notice is publication in the Federal Register.

General Information

The attention of interested person is directed to the following:

(1) Before an exemption may be granted under section 408(a) of ERISA and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the IRAs and Keogh Plans and their participants and beneficiaries and protective of the rights of participants and beneficiaries of such plans.

(2) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of ERISA and the Code including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) If granted, the proposed exemption will be applicable to a transaction only if the conditions specified in the class exemption are met.

Written Comments and Hearing Request

All interested persons are invited to submit written comments or requests for a public hearing on the proposed exemption to the address and within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the proposed exemption. Comments received will be available for public inspection with the referenced application at the above address.

Proposed Exemption

On the basis of the facts and representations set forth in the application and this document, the Department is considering granting the following exemption under the authority of section 408(a) of ERISA and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B [55 FR 32836, August 10, 1990].

Section I: Covered Transactions

Effective (date of publication of final exemption in the Federal Register), the restrictions of sections 406(a)(1)(D) and 406(b) of ERISA and the sanctions resulting from the application of section 4975 of the Code, including the loss of exemption of an IRA pursuant to section 408(e)(2)(A) of the Code, by reason of section 4975(c)(1) (D), (E), and (F) of the Code, shall not apply to the receipt of services at reduced or no cost by an individual for whose benefit an IRA or, if self-employed, a Keogh Plan, is established or maintained, or by members of his or her family, from a broker-dealer registered under the Securities Exchange Act of 1934 pursuant to an arrangement in which the account value of, or the fees incurred for services provided to, the IRA or Keogh Plan is taken into account for purposes of determining eligibility to receive such services, provided that each condition of Section II of this exemption is satisfied.

Section II: Conditions

(a) The IRA or Keogh Plan whose account value or whose fees are taken into account for purposes of determining eligibility to receive services under the arrangement is established and maintained for the exclusive benefit of the participant covered under the IRA or Keogh Plan, his or her spouse or their beneficiaries.

(b) The services offered under the relationship brokerage arrangement must be of the type that the broker-dealer itself could offer consistent with all applicable federal and state laws regulating broker-dealers.

(c) The services offered under the arrangement are provided by the broker-dealer (or an affiliate of the broker-dealer) in the ordinary course of the broker-dealer's business to customers who qualify for reduced or no cost services, but do not maintain IRAs or Keogh Plans with the broker-dealer.

(d) For purposes of determining eligibility to receive services, the arrangement satisfies one of the following:

(i) Eligibility requirements based on the account value of the IRA or Keogh Plan are as favorable as any such requirements based on the value of any other type of account which the broker-dealer includes to determine eligibility; and

(ii) Eligibility requirements based on the amount of fees incurred by the IRA or Keogh Plan are as favorable as any requirements based on the amount of fees incurred by any other type of account which the broker-dealer includes to determine eligibility.

(e) The combined total of all fees for the provision of services to the IRA or Keogh Plan is not in excess of reasonable compensation within the meaning of section 4975(d)(2).

(f) The investment performance of the IRA or Keogh Plan investment is no less favorable than the investment performance on an identical investment(s) that could have been made at the same time by a customer of the broker-dealer who is not eligible for (or who does not receive) reduced or no cost services.

(g) The services offered under the arrangement to the IRA or Keogh Plan customer must be the same as are offered to non-IRA or non-Keogh Plan customers with account values of the same amount or the same amount of fees generated.

Section III: Definitions

The following definitions apply to this exemption:

(a) The term *broker-dealer* means a broker-dealer registered under the Securities Exchange Act of 1934.

(b) The term *IRA* means an individual retirement account described in Code section 408(a). For purposes of this exemption, the term IRA shall not include an IRA which is an employee benefit plan covered by Title I of ERISA, except for a Simplified Employee Pension (SEP) described in section 408(k) of the Code which provides participants with the unrestricted authority to transfer their SEP balances to IRAs sponsored by different financial institutions.

(c) The term *Keogh Plan* means a pension, profit-sharing, or stock bonus plan qualified under Code section 401(a) and exempt from taxation under Code section 501(a) under which some or all of the participants are employees described in section 401(c) of the Code. For purposes of this exemption, the term Keogh Plan shall not include a Keogh Plan which is an employee benefit plan covered by title I of ERISA.

(d) The term *account value* means investments in cash or securities held in the account for which market quotations are readily available. For purposes this exemption, the term account value shall

not include investments in securities that are offered by the broker-dealer [or its affiliate] exclusively to IRAs and Keogh Plans.

(e) An affiliate of a broker-dealer includes any person directly or indirectly controlling, controlled by, or under common control with the broker-dealer. The term control means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(f) The term *members of his or her family* refers to beneficiaries of the individual for whose benefit the IRA or Keogh Plan is established or maintained, who would be members of the family as that term is defined in Code section 4975(e)(6), or a brother, a sister, or spouse of a brother or sister.

(g) The term *service* includes incidental products of a de minimis value which are directly related to the provision of services covered by the exemption.

(h) The term *fees* means commissions and other fees received by the broker-dealer from the IRA or Keogh Plan for the provision of services, including, but not limited to, brokerage commissions, investment management fees, custodial fees, and administrative fees.

Signed at Washington, D.C., this 25th day of July 1996.

Olena Berg,

Assistant Secretary, Pension and Welfare Benefits Administration U.S. Department of Labor.

[FR Doc. 96–19484 Filed 7–30–96; 8:45 am]

BILLING CODE 4510–29–P

[Prohibited Transaction Exemption 96–59; Exemption Application No. D–09818, et al.]

Grant of Individual Exemptions; PaineWebber Incorporated

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the Federal Register of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

PaineWebber Incorporated (PaineWebber), Located in New York, NY

[Prohibited Transaction Exemption 96–59; Exemption Application No. D–09818]

EXEMPTION

Section I. Covered Transactions

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply, effective August 18, 1995, to the purchase or redemption of shares by an employee benefit plan, a plan described in section 403(b) of the Code (the Section 403(b) Plan), an individual retirement account (the IRA) or a retirement plan for a self-employed individual (the Keogh Plan) (collectively referred to herein as the Plans) in the PaineWebber Managed Accounts Services Portfolio Trust (the Trust) established in connection with such Plans' participation in the PaineWebber PACE Program (the PACE Program).

In addition, the restrictions of section 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(E) and (F) of the Code, shall not apply, effective August 18, 1995, to (a) the provision, by PaineWebber Managed Accounts Services (PMAS), a division of PaineWebber, of asset allocation and related services to an independent fiduciary of a Plan (the Independent Fiduciary) or to a directing participant (the Directing Participant) in a Plan that is covered under and permits participant selection as contemplated by the provisions of section 404(c) of the Act (the Section 404(c) Plan), which may result in the selection by the Independent Fiduciary or the Directing Participant of portfolios of the Trust (the Portfolios) in the PACE Program for the investment of Plan assets; and (b) the provision of investment management services by Mitchell Hutchins Asset Management, Inc. (Mitchell Hutchins) to the PACE Money Market Investments Portfolio of the Trust.

This exemption is subject to the conditions set forth below in Section II.

Section II. General Conditions

(a) The participation of each Plan in the PACE Program is approved by an Independent Fiduciary or, if applicable, Directing Participant.

(b) As to each Plan, the total fees paid to PMAS and its affiliates constitute no more than reasonable compensation and do not include the receipt of fees pursuant to Rule 12b-1 under the Investment Company Act of 1940 (the '40 Act) by PMAS and its affiliates in connection with the transactions.

(c) No Plan pays a fee or commission by reason of the acquisition or redemption of shares in the Trust.

(d) The terms of each purchase or redemption of Trust shares remain at least as favorable to an investing Plan as those obtainable in an arm's length transaction with an unrelated party.

(e) PMAS provides written documentation to an Independent Fiduciary or a Directing Participant of its recommendations or evaluations based upon objective criteria.

(f) Any recommendation or evaluation made by PMAS to an Independent Fiduciary or Directing Participant is implemented only at the express direction of such fiduciary or participant.

(g) PMAS provides investment advice in writing to an Independent Fiduciary or Directing Participant with respect to

all Portfolios made available under the Plan.

(h) With the exception of the PACE Money Market Investments Portfolio, any sub-adviser (the Sub-Adviser) appointed by Mitchell Hutchins to exercise investment discretion with respect to a Portfolio is independent of PaineWebber and its affiliates.

(i) The quarterly fee that is paid by a Plan to PMAS for asset allocation and related services rendered to such Plan under the PACE Program (i.e., the outside fee) is offset by such amount as is necessary to assure that Mitchell Hutchins retains 20 basis points as a management fee from any Portfolio (with the exception of the PACE Money Market Investments Portfolio from which Mitchell Hutchins retains an investment management fee of 15 basis points) containing investments attributable to the Plan investor. However, the quarterly fee of 20 basis points that is paid to Mitchell Hutchins for administrative services is retained by Mitchell Hutchins and is not offset against the outside fee.

(j) With respect to its participation in the PACE Program prior to purchasing Trust shares,

(1) Each Independent Fiduciary receives the following written or oral disclosures from PaineWebber:

(A) A copy of the prospectus (the Prospectus) for the Trust discussing the investment objectives of the Portfolios comprising the Trust; the policies employed to achieve these objectives; the corporate affiliation existing between PaineWebber, PMAS, Mitchell Hutchins and their affiliates; the compensation paid to such entities; any additional information explaining the risks of investing in the Trust; and sufficient and understandable disclosures relating to rebalancing of investor accounts.

(B) Upon written or oral request to PaineWebber, a Statement of Additional Information supplementing the Prospectus, which describes the types of securities and other instruments in which the Portfolios may invest, the investment policies and strategies that the Portfolios may utilize and certain risks attendant to those investments, policies and strategies.

(C) An investor questionnaire.

(D) A written analysis of PMAS's asset allocation recommendation of specific Portfolios.

(E) A copy of the agreement between PMAS and such Plan relating to participation in the PACE Program.

(F) Upon written request to Mitchell Hutchins, a copy of the respective investment advisory agreements between Mitchell Hutchins and the Sub-Advisers.

(G) Copies of the proposed exemption and grant notice describing the exemptive relief provided herein.

(2) In the case of a Section 404(c) Plan, the Independent Fiduciary will—

(A) Make copies of the foregoing documents available to Directing Participants.

(B) Allow Directing Participants to interact with PaineWebber Investment Executives and receive information relative to the services offered under the PACE Program, including the rebalancing feature, and the operation and objectives of the Portfolios.

(3) If accepted as an investor in the PACE Program, an Independent Fiduciary of a Section 403(b) Plan, an IRA or a Keogh Plan, is required to acknowledge, in writing to PMAS, prior to purchasing Trust shares that such fiduciary has received copies of the documents described in paragraph (j)(1) of this Section II.

(4) With respect to a Section 404(c) Plan, written acknowledgement of the receipt of such documents is provided by the Independent Fiduciary (i.e., the Plan administrator, trustee, investment manager or named fiduciary). Such Independent Fiduciary will be required to represent in writing to PMAS that such fiduciary is—

(A) Independent of PaineWebber and its affiliates;

(B) Knowledgeable with respect to the Plan in administrative matters and funding matters related thereto, and;

(C) Able to make an informed decision concerning participation in the PACE Program.

(5) With respect to a Plan that is covered under Title I of the Act, where investment decisions are made by a trustee, investment manager or a named fiduciary, such Independent Fiduciary is required to acknowledge, in writing, receipt of such documents and represent to PMAS that such fiduciary is

(A) Independent of PMAS and its affiliates;

(B) Capable of making an independent decision regarding the investment of Plan assets;

(C) Knowledgeable with respect to the Plan in administrative matters and funding matters related thereto; and

(D) Able to make an informed decision concerning participation in the PACE Program.

(k) As applicable, subsequent to its participation in the PACE Program, each Independent Fiduciary receives the following written or oral disclosures with respect to its ongoing participation in the PACE Program:

(1) Written confirmations of each purchase or redemption transaction by the Plan with respect to a Portfolio.

(2) Telephone access to quotations from PaineWebber of such Plan's account balance.

(3) A monthly statement of account from PaineWebber specifying the net asset value of the Plan's investment in such account. Such statement is also anticipated to include cash flow and transaction activity during the month, unrealized gains or losses on Portfolio shares held; and a summary of total earnings and capital returns on the Plan's PACE Portfolio for the month and year-to-date.

(4) The Trust's semi-annual and annual report which will include financial statements for the Trust and investment management fees paid by each Portfolio.

(5) A written quarterly monitoring report that includes (a) a record of the Plan's PACE Program portfolio for the quarter and since inception, showing the rates of return relative to comparative market indices (illustrated in a manner that reflects the effect of any fees for participation in the PACE Program actually incurred during the period); (b) an investment outlook summary containing market commentary; and (c) the Plan's actual PACE Program portfolio with a breakdown, in both dollars and percentages, of the holdings in each portfolio. The quarterly monitoring report will also contain an analysis and an evaluation of a Plan investor's account to assist the investor to ascertain whether the Plan's investment objectives have been met and recommending, if required, changes in Portfolio allocations.

(6) A statement, furnished at least quarterly or annually, specifying—

(A) The total, expressed in dollars, of each Portfolio's brokerage commissions that are paid to PaineWebber and its affiliates;

(B) The total, expressed in dollars, of each Portfolio's brokerage commissions that are paid to unrelated brokerage firms;

(C) The average brokerage commissions per share that are paid by the Trust to brokers affiliated with PaineWebber, expressed as cents per share; and

(D) The average brokerage commissions per share that are paid by the Trust to brokers unrelated to PaineWebber and its affiliates, expressed as cents per share for any year in which brokerage commissions are paid to PaineWebber by the Trust Portfolios in which a Plan's assets are invested.

(7) Periodic meetings with a PaineWebber Investment Executive (or the appropriate PaineWebber representative) by Independent Fiduciaries to discuss the quarterly monitoring report or any other questions that may arise.

(l) In the case of a Section 404(c) Plan where the Independent Fiduciary has established an omnibus account in the name of the Plan (the Undisclosed Account) with PaineWebber, depending upon the arrangement negotiated by the Independent Fiduciary with PMAS, certain of the information noted above in subparagraphs (k)(1) through (k)(7) of this Section II may be provided by PaineWebber to the Directing Participants or to the Independent Fiduciary for dissemination to the Directing Participants.

(m) If previously authorized in writing by the Independent Fiduciary, the Plan investor's account is automatically rebalanced on a periodic basis to the asset allocation previously prescribed by the Plan or participant, as applicable, if the quarterly screening reveals that one or more Portfolio allocations deviates from the allocation prescribed by the investor by the agreed-upon formula threshold.

(n) The books and records of the Trust are audited annually by independent, certified public accountants and all investors are sent copies of an audited financial report no later than 60 days after the close of each Trust fiscal year.

(o) PaineWebber maintains, for a period of six years, the records necessary to enable the persons described in paragraph (p) of this Section II to determine whether the conditions of this exemption have been met, except that—

(1) A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of PaineWebber and/or its affiliates, the records are lost or destroyed prior to the end of the six year period; and

(2) No party in interest other than PaineWebber shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975 (a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (p)(1) of this Section II below.

(p)(1) Except as provided in subparagraph (p)(2) of this paragraph and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (o) of this Section II are unconditionally available at their customary location during normal business hours by:

(A) Any duly authorized employee or representative of the Department, the Internal Revenue Service (the Service) or the Securities and Exchange Commission (the SEC);

(B) Any fiduciary of a participating Plan or any duly authorized representative of such fiduciary;

(C) Any contributing employer to any participating Plan or any duly authorized employee representative of such employer; and

(D) Any participant or beneficiary of any participating Plan, or any duly authorized representative of such participant or beneficiary.

(p)(2) None of the persons described above in paragraphs (p)(1)(B)–(p)(1)(D) of this paragraph (p) are authorized to examine the trade secrets of PaineWebber or Mitchell Hutchins or commercial or financial information which is privileged or confidential.

Section III. Definitions

For purposes of this exemption:

(a) The term ''PaineWebber'' means PaineWebber Incorporated and any affiliate of PaineWebber, as defined in paragraph (b) of this Section III.

(b) An ''affiliate'' of PaineWebber includes—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with PaineWebber.

(2) Any officer, director or partner in such person, and

(3) Any corporation or partnership of which such person is an officer, director or a 5 percent partner or owner.

(c) The term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(d) The term ''Independent Fiduciary'' means a Plan fiduciary which is independent of PaineWebber and its affiliates and is either

(1) A Plan administrator, trustee, investment manager or named fiduciary of a Section 404(c) Plan or a Section 403(b) Plan;

(2) A participant in a Keogh Plan;

(3) An individual covered under a self-directed IRA which invests in Trust shares;

(4) An employee, officer or director of PaineWebber and/or its affiliates covered by an IRA not subject to Title I of the Act;

(5) A trustee, Plan administrator, investment manager or named fiduciary responsible for investment decisions in the case of a Title I Plan that does not permit individual direction as contemplated by Section 404(c) of the Act; or

(e) The term ''Directing Participant'' means a participant in a Plan covered under the provisions of section 404(c) of the Act, who is permitted under the terms of the Plan to direct, and who elects to so direct, the investment of the assets of his or her account in such Plan.

(f) The term ''Plan'' means a pension plan described in 29 CFR 2510.3–2, a welfare benefit plan described in 29 CFR 2510.3–1, a plan described in section 4975(e)(1) of the Code, and in the case of a Section 404(c) Plan, the individual account of a Directing Participant.

EFFECTIVE DATE: This exemption will be effective as of August 18, 1995.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption (the Notice) published on March 22, 1996 at 61 FR 11882.

Written Comments

The Department received one written comment with respect to the Notice and no requests for a public hearing. The comment was submitted by PaineWebber, PMAS and Mitchell Hutchins (collectively, the Applicants). Their comment is broken down into the areas discussed below.

(1) *Section 403(b) Plan Participation.* In addition to IRAs, Keogh Plans, Section 404(c) Plans and other types of employee benefit plans that will participate in the PACE Program, the Applicants represent that they wish to offer shares in the Trust to Plans that are described in section 403(b) of the Code. Therefore, the Applicants have requested that the Department include references to Section 403(b) Plans in the exemptive language set forth in Section I, in the conditional language set forth in Sections II(j)(3) and III(d)(1) and in Representation 6 of the Summary of Facts and Representations (the Summary). The Department has revised the Notice accordingly.

(2) *Available Portfolios.* Section II(g) of the Notice states that PMAS will provide investment advice in writing to an Independent Fiduciary or a Directing Participant with respect to all available Portfolios offered by the Trust. The Applicants note, however, that, in the case of a Section 404(c) Plan, an Independent Fiduciary will determine the initial array of Portfolios among which the Directing Participants may allocate Plan assets, and that such fiduciary may decide to include less than all of the Portfolios in that array. Therefore, the Applicants have requested that the Department revise Section II(g) of the Notice as follows to

make it clear that ''available'' Portfolios are those that will be selected by the Independent Fiduciary under such circumstances:

(g) PMAS provides investment advice in writing to an Independent Fiduciary or Directing Participant with respect to all Portfolios made available under the Plan.

The Department has made the change requested by the Applicants.

(3) *Independent Fiduciary Role.* With respect to a Section 404(c) Plan, Section II(j)(4) of the Notice states that written acknowledgement of the receipt of initial disclosures from PaineWebber will be provided by the Independent Fiduciary who may be the Plan administrator, trustee, investment manager or the named fiduciary, as the recordholder of Trust shares. The Applicants wish to clarify that because the trustee of a trust is generally the legal owner of trust assets, the Plan trustee rather than the Independent Fiduciary is the actual recordholder of Trust shares. Therefore, the Applicants request that the Department revise Section II(j)(4) of the Notice to read as follows:

(4) With respect to a Section 404(c) Plan, written acknowledgement of the receipt of such documents is provided by the Independent Fiduciary (i.e., the Plan administrator, trustee, investment manager or named fiduciary).

The Department has amended the Notice in this regard.

(4) *Directing Participant Disclosure.* Section II(l) of the Notice states, in relevant part, that if an Independent Fiduciary of a Section 404(c) Plan has established an Undisclosed Account with PaineWebber, certain disclosures will be provided by PaineWebber to the Directing Participants or to the Independent Fiduciary for dissemination to the Directing Participants, depending upon the arrangement negotiated with PMAS. In an effort to reflect the manner in which that information will be distributed or made available to Directing Participants and/or to the Independent Fiduciaries of Section 404(c) Plans, the Applicants request that the Department modify Section II(l) of the Notice.

The Department has amended Section II(l) of the Notice to read as follows:

(l) In the case of a Section 404(c) Plan where the Independent Fiduciary has established an omnibus account in the name of the Plan (the Undisclosed Account) with PaineWebber, depending upon the arrangement negotiated by the Independent Fiduciary with PMAS, certain of the information noted above in subparagraphs (k)(1) through (k)(7) of this Section II may be provided by PaineWebber to the Directing Participants or to the Independent Fiduciary for dissemination to the Directing Participants.

(5) *Description of Paine Webber Group and PaineWebber.* Representation 1(a) of the Summary, states, in part, that the Paine Webber Group is a member of all principal securities and commodities exchanges in the United States and the National Association of Securities Dealers, Inc. It is also represented that Paine Webber Group holds memberships or associate memberships on several principal foreign securities and commodities exchanges. Although the Applicants furnished this information to the Department, they wish to clarify that these representations pertain to PaineWebber rather than to the Paine Webber Group. Therefore, they request that the Department make appropriate changes to the Summary.

The Department has revised the language in Representation 1(b) of the Summary as follows:

PaineWebber is a member of all principal securities and commodities exchanges in the United States and the National Association of Securities Dealers, Inc. It also holds memberships or associate memberships on several principal foreign securities and commodities exchanges.

(6) *Net Asset Value Per Share.* In pertinent part, Representation 2 of the Summary states that with the exception of the PACE Money Market Investments Portfolio, shares in the Trust were initially offered to the public by PaineWebber at a net asset value of $10 per share and that shares in the PACE Money Market Investments Portfolio are being offered to the public at a net asset value of $1.00 per share. The Applicants wish to clarify that with the exception of the PACE Money Market Investments Portfolio in which shares are offered to the public at a net asset value of $1.00 per share, shares in the other Portfolios were initially offered to the public at a net asset value of $12 per share.

Accordingly, the Department has revised the sixth and seventh sentences of Representation 2 to read as follows:

With the exception of the PACE Money Market Investments Portfolio, shares in each of the Portfolios were initially offered to the public at a net asset value of $12 per share. Shares in the PACE Money Market Investments Portfolio are offered to the public at a net asset value of $1.00 per share.

(7) *Minimum Investments.* The second paragraph of Representation 3 of the Summary states, in part, that the minimum initial investment for a prospective investor in the PACE Program is $10,000. The Applicants note, however, that the minimum initial investment threshold for an investor is currently $25,000 and not $10,000. For Plan investors and Uniform Gift or Transfer to Minors Accounts, the Applicants wish to clarify that the minimum initial investment is presently $10,000.

The Department has revised part of Representation 3 to read as follows:

* * * The minimum initial investment in the PACE Program currently is $25,000 (except for Plans and Uniform Gift or Transfer to Minors Accounts, for which the minimum initial investment is currently $10,000).

(8) *Valuation of Portfolio Shares.* Footnote 10 of the Summary states, in part, that the net asset value of shares in the PACE Money Market Investments Portfolio is determined as of 12 p.m. each business day. To indicate that the net asset value of all Portfolio shares, including shares of the PACE Money Market Investments Portfolio, is being determined as of the close of regular trading on the New York Stock Exchange (currently 4 p.m., Eastern Time) each business day, the Applicants request that the Department modify Footnote 10 of the Summary.

The Department has modified Footnote 10 to read as follows:

The net asset value of each Portfolio's shares is determined as of the close of regular trading on the New York Stock Exchange (the NYSE) (currently, 4 p.m., Eastern Time) each business day. Each Portfolio's net asset value per share is determined by dividing the value of the securities held by the Portfolio plus any cash or other assets minus all liabilities by the total number of Portfolio shares outstanding.

In addition, the Applicants have requested that Footnote 16 of the Summary be revised to incorporate the following language:

* * * The net asset value of each Portfolio's shares is determined as of the close of regular trading on the NYSE (currently, 4 p.m. Eastern Time) each business day. PaineWebber may, in the future, impose a minimum dollar threshold on rebalancing transactions in order to avoid *de minimus* transactions.

(9) *Payment of Redemption Proceeds.* Representation 14 of the Summary states, in part, that a Portfolio will be required to transmit redemption proceeds for credit to an investor's account within 5 business days after receipt. Similarly, Representation 17 of the Summary sets forth the same time frame for the payment of the outside fee as well as the applicable fee if additional funds are invested during a calendar quarter. Because Federal Securities laws currently require PaineWebber to settle its obligations within three business days, the Applicants have requested that the

Department revise the Summary to reflect the current timing of such payments.

The Department does not object to these necessary revisions and has deleted references to the five business day requirement and inserted the phrase ''three business days'' in the fourth sentence of paragraph one of Representation 14, in the first sentence of paragraph two of Representation 17 and in the first sentence of paragraph three of Representation 17.

(10) *Brokerage Commission Information*. Representation 22(i) of the Summary states, in part, that on a quarterly and annual basis, PaineWebber will provide written disclosures to an Independent Fiduciary or, if applicable, a Directing Participant regarding brokerage commissions that are paid to PaineWebber and/or its affiliates or to unrelated parties. The Applicants have requested that the Department revise this representation to reflect that brokerage commission information will be provided to the Independent Fiduciary and, depending on the arrangement negotiated between the Independent Fiduciary of a Section 404(c) Plan and PMAS, to a Directing Participant. The Applicants state that the language set forth in the Summary appears to indicate that PaineWebber will provide such information under all circumstances to Independent Fiduciaries and where applicable, to Directing Participants only.

The Department has revised paragraph (i) of Representation 22 to read, in part, as follows:

(i) On a quarterly and annual basis, PaineWebber will provide written disclosures to an Independent Fiduciary and, depending on the arrangement negotiated with PMAS, a Directing Participant, with respect to (1) the total, expressed in dollars, of each Portfolio's brokerage commissions that are paid to PaineWebber and its affiliates; * * *

After giving full consideration to the entire record, the Department has decided to grant the exemption subject to the modifications or clarifications described above. The Applicants' comment letter has been included as part of the public record of the exemption application. The complete application file, including all supplemental submissions received by the Department, is made available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, Room N–5638, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

The Everett Clinic Profit Sharing Plan and 401(k) Employee Savings Plan and Trust (the Plan), Located in Everett, Washington

[Prohibited Transaction Exemption 96–60; Exemption Application No. D–10171]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the following transactions between the Plan and the Everett Clinic (the Employer), a party in interest with respect to the Plan: (1) The exchange of cash and real property (Parcel B) owned by the Plan for other real property (Parcel C) owned by the Employer; (2) the grant by the Employer to the Plan of a perpetual easement to run with the land on the Plan's Parcel B to be exchanged and on the Employer's property (Parcel E); (3) the modification and extension of an existing lease (the New Lease) of improved real property by the Plan to the Employer, so as to include Parcel C and, effective January 1, 1997, a parking lot owned by the Employer (Parcel D) to be contributed gratuitously [1] to the Plan; and (4) the potential future purchase of the leased premises by the Employer pursuant to the terms of an option agreement contained in the New Lease.

This exemption is subject to the following conditions:

(1) The Plan is represented in all the transactions by a qualified, independent fiduciary;

(2) The terms and conditions of the transactions are at least as favorable to the Plan as those the Plan could obtain in comparable arm's length transactions with unrelated parties;

(3) Under the purchase agreement (the Purchase Agreement) with respect to the exchange of Parcel B for Parcel C, the Plan pays to the Employer an amount no more than the difference between the fair market values of Parcel B and Parcel C as of the date of the exchange, as established by a qualified, independent appraiser, with the Plan receiving full market value for Parcel B (notwithstanding its being transferred subject to an easement);

(4) The rent paid to the Plan under the New Lease is and continues to be no less than the fair market rental value of the leased premises, as established by a qualified, independent appraiser;

(5) The rent is adjusted every three years, based upon an updated independent appraisal, but never falls below the fair market rental amount initially established;

(6) The New Lease is a triple net lease under which the Employer as the tenant is obligated for all operating expenses, including maintenance, repairs, taxes, insurance, and utilities;

(7) The independent fiduciary expressly approves any improvements over $100,000 to the leased premises and any renewal of the New Lease beyond the initial term;

(8) The New Lease contains a two-way option agreement enabling the Plan to sell the leased premises to the Employer (or the Employer to purchase the leased premises from the Plan), in the event the independent fiduciary determines that such a sale is in the best interests of the Plan, for cash in an amount which is the greater of: (a) the original acquisition cost of the premises to the Plan plus expenses, or (b) the fair market value of the premises as of the date of the sale, as established by a qualified, independent appraiser selected by the independent fiduciary;

(9) At all times, the fair market value of the leased premises represents no more than 25% of the total assets of the Plan;

(10) The independent fiduciary determines that all of the transactions are appropriate for and in the best interests of the Plan and its participants and beneficiaries at the time of the transactions;

(11) At all times, the independent fiduciary monitors and enforces compliance with the terms and conditions of the Purchase Agreement, the New Lease, and the exemption; and

(12) The Plan incurs no commissions, costs, fees, nor other expenses relating to any of the transactions.

EFFECTIVE DATE: This exemption is effective as of June 1, 1996.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on June 4, 1996 at 61 FR 28237.

[1] The Department notes the Employer's representation that its contribution of Parcel D to the Plan will not be a prohibited transaction under the Department's regulation at 29 CFR 2509.94–3 because the contribution will not be made pursuant to any legal obligation of the Employer to contribute. The Plan is a profit-sharing plan which provides for a fully discretionary annual contribution by the Employer. It is represented that Parcel D will be contributed to the Plan on December 31, 1996 for the 1996 Plan Year and that no contribution has been declared for the 1996 Plan Year; therefore, the Employer has no existing obligation to contribute any amounts to the Plan. However, the Department expresses no opinion herein as to whether the Employer's contribution of Parcel D to the Plan is fully discretionary.

Written Comments

The Department received one written comment with respect to the notice of proposed exemption and no requests for a public hearing. The written comment was submitted by the trustees of the Plan (the Trustees) and concerns a clarification of the notice of proposed exemption. The Summary of Facts and Representations, Section 9, Paragraph 2 (page 28240, column 3) states:

The income from the Current Lease has provided the Plan with a stable and favorable rate of investment return (over 9% per annum for the period covering the 1980's and the first half of the 1990's, ranking in the top 5% of the Independent Consultants Cooperative database).

The Trustees desired to make the observation that this representation inaccurately understates the performance of the real estate. A letter dated November 16, 1995, from Wurts, Johnson & Company (Wurts, Johnson), investment consultants to the First Interstate Bank of Washington N.A., the independent fiduciary for the Plan, indicates that the rate of return to the Plan of ''over 9% per annum'' is actually for the five-year period ending June 30, 1995. Extending the return analysis back to January 1, 1983 for a 12-year period ending December 31, 1994, Wurts, Johnson found that the annual rate of return was 12.8%. Moreover, the most recent report from Wurts, Johnson shows that the annual rate of return for the five-year period ending December 31, 1995 was 14.1%. This rate is significantly higher than that for the five-year period ending June 30, 1995 due to a significant increase in the value of the real estate subsequent to June 30, 1995.

FOR FURTHER INFORMATION CONTACT: Ms. Karin Weng of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

The SUP Welfare Plan (the Plan), Located in San Francisco, California

[Prohibited Exemption Transaction 96–61; Exemption Application No. L–10221]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act shall not apply to the sale by the Plan of the remaining term of a one-hundred year pre-paid leasehold interest (the Interest) to the Sailors' Union of the Pacific Building Corporation, a party in interest with respect to the Plan, provided the following conditions are satisfied: (a) the sale is a one-time transaction for cash; (b) the Plan pays no commissions or other expenses in connection with the sale; (c) the Plan receives the greater of $438,000 or the fair market value of the Interest as of the date of the sale; and (d) the fair market value of the Interest has been determined by a qualified, independent appraiser.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on June 4, 1996 at 61 FR 28241.

Written Comments: The Department received three written comments (and no hearing requests) with respect to the proposed exemption. Two of the comments were in favor of granting the exemption as proposed. The third commentator disagreed with the Plan's trustees' decision to eliminate its housing program, and also expressed concern that the transaction would have negative impact on the participants' paychecks and affect their retirement plan.

The applicant responded to this comment by stating that the trustees' decision to terminate the housing benefit does not involve the merits of the subject transaction. Nonetheless, the applicant states that the trustees did act prudently and in the best interest of all participants and beneficiaries in terminating the housing benefit. Over the past 40 years, the number of jobs available for West Coast unlicensed deck hands has declined from several thousand to about a hundred. There is a substantial possibility that further shrinkage will occur if Congress fails to enact a maritime subsidy program. As the declining contribution base squeezes the Plan's finances, the applicant represents that the Plan's trustees properly chose to marshal the Plan's assets to provide benefits to the maximum number of eligible participants for as long as possible. The applicant further states that the elimination of the housing benefit will have no impact on any participant's paycheck, nor will it affect any retirement plan.

The Department has considered the entire record, including the comments submitted and the applicant's response thereto, and has made a final determination to grant the exemption as proposed.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 26th day of July, 1996.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 96–19482 Filed 7–30–96; 8:45 am]

BILLING CODE 4510–29–P

[Application No. D–10189, et al.

Proposed Exemptions; Westinghouse Savannah River Company

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions,

unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this Federal Register Notice. Comments and request for a hearing should state: (1) the name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the Federal Register. Such notice shall include a copy of the notice of proposed exemption as published in the Federal Register and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Westinghouse Savannah River Company/Bechtel Savannah River, Inc. Pension Plan (the Plan) Located in Aiken, South Carolina

[Application No. D–10189]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 C.F.R. Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of section 406(a)(1)(A), 406(a)(1)(D), 406(b)(1), and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A), 4975(c)(1)(D), and 4975(c)(1)(E) of the Code,[1] shall not apply, effective October 15, 1994, to the past and future use by the U. S. Department of Energy (DOE)[2], acting on behalf of Westinghouse Savannah River Company (WSRC) and Bechtel Savannah River, Inc. (BSRI), parties in interest with respect to the Plan, of portions of DOE's interest in Group Annuity Contract GR–409 (GR–409) issued by Connecticut General Life Insurance Company (CGLIC), an insurance company headquartered in Hartford, Connecticut, to purchase interests for the Plan in CGLIC Group Annuity Contract IN–16111 (IN–16111) for the purpose of funding the benefits under the Plan; provided that:

(1) the use by DOE, acting on behalf of WSRC and BSRI, of portions of DOE's interests in GR–409 to purchase additional interests in IN–16111 on behalf of the Plan has benefited and will benefit the Plan to the same extent, as contributions of cash by DOE to such Plan;

(2) the fair market value of the debits to GR–409 that have occurred or will occur, as a result of the use of portions of GR–409 by DOE to purchase additional interest in IN–16111 on behalf of the Plan, has exactly matched and will exactly match the fair market value of the credits to IN–16111 acquired by the Plan as a result of such purchase transactions;

(3) the Plan has received and will receive interests in IN–16111 that have a fair market value equal to the fair market value of the interests the Plan would have received had DOE or WSRC acquired additional interests in IN–16111 for the Plan for cash;

(4) the value of the earnings received by the Plan from the interests in IN–16111 purchased by DOE with portions of GR–409 have been and will be the same, as if those interests were or are purchased with cash;

(5) the named fiduciary of the Plan has determined that the transactions have been and will be prudent, feasible, and in the interest of and protective of the Plan;

(6) CGLIC, an independent, qualified third party, has determined and will continue to determine the fair market value of the interests in GR–409, as of the date of each purchase transaction;

(7) the actuary for the Plan has determined and will continue to determine the minimum funding requirement of the Plan and has determined and will continue to determine the extent to which the amount credited to the Plan's funding standard account by virtue of the use of the interest in GR–409 satisfies the minimum funding requirement;

(8) the actuary of the Plan has monitored and will continue to monitor the transactions on behalf of the Plan, as well as the terms and conditions of the exemption at all times;

(9) no more than 25% of the assets of the Plan have been or will be involved in the transactions;

(10) the Plan has not, nor will the Plan in the future, incur any fees, costs, or other charges or expenses as a result of the transactions; and

(11) if, by the required filing date of the Form 5500 (including extensions) for any year, the aggregate book value[3] of the interests in IN–16111 purchased for the Plan is less than the aggregate amount credited to the Plan's funding standard account as a result of such purchases, DOE will (by the filing date of the Form 5500 for such year) purchase an additional interest in IN–16111 for the Plan that has a book value equal to the shortfall or contribute to the

[1] For purposes of this exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

[2] References to DOE include, where applicable, DOE's predecessors, the Energy Research and Development Administration and the Atomic Energy Commission.

[3] It is represented that the book value of an annuity contract represents the amount contributed to such contract, plus accumulated interest credited to date, less amounts withdrawn from such contract. Fair market value, on the other hand, represents the market value of the general account assets in which a contract is deemed to be invested for accounting purposes.

Plan cash in the amount of such shortfall.

EFFECTIVE DATE: If the proposed exemption is granted, the exemption will be effective, as of October 15, 1994, the date DOE first used, on behalf of WSRC and BSRI, portions of its interests in GR–409 to acquire additional interests in IN–16111 for the Plan.

Summary of Facts and Representations

1. The Plan is a non-contributory multiple-employer defined benefit pension plan established, as of April 1, 1989, and maintained by WSRC and BSRI for their employees. As of January 1, 1995, the Plan covered 19,316 participants and beneficiaries. Of these individuals, 16,973 were active, laid-off, or transferred participants, 1,303 were deferred vested participants, and 1,040 were retirees or their beneficiaries in pay status.

The named fiduciary of the Plan is a committee (the Benefits Committee) which is composed of four (4) senior WSRC managers and a representative from BSRI. The Benefits Committee is responsible for the general administration of the Plan and for carrying out the provisions of the Plan. Acting in its fiduciary capacity, the Benefits Committee has appointed seven (7) independent asset management companies which serve as investment managers with respect to certain assets of the Plan, other than the Plan's interests in IN–16111.

It is represented that the assets of the Plan are well diversified. As of January 1, 1995, approximately 47 percent (47%) or $176,259,918 of the Plan's assets is invested in a broad range of equities; 36.6 percent (36.6%) or $137,526,560 is invested in IN–16111; 8.1 percent (8.1%) or $30,319,763 is invested in a variety of fixed income securities managed by the investment advisors; 5.8 percent (5.8%) or $21,954,535 is held in cash and cash equivalents; and the balance consists of accounts receivable and unsettled trades.

Until December 31, 1992, Wilmington Trust Company (Wilmington) served as trustee for the Plan. The current trustee of the Plan (the Trustee) is NationsBank (Carolinas), N.A. It is represented that the assets of the Plan, including IN–16111, are held in trust by the Trustee. As of January 1, 1995, the Plan was funded above the required minimum funding level. In this regard, as of January 1, 1995, the value of assets held by the Plan was $375,411,740. As of the same date, liabilities of the Plan totaled $340,770,268. It is represented that as of January 1, 1995, the Plan's liability percentage was 110.2 percent (110.2%).

Buck Consultants (Buck) serves as the Plan actuary. It is represented that Buck is an unrelated third party that is independent of parties involved in the transactions which are the subject of this request for exemption. In this regard, Buck is unaffiliated with DOE, WSRC, or BSRI.

2. WSRC is a Delaware corporation headquartered at 1993 Centennial Avenue, in Aiken, South Carolina. WSRC is a wholly-owned subsidiary of Westinghouse Electric Corporation, a public company incorporated in Pennsylvania and headquartered in Pittsburgh, Pennsylvania.

3. BSRI is a subcontractor to WSRC. BSRI is a private company incorporated in Delaware and headquartered in South Carolina. BSRI is a wholly-owned subsidiary of Bechtel Operating Services Corporation, a private company incorporated in Delaware and headquartered in California.

4. The applicants on behalf of whom exemption relief is sought are WSRC and BSRI, the sponsors of the Plan, and the members of the Benefits Committee. In this regard, WSRC and BSRI are parties in interest in that each is an employer any of whose employees are covered by the Plan, pursuant to section 3(14)(C) of the Act.

5. In 1950, DOE awarded E.I. du Pont de Nemours and Company (Du Pont) a contract to manage the U.S. owned nuclear facility in Aiken, South Carolina. During Du Pont's management of the facility from 1950 until 1989, employees of Du Pont were participants in the Du Pont Pension and Retirement Plan (the Du Pont Plan), a defined benefit pension plan sponsored and maintained by Du Pont for all eligible employees of Du Pont and its wholly-owned subsidiaries. Under the terms of a management contract between DOE and Du Pont, DOE was obligated to reimburse Du Pont for the cost of funding benefits under the Du Pont Plan for employees who worked at the nuclear facility.

6. It is represented that to fulfill its obligations under the management contract with Du Pont, DOE purchased GR–409 from CGLIC in 1950. GR–409, as amended, is an immediate participation guarantee group annuity contract issued by CGLIC. Amounts contributed under GR–409 are invested in the defined benefit plan segment of CGLIC's general account. Under the terms of GR–409, DOE is entitled, subject to certain limitations, to make annual withdrawals without effecting the book value of remaining funds. Although only DOE made contributions to GR–409, the group annuity contract originally named both DOE and Du Pont as contractholders.

It is represented that GR–409 was not an asset of the Du Pont Plan. Rather, cash payments from GR–409 received by DOE from CGLIC were used by DOE for more than forty (40) years to reimburse Du Pont or to directly reimburse the Du Pont Plan for benefit payments made to retired employees who had worked at the facility and to their beneficiaries.

7. In 1989, Du Pont's contract to manage the facility expired, and subsequently in 1991, DOE and Du Pont agreed on a lump sum settlement of retiree benefit costs. Under the terms of the settlement, cash and a portion of GR–409 were transferred to the Du Pont Plan to settle DOE's contractual obligation respecting the funding of the Du Pont Plan and other retiree benefits. It is represented that DOE at that time became the sole contractholder of the remaining balance in GR–409.

8. Subsequent to the termination of the contract with Du Pont, in 1989, DOE selected WSRC to manage and operate the nuclear facility. At that time, WSRC established the Plan which is the subject of this exemption request. As the Plan was intended to provide continuity for former Du Pont employees who had agreed to remain at the nuclear facility as employees of WSRC (the Transferred Employees), WSRC designed the Plan to replicate the benefits structure of the Du Pont Plan. In this regard, it is represented that in material respects, the Plan generally provides the same benefits, rights, and features as the Du Pont Plan did in 1989, subject to statutorily mandated revisions. At the same time, DOE became obligated, under the terms of a management contract between DOE and WSRC (the Prime Contract), to reimburse WSRC for all funding contributions made by WSRC to the Plan.

9. In order to preserve the benefits and service credits of Transferred Employees, benefits accrued by Transferred Employees under the Du Pont Plan (and liabilities attributable thereto) were spun-off to the Plan. In this regard, it is represented that full participation, vesting, and accrual credit was granted under the Plan for service rendered to Du Pont by the Transferred Employees. In order to accomplish the spin-off, on December 30, 1990, the Du Pont Plan entered into a trust-to-trust transaction with the Plan that involved $246 million worth of assets. It is represented that the mechanics of the trust-to-trust transfer were as follows. DOE, which was responsible for funding the Du Pont Plan for employees at the site, instructed CGLIC to issue an annuity contract with a book value of

$246 million, designated GR–AA, to the Du Pont Plan trust in exchange for DOE's surrender of a portion of its annuity contract GR–409. Du Pont then immediately instructed Wilmington, the trustee of the Du Pont Plan trust, to surrender GR–AA and directed CGLIC to issue IN–16111, an immediate participation guarantee group annuity contract, to the Plan's trust. Finally, WSRC instructed Wilmington, who until 1993 was also the trustee of the Plan's trust, to accept IN–16111 from CGLIC.

10. It is represented that the Trustee is currently the contractholder of IN–16111. Under the terms of such contract, CGLIC is obligated to pay retirement benefits provided under the Plan, to the extent requested by the Trustee, up to an aggregate amount not to exceed the book value of IN–16111. In this regard, the book value of IN–16111 is equal to the sum of all contributions to such contract, plus accumulated interest, less the sum of all amounts withdrawn from IN–16111.

It is represented that shortly after the acquisition by the Plan of IN–16111, a portion of IN–16111 with a book value of $50 million was liquidated and the proceeds invested by the Plan in equity securities, leaving a remaining book value of $196 million for IN–16111. It is represented that CGLIC has advised that the book value of IN–16111, as of December 31, 1994, was $137.5 million.

11. It is represented that WSRC manages the nuclear facility and BSRI, a subcontractor to WSRC, provides engineering services and manages the construction program at the facility. In this regard, the annual budget at the facility totals approximately $1.6 billion, of which $900 million represents payroll costs.

12. Since 1989, pursuant to the terms of the Prime Contract between DOE and WSRC, DOE has been obligated to reimburse WSRC for reasonable compensation expenses, including all legally required funding contributions of the Plan. In this regard, DOE's reimbursement obligation extends to both contributions for which WSRC is responsible as an employer and contributions which WSRC is required to make on behalf of BSRI under WSRC's subcontract with BSRI. DOE is also obligated to reimburse WSRC for ''reasonable costs arising from any past or future prohibited transaction'' resulting from DOE's actions.

13. It is represented that DOE originally fulfilled its responsibility under the Prime Contract by funding the Plan directly, rather than by reimbursing WSRC. In 1989 when the Plan was established, DOE contributed cash in the amount of $1.63 million to the Plan to cover start-up and other interim costs of the Plan. In this regard, it is represented that the initial cash contribution by DOE, plus the amount involved in the trust-to-trust transfer, adequately funded the Plan for a number of years without any additional contribution. Thereafter, in September 1993, in connection with a special early retirement program, DOE made, on behalf of WSRC, a cash contribution of $16,500,000 to the Plan. Subsequently, DOE made a cash contribution of $8,031,573 on April 14, 1994; a cash contribution of an equal amount on July 15, 1994; and a cash contribution of $15,293,573 on September 15, 1994.

14. Rather than continue to make cash contributions to the Plan, beginning in mid-October 1994, DOE in four (4) instances has fulfilled its responsibility under the Prime Contract by purchasing from CGLIC additional interests in IN–16111 for the Plan. However, on those occasions, DOE did not purchase such additional interests in IN–16111 with cash, but rather surrendered to CGLIC portions of GR–409, as consideration for such purchase.

The mechanics of each of the past transactions was accomplished in the following steps. Before a contribution was due, Buck advised WSRC of the minimum funding requirement for the Plan. WSRC, in turn, notified DOE of the amount of the required contribution. When the contribution became due, DOE instructed CGLIC that it wished to surrender a portion of its interest in GR–409 with a book value equal to the amount of the minimum funding requirement of the Plan to purchase additional interests in IN–16111 for the Plan. It is represented that both GR–409 and IN–16111 represent derivative interests in assets held in the defined benefit segment of the general account of CGLIC. Accordingly, when instructed by DOE, CGLIC obliged by shifting the interest in a *pro rata* portion of the assets underlying GR–409 (with a book value equal to the amount of the required contribution) to IN–16111. In this regard, each transfer increased the book value of the Plan's interest in IN–16111 by the amount of the required funding contribution. The applicants are concerned that these transactions may be viewed as contributions by DOE, on behalf of WSRC and BSRI, of interests in GR–409 in consideration of the purchase of interests in IN–16111 for the Plan.

It is represented that in this manner, the following transactions totaling $29,811,336 were executed: (1) a quarterly contribution of $920,106 due October 15, 1994; (2) a quarterly contribution of $5,707,777 due January 15, 1995; (3) a voluntary contribution of $6,900,000 due April 14, 1995; and (4) a voluntary contribution of $16,283,453 paid on July 17, 1995. At the time of the contributions for the plan year of 1994, the book value of the interests in GR–409 exceeded the fair market value of the assets underlying GR–409. In order to bring the Plan's funding standard account into balance for the 1994 plan year based on the fair market value of the transferred interests in GR–409, on July 17, 1995, $4,323,800 of interests at book value in GR–409 were used as consideration to purchase additional interests in IN–16111 for the Plan. In this regard, it is represented that Buck determined this amount based on the fair market value of the underlying assets of GR–409, as determined by CGLIC.

DOE wishes to continue, over the next two (2) years until GR–409 is exhausted (projected to be towards the end of 1997), to use GR–409 to satisfy its obligations under the Prime Contract to reimburse WSRC for the cost of funding the Plan. In this regard, the same procedure, as described with respect to the past transactions, will be employed in the future, except that all prospective transactions will be based on fair market value of the interests at the time of the contribution.[4] As it did in the past transactions, the Plan in the future will assume the book value of the respective interests in GR–409 which are used as consideration to acquire additional interest in IN–16111 for the Plan. However, if by the required filing date of the Form 5500 (including extensions) for any year, the aggregate book value of the interests in IN–16111 purchased for the Plan to date is less than the aggregate amount credited to the Plan's funding standard account as a result of such purchases, DOE will (by the filing date of the Form 5500 for such year) purchase an additional interest in IN–16111 for the Plan that has a book value equal to the shortfall. In this regard, DOE would make a cash contribution to the Plan to the extent there were insufficient annuity interests to cover the shortfall. This will ensure that the aggregate book value of annuity interests in IN–16111 purchased for the Plan are at least equal to the book value of the

[4] The applicants represent that regardless of the fact that interests in GR–409 and IN–16111 will be valued for funding purposes on the fair market value of the underlying assets, all of the general account assets of CGLIC stand behind IN–16111. Thus, CGLIC is at all times obligated to pay retirement benefits to the Plan, as contractholder of IN–16111, to the extent requested by the Trustee, up to an aggregate amount not to exceed the book value of IN–16111.

interests in IN–16111 that could have been purchased for the Plan with cash for the purpose of satisfying the minimum funding requirements of the Plan.

15. It is represented that neither DOE nor any of the parties on behalf of whom the exemption is sought participated in the past transactions knowing that such might be prohibited under the Act or under the Code. In the opinion of the applicants, the Plan is not actually receiving a contribution of interests in GR–409; instead the GR–409 interests are consideration used by DOE to purchase additional interests in IN–16111 for the Plan. The funding mechanism in this case differs from an ''in-kind contribution'' wherein the thing of value that is contributed by the plan sponsor is what in fact the plan receives. In this regard, the applicants point out that the interests in GR–409 which DOE has surrendered and will surrender to CGLIC, as consideration for the purchase of additional interest in IN–16111 for the Plan, are not in themselves ''contributions.''

WSRC and BSRI, acting in their settlor capacities, have elected to make contributions to the Plan through the purchase of annuity interests. However, rather than purchasing additional annuity interests with cash for the Plan, WSRC and BSRI have permitted the purchases by DOE in the past and will permit purchases by DOE in the future of additional interests in IN–16111 for the Plan. Accordingly, the applicants believe that the purchases by DOE of IN–16111 for the Plan on behalf of WSRC and BSRI, the sponsors of such Plan, are not properly characterized as ''sales or exchanges'' between the plan sponsors and the Plan any more than contributions in cash would be so characterized. Further, the applicants maintain that the surrenders of portions of GR–409 by DOE to CGLIC are not transactions between DOE and the Plan within the meaning of section 406(a) of the Act or section 4975(c) of the Code.

With respect to the prohibition against fiduciary conflicts of interest, as set forth in section 406(b) of the Act, the applicants believe that the transactions which are the subject of this exemption do not raise conflict of interest issues. In this regard, the applicants maintain that WSRC and BSRI are acting in their settlor or corporate capacities and not as fiduciaries, in permitting DOE to surrender on behalf of WSRC portions of DOE's interests in GR–409 to purchase interests in IN–16111 for the Plan. The applicants are also of the view that no conflict of interest arises with respect to the decision of the Benefits Committee to accept the transactions, because the Benefits Committee takes such action solely on behalf of the Plan and in the interest of the participants and beneficiaries.

Notwithstanding the reasoning described in the paragraphs above, it is represented that the Benefits Committee and WSRC became concerned in March of 1995 that there was a possibility that the transactions could be considered to be prohibited. As a result, WSRC promptly sought guidance as to the propriety of the transactions and expressed its concerns to CGLIC and to DOE. As the Benefits Committee represents that it was by no means certain that the transactions were prohibited, it was not clear that the Plan had a basis to object. It is further represented that the Benefits Committee had no reason to complain of the past transactions, as the Plan did not have a stake in whether CGLIC collected cash from WSRC or from DOE or in whether CGLIC debited a portion of GR–409, as either way the value of the Plan's interest in IN–16111 increased by the same amount. Accordingly, the applicants are aware that the prohibited transaction issue is not entirely free from doubt, and that DOE's interests in GR–409 which are used to purchase interests in IN–16111 on behalf of WSRC and BSRI may be viewed as contributions to the Plan. As a result, the applicants seek retroactive and prospective exemption relief from section 406(a)(1)(A) and 406(a)(1)(D) of the Act and from section 4975(c)(1)(A) and 4975(c)(1)(D) of the Code, for past and future transactions involving DOE's use of portions of GR–409 for the purpose of purchasing additional interests in IN–16111 for the Plan. Further, because the decision of the Benefits Committee arguably benefits DOE—by permitting DOE to satisfy its obligations under the Prime Contract with interests in GR–409 rather than with cash, the applicants seek both retroactive and prospective relief from section 406(b)(1) and 406(b)(2) of the Act and from section 4975(c)(1)(E) of the Code.

16. At the request of WSRC, DOE did not make the contribution scheduled for October 15, 1995, and has temporarily suspended further transactions involving GR–409, pending disposition of the requested exemption. Under present law funding requirements, funding for the 1995 Plan year must be completed by September 15, 1996.

It is represented that although not a party in interest with respect to the Plan, DOE believes its budget would be adversely affected if the exemption were not granted. In this regard, if the requested exemption is not granted, DOE could not use GR–409 as a source of Plan funding. This would upset DOE's settled expectation and saddle DOE with an asset that serves no other useful purpose. As a result, DOE would be forced to divert scarce resources (*i.e.*, congressional appropriations) from other areas of its shrinking budget. In addition, it would be particularly disruptive, if DOE were required to undo the transactions which have already occurred and to contribute cash instead.

17. It is represented that the past and future transactions for which relief is requested represent a relatively small percentage of the Plan's assets. In this regard, the four (4) contributions by DOE of portions of GR–409 which have already taken place represent less than 8.1 percent (8.1%) of the total fair market value of the assets of the Plan. Further, the sum of the nominal book value of the four (4) transactions completed to date equals $29.8 million. With respect to future transactions, it is represented that, based on CGLIC's valuation and Buck's reasonable projection of WSRC's minimum funding obligations, that the sum of the nominal book values of such future transactions will equal approximately $94.9 million. In this regard, it is anticipated that future uses by DOE of portions of GR–409 will increase the total percentage of Plan assets involved in the transactions to approximately 24 percent (24%). It is represented that as neither the past nor future transactions represents a significant percentage of Plan assets, the risk is minimal that any one of them could have impaired or will impair the ability of the Plan to pay benefits and expenses when due.

18. It is represented that the Plan has accepted transactions which are the subject of this exemption in the past and intends to accept such transactions in the future, because it is in the interest of the Plan and its participants and beneficiaries to do so. In this regard, it is represented that the Benefits Committee has thoroughly reviewed the transactions and has concluded that it is prudent and in the interest of the Plan and its participants and beneficiaries to accept such transactions. Among the elements that the Benefits Committee relied upon in support of this conclusion are that: (1) The interests have had and will have a fair market value at least equal to WSRC's minimum funding obligation and equal to the interests that WSRC could otherwise have purchased with cash; (2) the interests have consistently generated competitive risk-adjusted rate of returns and are reasonably expected to continue to do so; (3) the interests are invested in

a diversified group of investment grade fixed-income securities and commercial mortgages and as such balance the equity portfolio held by the Plan's trust; and (4) pursuant to the annual withdrawal provisions in IN–16111, the Plan is able to cash out a significant portion of such interests each year with no market value adjustment, adding a degree of liquidity not generally available under an immediate participation guarantee group annuity contract. In addition, it is represented that CGLIC is consistently ranked by the major ratings organizations in the top echelon of insurance companies.

19. WSRC maintains that both past and future transactions have been structured to protect the interests of the Plan and its participants and beneficiaries consistent with the objectives of the Act. In this regard, it is represented that Buck, a skilled and reputable pension actuarial consulting firm, providing services for employee benefit plans with more than $100 million in assets, has determined and will determine the amount creditable under the Plan's funding standard account. Although Buck does provide actuarial and benefits consulting services to WSRC and BSRI, and before 1995, did provide such services to Westinghouse Electric Corporation and its plans, it is represented that these accounts represented only about 1.5 percent (1.5%) of Buck's annual gross revenue in 1994 and less than one percent (1%) in 1995.

With respect to the transactions which are the subject of this exemption, it is represented that as the actuary for the Plan, Buck is a service provider to the Plan. In this regard, it is represented that Buck's allegiance is to the Plan and that it has carried out and will carry out its responsibilities solely in the interest of the Plan and its participants and beneficiaries.

Further, protections are provided in that the fair market value of the interests in GR–409 surrendered by DOE have been and will be established by CGLIC, a qualified third party. It is represented CGLIC has advised that as of December 31, 1994, and July 17, 1995, the book value of GR–409 was, respectively, $163.3 million and $110.1 million and that the fair market value of GR–409 was $154.4 million, as of December 31, 1994, and $109.8 million, as of July 17, 1995.

It is represented that CGLIC is the entity most qualified to make the determination of value of GR–409, because it best understands the intricacies of its general account and cell accounting methods, and because CGLIC has a well-developed expertise in valuing the fixed income securities, commercial mortgage interests, and other interests in which the general account is invested. Further, it is represented that CGLIC has no motivation to misvalue the interests, because the value of the debits to GR–409 have matched and will match exactly the value of the credits to IN–16111 received by the Plan. In this regard, CGLIC's aggregate liability under the contracts will not change as a result of the transfers. Accordingly, it is represented that the interests will be fairly valued by CGLIC in a way that protects the participants and beneficiaries of the Plan.

20. The applicants maintain that the transactions which are the subject of this exemption are feasible in that the WSRC will bear the cost of filing the application for exemption, the cost of notifying interested persons, and the expenses associated with the proposed transaction. In addition, it is represented that there will be no need for the Department to monitor or supervise the transactions, as independent qualified third parties have determined and will determine the value of the interests and the amount of the minimum funding requirements.

Further, the applicants assert that the facts supporting their application are highly unusual and are not likely to be replicated. In this regard, it is represented that insurance companies as a rule do not offer to non-plan entities annuity contracts that are invested in the defined benefit plan segment of such insurance companies separate account. As a result, it is not generally possible for a sponsor to contribute an annuity interest to a plan that would provide the same benefit to the plan as had the sponsor purchased an interest in cash. It is represented that to the best of CGLIC's knowledge GR–409, which was purchased by DOE in 1950 prior to the passage of the Act, is the only group annuity contract issued by CGLIC to a non-plan entity that is invested in the defined benefit segment of CGLIC's general account. Moreover, neither CGLIC or Buck is aware of any such contract issued by any other insurance company.

21. In summary, the applicants represent that the transactions meet the statutory criteria of section 408(a) of the Act because:

(a) the use by DOE, acting on behalf of WSRC and BSRI, of portions of DOE's interests in GR–409 to purchase additional interests in IN–16111 on behalf of the Plan has benefited and will benefit the Plan to the same extent, as contributions of cash by DOE to such Plan;

(b) the fair market value of the debits to GR–409 that have occurred or will occur, as a result of the use of portions of GR–409 by DOE for the benefit of the Plan, has exactly matched and will exactly match the fair market value of the credits to IN–16111 acquired by the Plan as a result of such use;

(c) the Plan has received and will receive interests in IN–16111 that have a fair market value equal to the fair market value of the interests the Plan would have received had DOE or WSRC purchased additional interests in IN–16111 for the Plan for cash;

(d) the value of the earnings received by the Plan from the interests in IN–16111 purchased by DOE with portions of GR–409 has been and will be the same, as if those interests were purchased with cash;

(e) the named fiduciary of the Plan has determined that the transactions have been and will be prudent, feasible, and in the interest of and protective of the Plan;

(f) an independent, qualified third party has determined and will continue to determine the fair market value of the interests in GR–409, as of the date of each purchase transaction;

(g) the actuary for the Plan has determined and will continue to determine the minimum funding requirement of the Plan and has determined and will continue to determine the extent to which the amount credited to the Plan's funding standard account satisfies the minimum funding requirement;

(h) the actuary of the Plan has monitored and will continue to monitor the transactions on behalf of the Plan, as well as the terms and conditions of the exemption at all times;

(i) no more than 25% of the assets of the Plan have been or will be involved in the transactions;

(j) the Plan has not, nor will the Plan in the future, incur any fees, costs, or other charges or expenses as a result of the transactions; and

(k) if, by the required filing date of the Form 5500 (including extensions) for any year, the aggregate book value of the interests in IN–16111 purchased for the Plan is less than the aggregate amount credited to the Plan's funding standard account as a result of such purchases, DOE will (by the filing date of the Form 5500 for such year) purchase an additional interest in IN–16111 for the Plan that has a book value equal to the shortfall or contribute cash in the amount of such shortfall.

Notice to Interested Persons

Those persons who may be interested in the pendency of the requested

exemption include, but are not limited to, all active WSRC employees participating in the Plan, all retired or separated participants either receiving or entitled to receive benefits, all beneficiaries of deceased participants who are receiving or are entitled to receive benefits, and all unions representing active BSRI employees who participate in the Plan. It is represented that these various classes of interested persons will be notified within four (4) business days from the date of the publication of the Notice of Proposed Exemption (the Notice) in the Federal Register, either by mailing first-class or by posting a photocopy of the Notice, plus a copy of the supplemental statement (the Supplemental Statement), in the form set forth in the Department's regulations under 29 CFR 2570.43(b)(2). In this regard, notification will be provided to all retired or separated participants either receiving or entitled to receive benefits, and to all beneficiaries of deceased participants who are receiving or are entitled to receive benefits, by first-class mail to their last known mailing address of a copy of the Notice and a copy of the Supplemental Statement. Active participants will be provided with notification by posting a copy of the Notice and a copy of the Supplemental Statement at all WSRC locations, in areas that are customarily used for notices to employees with regard to employee benefits or labor relations matters. WSRC shall also seek to post a copy of the Notice and a copy of the Supplemental Statement at the offices of the unions that represent BSRI active employees who participate in the Plan.

FOR FURTHER INFORMATION CONTACT: Angelena C. Le Blanc of the Department, telephone (202) 219–8883 (This is not a toll-free number.)

Operating Engineers Local 150 Apprenticeship Fund (the Plan) Located in Plainfield, Illinois

[Application No. L–10279]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in 29 C.F.R. Part 2570, Subpart B (55 F.R. 32836, 32847, August 10, 1990). If the exemption is granted the restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act shall not apply to the proposed sale by the Plan of a parcel of unimproved real property in Will County, Illinois (the Property) to the International Union of Operating Engineers Local 150, AFL-CIO (the Union), a party in interest with respect to the Plan; provided the following conditions are satisfied:

(A) All terms of the transaction are at least as favorable to the Plan as those which the Plan could obtain in an arm's-length transaction with an unrelated party;

(B) The Plan incurs no costs or expenses related to the transaction; and

(C) The Plan receives a purchase price no less than the greater of (1) $65,000, or (2) the fair market value of the Property as of the sale date.

Summary of Facts and Representations

1. The Plan is an employee welfare plan as described in section 3(c) of the Act with total assets of approximately $6,492,242 as of December 31, 1995. The Plan provides training and skill improvement for members of the Union, and during 1995 the Plan provided such services to approximately 600 apprentices and 5,493 journeymen. The Plan is sponsored by the Union and several employer associations, all of which appoint trustees to the Plan. The Plan's board of trustees (the Trustees) consists of an equal number of representatives of the Union and representatives of participating employers.

2. Among the assets of the Plan are two adjacent parcels of land located in the Lockport Township of Will County, Illinois, constituting approximately 104.11 acres (the Land). The Land consists of Parcel 1, consisting of 8.54 acres, and Parcel 2, consisting of 95.57 acres. The Land was purchased by the Trustees for the Plan from unrelated parties in 1978 at $2,401.30 per acre, for a total purchase price of $250,000.

3. The Trustees represent that all of the Land except Parcel 1 has been utilized in the Plan's training program for the operation of heavy equipment, garages for equipment repair and maintenance, and classroom/administration buildings. The Trustees represent that the physical configuration of Parcel 1 renders it too narrow for the operation of heavy equipment and that, accordingly, Parcel 1 has been utilized solely to provide convenient access to the Land from Weber Road, a major thoroughfare which is east of the Land. Parcel 1 has remained vacant and unimproved since its acquisition by the Plan. Adjacent to Parcel 1 on the north is a parcel of land owned by the Union (the Union Land), on which the Union intends to build a new administration building (the New Building). The Union would like to utilize part of Parcel 1 for the New Building and has asked the Trustees to sell a portion of Parcel 1 for this purpose. The Union is proposing to purchase 7.02 acres of Parcel 1 (the Property) from the Plan, leaving the Plan with ownership of the remaining 1.52 acres necessary for continued access between Parcel 2 and Weber Road. The Trustees have adopted a resolution providing for the sale of the Property to the Union, and are requesting an exemption to enable this sale transaction under the terms and conditions described herein.

4. After the Trustees received the request of the Union to purchase the Property, the Property was appraised for its fair market value by independent professional real property appraisers. According to an appraisal performed by Gadd, Tibble & Associates, Inc. (Gadd Tibble), as of October 30, 1995 the Property had a fair market value of $65,000, or approximately $9259.26 per acre. In another appraisal, Shetina Appraisal Company determined that as of December 20, 1995 the Property had a fair market value of $45,630, or $6,500 per acre.

The Union proposes to purchase the Property for cash in the amount of no less than $65,000, the Property's fair market value determined in the Gadd Tibble appraisal. In a supplement to the Gadd Tibble appraisal, Roger F. Tibble, MAI, states that the Union's ownership of adjacent property, and the intention to use the Property in the construction project on the Union Property, do not warrant a higher valuation of the Property to the Union as purchaser, as opposed to an unrelated purchase, because the Property is not necessary for the intended construction project and the Union is able to proceed with construction of the intended improvements without the Property. Mr. Tibble represents that while the Property would provide the new Union building with additional access to Weber Road, the Union Property already has sufficient access to Weber Road for the project.

Commensurate with the sale transaction, the Gadd Tibble appraisal shall be updated as of the sale date, and the purchase price will be increased accordingly if Gadd Tibble determines that the Property's fair market value has increased since its appraisal of October 30, 1995. The Plan will not incur any expenses in relation to the purchase transaction.

5. In summary, the applicant represents that the proposed transaction satisfies the criteria of section 408(a) of the Act for the following reasons: (a) The sale will be a one-time cash transaction and the Plan will incur no expenses related to the sale; (b) The Plan will receive a purchase price for the Property in the amount of no less than its fair market value as of the sale

date, and in no event less than $65,000; and (c) The transaction will enable the Plan to liquidate most of Parcel 1, which is too narrow for training uses, while retaining enough of Parcel 1 for continued use as Parcel 2 access to a major thoroughfare.

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 26th day of July, 1996.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 96–19481 Filed 7–30–96; 8:45 am]

BILLING CODE 4510–29–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–440]

Cleveland Electric Illuminating Company, et al.; Order Approving Transfer of License for Perry Nuclear Power Plant

I

Cleveland Electric Illuminating Company (CEI), Centerior Service Company (CSC), Duquesne Light Company, Ohio Edison Company (Ohio Edison), OES Nuclear, Inc. (OES), Pennsylvania Power Company, and Toledo Edison Company are the licensees of Perry Nuclear Power Plant, Unit No. 1 (PNPP Unit 1). CEI and CSC act as agents for themselves and the other licensees and have exclusive responsibility for and control over the physical construction, operation, and maintenance of PNPP Unit 1 as reflected in Facility Operating License No. NPF–58. The Nuclear Regulatory Commission (NRC) issued License No. NPF–58 on March 18, 1986, pursuant to Part 50 of Title 10 of the *Code of Federal Regulations* (10 CFR Part 50). Ohio Edison leases 12.58 percent of PNPP Unit 1 pursuant to the sale and leaseback transactions previously authorized by Amendment 2 to License No. NPF–58. The facility is located on the shore of Lake Erie in Lake County, Ohio, approximately 35 miles northeast of Cleveland, Ohio.

II

Under cover of a letter dated December 29, 1995, from Shaw, Pittman, Potts and Trowbridge, Ohio Edison submitted its request dated December 28, 1995, for approval of its intended transfer of its 12.58-percent ownership interest in the ''common facilities'' regarding the PNPP Unit 1 to its wholly owned subsidiary, OES. The ''common facilities'' include fuel-handling and storage facilities and equipment, radioactive waste processing facilities and equipment, service equipment (including laboratory equipment, computer equipment, and machine shop equipment), site security systems equipment, health physics equipment, makeup and discharge water systems, tunnels and equipment, furniture, training equipment, and the reactor simulator. This request supplements an earlier request to transfer a 17.42-percent ownership interest in PNPP Unit 1 from Ohio Edison to OES, which the NRC approved by order dated December 20, 1995. The other licensees would remain the same and would not be affected by the proposed transfer. On May 8, 1996, a notice of proposed ownership transfer was published in the Federal Register (61 FR 20840), and on June 25, 1996, an Environmental Assessment and Finding of No Significant Impact was published in the Federal Register (61 FR 32860).

The transfer of License No. NPF–58 is subject to the consent of the NRC as described in 10 CFR 50.80(a). Ohio Edison and OES will remain licensees of PNPP Unit 1. Ohio Edison would make sufficient payments to OES for OES to pay its expenses and would retain full responsibility for the costs of operating, maintaining, and decommissioning the interest in PNPP Unit 1 ''common facilities'' transferred to OES. OES is an ''electric utility'' as defined in 10 CFR 50.2 and thus is exempt from further financial qualifications review as specified in 10 CFR 50.33(f). Ohio Edison will continue to be an ''electric utility'' as defined in 10 CFR 50.2 and thus is also exempt from any further financial qualifications review. Given the financial arrangement between Ohio Edison and OES, and that both are licensees, the transfer will result in no adverse impact with respect to financial qualifications.

Since CEI and CSC are the only authorized operators and the transfer would not affect their staff, plant operations would not be affected by the transfer. OES is bound by the existing antitrust license conditions, and Ohio Edison will remain obligated to these same antitrust license conditions after the proposed transfer. Ohio Edison has also asserted that it and OES are not owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government.

On the basis of a review of the information in the letter of December 29, 1995, and the application of December 28, 1995, and other information before the Commission, the NRC staff finds that the transfer of Ohio Edison's 12.58-percent ownership interest in the ''common facilities'' to OES will not be inimical to the common defense and security or to the health and safety of the public. Therefore, the NRC staff concludes that OES is qualified to hold the license to the extent and for the purposes that Ohio Edison is now authorized to hold the

license with respect to such 12.58-percent ownership interest and that the transfer, subject to the conditions set forth herein, is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission.

III

By August 30, 1996, any person adversely affected by this order may file a request for a hearing with respect to issuance of the order. Any person requesting a hearing shall set forth with particularity how such person's interest is adversely affected by this order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is to be held, the Commission will issue an order designating the time and place of such hearing.

If a hearing is held concerning this order, the issue to be considered at any such hearing will be whether this order should be sustained.

Any request for a hearing must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Copies should also be sent to the Office of the General Counsel and to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Gerald Charnoff, Esquire, of Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037.

IV

Accordingly, pursuant to Sections 161b, 161i, and 184 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. §§ 2201(b), 2201(i), and 2234; and 10 CFR 50.80, It is hereby ordered that the Commission consents to the proposed transfer of the license described herein from Ohio Edison to OES, subject to the following: Should the transfer not be completed by September 30, 1996, this order will become null and void, unless upon application and for good cause shown this date is extended.

This order is effective upon issuance. For further details with respect to this action, see the application for transfer dated December 28, 1995, under cover of letter dated December 29, 1995, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Perry Public Library, 3753 Main Street, Perry, Ohio.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland this 25th day of July 1996.

William T. Russell,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 96–19436 Filed 7–30–96; 8:45 am]

BILLING CODE 7590–01–P

Biweekly Notice

Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97-415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from July 6, 1996, through July 19, 1996. The last biweekly notice was published on July 17, 1996 (61 FR 37295).

Notice Of Consideration Of Issuance Of Amendments To Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, And Opportunity For A Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the Federal Register a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By August 30, 1996, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10

CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 248-5100 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to (Project Director): petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Detroit Edison Company, Docket No. 50-341, Fermi-2, Monroe County, Michigan

Date of amendment request: March 25, 1996 (NRC-96-0003)

Description of amendment request: The proposed amendment would modify the charcoal testing standards for the Control Room Emergency Filtration System (CREFS) and the Standby Gas Treatment System (SGTS) to the current industry standard. The changes affect Surveillance Requirements (SRs) 4.6.5.3.b.2, 4.6.5.3.c, 4.7.2.1.c.2, and 4.7.2.1.d in Technical Specifications (TS) 3/4.6.5.3 ''Standby Gas Treatment System'' and TS 3/4.7.2 ''Control Room Emergency Filtration System.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed TS changes do not involve a significant increase in the probability or consequences of an accident previously evaluated. By providing an improved protocol for charcoal testing the proposal provides greater assurance that the installed charcoal can perform its design function and, thus, the consequences of evaluated accidents remain valid. The method of laboratory analysis has no effect upon how the plant is operated, including the method of sample removal. Therefore, the probability [or consequences] of any evaluated accident is unchanged.

2. The proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposal has no effect on the manner of plant operation. The proposal does not involve any change to the plant design. Therefore, the change creates no new accident modes.

3. The proposed TS changes do not involve a significant reduction in a margin of safety. By providing an improved protocol for charcoal testing the proposal acts to maintain existing safety margins. The change to the SGTS charcoal acceptance criteria also acts to ensure that the existing margins, as discussed in Regulatory Guide 1.52, Revision 2 [Design, Testing and Maintenance Criteria for Post-Accident Engineered Safety-Feature Atmosphere Cleanup System Air Filtration and Adsorption Units of Light-Water-Cooled Nuclear Power Plants], are maintained.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161

Attorney for licensee: John Flynn, Esq., Detroit Edison Company, 2000 Second Avenue, Detroit, Michigan 48226

NRC Project Director: Mark Reinhart, Acting

Duquesne Light Company, et al., Docket Nos. 50-334 and 50-412, Beaver Valley Power Station, Unit Nos. 1 and 2, Shippingport, Pennsylvania

Date of amendment request: June 18, 1996

Description of amendment request: For Beaver Valley Power Station, Unit No. 1 (BVPS-1) only, the proposed amendment would revise Technical Specification (TS) 3.4.5 and associated Bases; the Bases for TS 3.4.6.2 would also be revised. The proposed changes are editorial in nature and are intended to provide consistency between the TSs and associated Bases. Index page XIX would be revised to reflect the revision of page numbers for TS Tables 4.4-1 and 4.4-2 due to shifting of text.

For Beaver Valley Power Station, Unit No. 2 (BVPS-2) only, the proposed amendment would implement a voltage-based repair criteria for steam generator tubes similar to the changes approved for BVPS-1 by License Amendment No. 198. The proposed changes are intended to reflect the guidance provided in NRC Generic Letter 95-05, ''Voltage-Based Repair Criteria for Westinghouse Steam Generator Tubes Affected by Outside Diameter Stress Corrosion Cracking.'' The proposed changes would revise TSs 3.4.5 and 3.4.6.2 and associated Bases. TS Table 4.4-2 would be revised to reference TS 6.6 for reporting requirements.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

Tube burst criteria are inherently satisfied during normal operating conditions due to the proximity of the tube support plate (TSP). Test data indicates that tube burst cannot occur within the TSP, even for tubes which have 100% throughwall electric discharge machining notches, 0.75 inch long, provided that the TSP is adjacent to the notched area. Since tube-to-TSP proximity precludes tube burst during normal operating conditions, use of the criteria must retain tube integrity characteristics which maintain a margin of safety of 1.43 times the bounding faulted condition, main steamline break (MSLB) pressure differential. The Regulatory Guide (RG) 1.121 criterion requiring maintenance of a safety factor of 1.43 times the MSLB pressure differential on tube burst is satisfied by 7/8'' diameter tubing with bobbin coil indications with signal amplitudes less than 8.6 volts, regardless of the indicated depth measurement.

The upper voltage repair limit (V_{URL}) will be determined prior to each outage using the most recently approved NRC database to determine the tube structural limit (V_{SL}). The structural limit is reduced by allowances for nondestructive examination (NDE) uncertainty (V_{NDE}) and growth (V_{GR}) to establish V_{URL}. Using the Generic Letter (GL) 95-05 NDE and growth allowances for an example, the NDE uncertainty component of 20% and a voltage growth allowance of 30% per full power year can be utilized to establish a V_{URL} of 5.7 volts. The 20% NDE uncertainty represents a square-root-sum-of-the-squares (SRSS) combination of probe wear uncertainty and analyst variability. The degradation growth allowance should be an average growth rate or 30% per effective full power year, whichever is larger.

Relative to the expected leakage during accident condition loadings, it has been previously established that a postulated MSLB outside of containment but upstream of the main steam isolation valve (MSIV) represents the most limiting radiological condition relative to the plugging criteria. In support of implementation of the revised plugging limit, analyses will be performed to determine whether the distribution of cracking indications at the tube support plate intersections during future cycles are projected to be such that primary-to-secondary leakage would result in postulated site boundary and control room doses exceeding 10 CFR 100, 10 CFR 50 Appendix A, and GDC-19 [General Design Criterion-19] requirements, respectively. A separate calculation has determined the maximum allowable MSLB leakage limit in a faulted loop. This limit was calculated using the technical specification reactor coolant system (RCS) Iodine-131 activity level of 1.0 microcuries per gram dose equivalent Iodine-131 and the recommended Iodine-131 transient spiking values consistent with NUREG-0800. The projected MSLB leakage rate calculation methodology prescribed in Section 2.b of GL 95-05 will be used to calculate the end-of-cycle (EOC) leakage. Projected EOC voltage distribution will be developed using the most recent EOC eddy current results and considering an appropriate voltage measurement uncertainty. The log-logistic probability of leakage correlation will be used to establish the MSLB leakrate used for comparison with the faulted loop allowable limit. Therefore, as implementation of the voltage-based repair criteria does not adversely affect steam generator tube integrity and implementation will be shown to result in acceptable dose consequences, the proposed amendment does not result in any increase in the probability or consequences of an accident previously evaluated in the Updated Final Safety Analysis Report (UFSAR).

The proposed changes to the BVPS-1 Index, Specifications and associated Bases and the proposed change to BVPS-2 Table 4.4-2 are editorial in nature. Therefore, these changes do not involve an increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

Implementation of the proposed steam generator tube voltage-based repair criteria does not introduce any significant changes to the plant design basis. Use of the voltage-based repair criteria does not provide a mechanism which could result in an accident outside of the region of the tube support plate elevations as no outside diameter stress corrosion cracking (ODSCC) is occurring outside the thickness of the tube support plates. Neither a single or multiple tube rupture event would be expected in a steam generator in which the plugging limit has been applied (during all plant conditions).

Duquesne Light Company will implement a maximum primary-to-secondary leakage rate limit of 150 gpd [gallons per day] per steam generator to help preclude the potential for excessive leakage during all plant conditions. The RG 1.121 criterion for establishing operational leakage rate limits that require plant shutdown are based upon leak-before-break considerations to detect a free span crack before potential tube rupture during faulted plant conditions. The 150 gpd limit provides for leakage detection and plant shutdown in the event of the occurrence of an unexpected single crack resulting in leakage that is associated with the longest permissible crack length. RG 1.121 acceptance criteria for establishing operating leakage limits are based on leak-before-break considerations such that plant shutdown is initiated if the leakage associated with the longest permissible crack is exceeded.

The single through-wall crack lengths that result in tube burst at 1.43 times the MSLB pressure differential and the MSLB pressure differential alone are approximately 0.57 inch and approximately 0.84 inch, respectively. A leak rate of 150 gpd will provide for detection of approximately 0.41 inch long cracks at nominal leak rates and approximately 0.62 inch long cracks at the lower 95% confidence level leak rates. Since tube burst is precluded during normal

operation due to the proximity of the TSP to the tube and the potential exists for the crevice to become uncovered during MSLB conditions, the leakage from the maximum permissible crack must preclude tube burst at MSLB conditions. Thus, the 150 gpd limit provides for plant shutdown prior to reaching critical crack lengths for MSLB conditions using the lower 95% leakrate data. Additionally, this leak-before-break evaluation assumes that the entire crevice area is uncovered during blowdown. Partial uncovery will provide benefit to the burst capacity of the intersection. Analyses have shown that only a small percentage of the TSPs are deflected greater than the TSP thickness during a postulated MSLB.

As steam generator tube integrity upon implementation of the voltage-based repair criteria continues to be maintained through inservice inspection and primary-to-secondary leakage monitoring, the possibility of a new or different kind of accident from any accident previously evaluated is not created.

The proposed change to BVPS-1 Index, Specifications and associated Bases and the proposed change to BVPS-2 Table 4.4-2 are editorial in nature. These changes do not change the performance of plant systems, plant configuration or method of operating the plant.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

The use of the voltage-based repair criteria at BVPS-2 maintains steam generator tube integrity commensurate with the criteria of RG 1.121. This guide describes a method acceptable to the Commission for meeting GDCs 14, 15, 30, 31, and 32 by reducing the probability or the consequences of steam generator tube rupture. This is accomplished by determining the limiting conditions of degradation of steam generator tubing, as established by inservice inspection, for which tubes with unacceptable cracking should be repaired or removed from service. Upon implementation of the proposed criteria, even under the worst case conditions, the occurrence of ODSCC at the tube support plate elevations is not expected to lead to a steam generator tube rupture event during normal or faulted plant conditions. The EOC distribution of crack indications at the tube support plate elevations will be confirmed to result in acceptable primary-to-secondary leakage during all plant conditions and that radiological consequences remain within the licensing basis.

In addressing the combined effects of loss-of-coolant-accident (LOCA) + safe shutdown earthquake (SSE) on the steam generator component (as required by GDC 2), it has been determined that tube collapse may occur in the steam generators at some plants. This is the case as the tube support plates may become deformed as a result of lateral loads at the wedge supports at the periphery of the plate due to the combined effects of the LOCA rarefaction wave and SSE loadings. Then, the resulting pressure differential on the deformed tubes may cause some of the tubes to collapse. There are two issues associated with steam generator tube collapse. First, the collapse of steam generator tubing reduces the RCS flow area through the tubes. The reduction in flow area increases the resistance to flow of steam from the core during a LOCA which, in turn, may potentially increase peak clad temperature. Second, there is a potential that partial through-wall cracks in tubes could progress to complete through-wall cracks during tube deformation or collapse.

The results of an analysis using the larger break inputs show that the LOCA loads were found to be of insufficient magnitude to result in steam generator tube collapse or significant deformation. Since the leak-before-break methodology is applicable to the reactor coolant loop piping, the probability of breaks in the primary loop piping is sufficiently low that they need not be considered in the structural design of the plant. The limiting LOCA event becomes the pressurizer spray line break. Analysis results have demonstrated that no tubes were subject to deformation or collapse. No tubes have been excluded from application of the subject voltage-based steam generator tube repair criteria.

Addressing RG 1.83 considerations, implementation of the voltage-based repair criteria is supplemented by: enhanced eddy current inspection guidelines to provide consistency in voltage normalization, the bobbin coil inspection will include 100% of the hot-leg TSP intersections and cold-leg intersections down to the lowest cold-leg TSP with known ODSCC, the determination of the TSPs having ODSCC will be based on the performance of at least 20% random sampling of tubes inspected over their full length, and rotating pancake coil inspection requirements for the larger indications left inservice to characterize the principal degradation as ODSCC.

As noted previously, implementation of the tube support plate intersection voltage-based repair criteria will decrease the number of tubes which must be repaired. The installation of steam generator tube plugs reduces the RCS flow margin. Thus, implementation of the voltage-based repair criteria will maintain the margin of flow that would otherwise be reduced in the event of increased tube plugging.

The proposed change to the BVPS-1 Index, Specifications and associated Bases and the proposed change to BVPS-2 Table 4.4-2 are editorial in nature. These changes will not reduce the margin of safety because they have no impact on any safety analysis assumptions.

Based on the above, it is concluded that the proposed license amendment request does not result in a significant reduction in margin with respect to plant safety as defined in the UFSAR or any BASES of the plant technical specifications.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, PA 15001

Attorney for licensee: Jay E. Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz

Entergy Operations, Inc., Docket No. 50-313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas

Date of amendment request: May 9, 1996

Description of amendment request: The proposed amendment changes both technical and administrative requirements associated with station batteries. The proposed changes are modeled after ''Standard Technical Specifications - Babcock and Wilcox Plants,'' NUREG-1430 and Nuclear Energy Institute guidance, ''IEEE Recommended Practice for Maintenance, Testing, and Replacement of Vented Lead-Acid Batteries for Stationary Applications,'' IEEE Std 450-1995.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1 - Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The switchyard 125V DC control power source requirements do not meet the criteria for inclusion in Technical Specifications (TSs) as evaluated with respect to the selection criteria of 10 CFR 50-36. These control power sources are not assumed to mitigate accident or transient events. The effects of a loss of these control power sources are enveloped by the Loss of Offsite Power (LOOP) event and relocation is considered to have a non-significant impact on the probability or severity of a LOOP event. These requirements will be relocated from the TSs to an appropriate administratively controlled document and maintained pursuant to 10 CFR 50.59.

Proposed changes incorporating the requirements of TS 3.7.1.D, 3.7.2.E, 3.7.2.F, and 3.7.2.A, as related to the DC electrical power subsystems in the new TS 3.7.3 results in a more stringent requirement for the ANO-1 TSs in that reductions to lower conditions of operation in shorter periods of time are now required. These more stringent requirements are not assumed to be initiators of any analyzed events and will not alter assumptions relative to mitigation of accident or transient events.

Proposed changes incorporating TS 3.7.4. requirements for the station batteries allowing the battery parameters to be outside

the limits of the Battery Inspection Program for 31 days do not result in an increase in the frequency of consequences of any analyzed accident, as the actions require more frequent checks of other parameters to ensure battery capability during this 31 day period. The Battery Inspection Program also requires evaluations to determine battery operability in the event these limits are exceeded. If an evaluation shows the battery is incapable of performing its design basis function, that DC electrical subsystem will be declared inoperable, and the appropriate actions taken.

Proposed changes to allow the use of float current in lieu of specific gravity incorporate current industry guidance on operability measures for station batteries, as stated in IEEE-450, ''IEEE Recommended Practice for Maintenance, Testing, and Replacement of Vented Lead-Acid Batteries for Stationary Applications.'' This Surveillance Requirement is not considered to initiate or mitigate any analyzed accident.

The proposed incorporation of a Battery Inspection Program relocates maintenance requirements from the TSs to a program under 10 CFR 50.59 control and allows the TSs to concentrate on those items required to ensure battery operability. These relocated requirements are not considered to be initiators of any analyzed accident. Battery operability is assured by the combination of TS Surveillance Requirements and Battery Inspection Program maintenance requirements based on IEEE-450 guidance.

Proposed changes in Surveillance Requirements and Frequencies reflect current industry guidance on maintenance and testing of the station batteries. These requirements, in themselves, are not considered to be initiators of any analyzed accident condition. Although some frequencies have been extended, continued performance of maintenance activities in accordance with IEEE-450, in addition to the required Surveillance Requirements, ensures that corrective maintenance can be performed prior to a condition challenging an operability limit.

Therefore, this change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

Criterion 2 - Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

The proposed changes do not change the design, configuration, or method of operation of the plant.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3 - Does Not Involve a Significant Reduction in the Margin of Safety.

Relocation of the switchyard 125V DC control power source requirements has no impact on any safety analysis assumptions. In addition, the requirements associated with these control power sources are relocated to an owner controlled document for which future changes will be evaluated pursuant to the requirements of 10 CFR 50.59.

Proposed changes incorporating the requirements of TS 3.7.1.D, 3.7.2.E, 3.7.2.F, and 3.7.2.A, as related to the DC electrical power subsystems, in the new TS 3.7.3 impose more stringent requirements than previously specified for ANO-1.

Proposed changes incorporating TS 3.7.4 requirements for the station batteries allowing the battery parameters to be outside the limits of the Battery Inspection Program for 31 days may involve an incremental reduction in the margin of safety since the battery may be in a slightly degraded state. However, this reduction is not considered significant in that the associated actions require more frequent checks of other parameters to ensure battery capability during this 31 day period. The attery Inspection Program also requires evaluations to determine battery operability in the event these limits are exceeded.

If an evaluation shows the battery is incapable of performing its design basis function, that DC electrical subsystem will be declared inoperable, and the appropriate actions taken.

The proposed change to allow the use of float current in lieu of specific gravity as a measure of battery operability is expected to result in a more representative measure of operability. IEEE-450 states that specific gravity may not be an appropriate measure of battery capability following addition of electrolyte or when the battery is on recharge following a discharge.

Proposed incorporation of a Battery Inspection Program relocates maintenance requirements from the TSs to a program under 10 CFR 50.59 controls and allows the TSs to concentrate on those items required to ensure battery operability. The relocation of these requirements is not considered to be a reduction in the margin of safety. Battery operability is assured by the combination of TS Surveillance Requirements and Battery Inspection Program maintenance requirements based on IEEE-450 guidance.

Proposed changes in Surveillance Requirements and Frequencies reflect current industry guidance on maintenance and testing of the station batteries. Although some frequencies have been extended, continued performance of maintenance activities in accordance with IEEE-450, in addition to the required Surveillance Requirements, ensures that corrective maintenance can be performed prior to a condition challenging an operability limit.

Therefore, this change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, AR 72801

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., Washington, DC 20005-3502

NRC Project Director: William D. Beckner

Entergy Operations Inc., Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: June 27, 1996

Description of amendment request: The proposed amendment will modify Technical Specification 3/4.3.3.6, ''Accident Monitoring Instrumentation,'' based on the Combustion Engineering improved Standard Technical Specifications (STS) issued by the NRC as NUREG 1432. The amendment will also revise the Technical Specification (TS) to include Accident Monitoring Instrumentation as recommended by Regulatory Guide (RG) 1.97, Revision 3.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed change deletes all non-Type A and non-Category 1 instruments from the requirements of TS 3/4.3.3.6, ''Accident Monitoring Instrumentation.'' Type A variables provide the primary information required to permit the control room operators to take specific manually controlled actions, for which no automatic control is provided, that are required for safety systems to accomplish their safety functions during a DBA [Design Basis Accident]. Category 1, non-Type A variables are important in reducing public risk and are retained in TS because they are intended to assist operators in minimizing the consequences of accidents. Category 2 instruments are generally designated for indicating system operating status and are not designated as essential key variables necessary for the safe shutdown of the plant. The proposed change preserves the safety requirements of RG 1.97, Revision 3, and will not adversely affect any material condition of the plant that could directly contribute to causing or mitigating the affects of an accident.

The proposed change also adds two parameters to TS 3/4.3.3.6 which were previously controlled administratively or per another TS. Containment Pressure (Wide Wide Range) is being added because it is a Category 1 parameter required in addition to Containment Pressure (Wide Range), which is currently in the TS. Neutron Flux is being added to distinguish the RG 1.97 channels from the non-RG 1.97 channels and to provide action and surveillance requirements consistent with the other accident monitoring instrumentation. These additions to TS 3/4.3.3.6 contribute to the overall safety of the plant and therefore in no way increase the probability or consequences of an accident previously evaluated.

Additionally, the proposed change also extends the AOTs [Allowed Outage Times] for TS 3/4.3.3.6 and replaces the HOT SHUTDOWN requirement for the number of OPERABLE channels being less than the Required Number of channels with a Special Report requirement. These changes are based

on the relatively low probability of an accident occurring which would require these instruments, the passive nature of these instruments, and alternate means of monitoring available. This is consistent with the CE improved STS and associated safety analyses which have been approved and issued by the NRC as NUREG 1432.

The remainder of the proposed change provides enhancements and clarifications to TS 3/4.3.3.6 which have no potential to impact plant operations. No previous accident scenario is changed, and initiating conditions and assumptions remain as previously analyzed. Therefore, the proposed change will not involve a significant increase in the probability or consequences of any accident previously evaluated.

The proposed change will not alter the operation of the plant or the manner in which the plant is operated. No new or different failure modes have been introduced. TS 3/4.3.3.6 ensures the OPERABILITY of essential Post Accident Monitoring Instrumentation. This instrumen-tation provides information to the control room operators during an accident so that appropriate actions can be taken to mitigate the consequences of the accident. These instruments are passive in nature in that no critical automatic action is assumed to occur from these instruments. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change revises TS 3/4.3.3.6 based on the information provided in CE improved STS, NUREG 1432. The deletion and addition of specific components from the TS per this change is commensurate with the safety significance of their associated parameters. The proposed change ensures the operability of the post accident monitoring instrumentation which has been designated, by RG 1.97 and Waterford 3's associated analysis, as essential for availability during and following a DBA. The proposed change preserves the single failure criteria required for this instrumentation and maintains the level of safety currently established in the Technical Specifications. The proposed change will not affect any physical protective boundary. Therefore, the proposed change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room Location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, LA 70122

Attorney for licensee: N.S. Reynolds, Esq., Winston & Strawn 1400 L Street N.W., Washington, D.C. 20005-3502

NRC Project Director: William D. Beckner

GPU Nuclear Corporation, et al., Docket No. 50-219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of amendment request: July 17, 1996 (TSCR 242, Rev. 2)

Description of amendment request: The proposed change to the Technical Specifications would allow the implementation of 10 CFR Part 50, Appendix J, Option B. This application supersedes the previously submitted application dated February 23, 1996, which was noticed in the Federal Register on March 27, 1996 (61 FR 13526).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

GPU Nuclear has determined that this TSCR involves no significant hazards considerations as defined by NRC in 10 CFR 50.92.

1. Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or occurrence or the consequences of an accident of malfunction of equipment important to safety as previously evaluated in the Safety Analysis Report.

The proposed change implements Option B of 10 CFR 50, Appendix J on performance based containment leakage testing. The proposed change does not involve a change to the plant design or operation. Therefore, the proposed change does not affect any of the parameters or conditions that contribute to initiation of any of the analyzed accidents or malfunctions. The proposed change does not request an allowable extension of containment testing. Therefore, a hypothetical leak could remain undetected for a greater period of time. This slight increase in risk has been determined to be insignificant as:

Type A Testing

NUREG 1493 [Performance-Based Containment Leak Test Program] determined that the effect of containment leakage on overall accident risk is small as risk is dominated by accident sequences that result in the failure or bypass of the containment. Industry wide PCILRTs [primary containment integrated leak rate tests] have demonstrated that only a small fraction of the leaks discovered during testing exceeded acceptance criteria, and that the leak rate has been only marginally above the acceptable limit. Only 3% of all leaks can be detected only by PCILRT, therefore, only 3% of the theoretical leaks are affected by the extension to the Type A test interval. Experience at Oyster Creek agrees with the industry wide data in that the majority of the detected leakage from the primary containment is found through Type B and C testing. NUREG 1493 found that these observations, together with the insensitivity of reactor accident risk to the containment leakage rate, demonstrates that increasing the Type A leakage test intervals would have a minimal impact on public risk.

Type B and C Testing

Penetrations are designed to ensure reliability of the containment isolation function. Type B penetrations use a double passive seal (e.g. o-ring, gasket) and Type C penetrations use a double isolation valve design to ensure reliability of the isolation function. Because valves perform the isolation function actively, they are more likely to fail on demand (e.g. failure to completely close on demand). To address this failure mode, Type C valves are subjected to increased design constraints and testing to ensure both acceptable leak rates and stroke times. The proposed change does not alter the installation, operation, operating environment, or testing method of these valves. Therefore, the proposed change does not introduce any new component failure modes, nor does it affect the probability of occurrence of any existing evaluated failure mode.

The failure of any single penetration barrier (isolation valve or passive seal) does not cause penetration failure. Therefore, a double failure would have to occur to cause a failure of the penetration and affect containment. Additionally, the proposed change does not change the acceptance criteria for acceptable leakage testing.

The proposed change does not alter plant design or operation, nor does it alter the allowable maximum leakage rate limit. Thus, the proposed change does not affect the probability of occurrence nor the consequences of any evaluated accident or malfunction of equipment important to safety.

2. Operation of the facility in accordance with the proposed amendment would not create the possibility of any accident or malfunction different from any accident or malfunction previously evaluated.

The proposed change does not involve a change to the plant design or operation. As a result, the proposed change does not affect any of the parameters or conditions that could contribute to initiation of any accidents. This change only involves the reduction in Type A, B, and C test frequencies, and the Type A test pressure.

Type A Testing

The only changes proposed to the Type A testing are to frequency and test pressure. As the proposed test pressure is greater than the existing test pressure, no new type of accident or malfunction is created, and the increase in pressure provides an additional margin of safety. The increase in surveillance interval cannot introduce any new type of accident or malfunction.

The PCILRT is presently performed at 20 psig. Performance of the PCILRT at PGG5GA(35 psig) will provide a more direct leak rate for analysis. P_a is the design pressure of the torus (the drywell design pressure is 44 psig, but the torus is non isolable from the drywell). Therefore, P_a will not create the possibility of the failure of the torus due to overpressurization. No new accident modes can be created by extending the test intervals. No safety related functions

or components are altered as a result of this change. Therefore, no new accident or malfunction different from those evaluated in the Safety Analysis Report can result due to the increase in test pressure or increase in surveillance interval.

Type B and C Testing

The proposed change only deals with the frequency of performing Type B and C testing. It does not change what components are tested or the method of testing. There is no proposed change to the design or operation of the plant. Therefore, no new accident or malfunction different from those evaluated in the Safety Analysis Report can result due to the increase in test pressure or increase in surveillance interval.

3. Operation of the facility in accordance with the proposed amendment would not decrease the margin of safety as defined in the bases of the Technical Specifications.

Type A Testing

Except for the method of defining the test frequency and pressure at which the PCILRT is performed, the methods for performing the actual test are not changed. However, the proposed change can increase the probability that an increase in leakage could go undetected for an extended period of time. NUREG 1493 has determined that under several different accident scenarios, the increased risk of radioactivity release from containment is negligible with the implementation of these proposed changes.

Type B and C Testing

The proposed change only affects the frequency of Type B and C testing. The methods for performing the actual test are not changed. The design or operation of Type B and C components are not changed. The proposed change will result in a longer interval between tests of good performing Type B and C components.

The margin of safety that has the potential of being impacted by the proposed change involves the offsite dose consequences of postulated accidents which are directly related to containment leakage rate. The containment isolation system is designed to limit leakage to L_a, which is defined by the Oyster Creek Technical Specifications to be 1.0 percent by weight of the containment air at 35 psig per 24 hours. The limitation on containment leakage rate is designed to ensure the total leakage volume will not exceed the value assumed in the accident analyses at the peak accident pressure (P_a). The margin of safety for the offsite dose consequences of postulated accidents directly related to the containment leakage rate is maintained by meeting the 1.0 L_a acceptance criteria. The L_a value is not being modified by this proposed Technical Specification change request.

Therefore, the margin of safety as defined in the bases for the Technical Specification will not be reduced.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Ocean County Library, Reference Department, 101 Washington Street, Toms River, NJ 08753

Attorney for licensee: Ernest L. Blake, Jr., Esquire. Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz

GPU Nuclear Corporation, et al., Docket No. 50-289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of amendment request: June 28, 1996

Description of amendment request: This amendment would allow implementation of Option B to 10 CFR Part 50, Appendix J, which permits performance based determination of the frequency of containment leak rate testing.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration (SHC), which is presented below:

The proposed change has been evaluated against the standards in 10 CFR 50.92 and determined not to involve a significant hazards consideration, in that the editorial changes do not change the meaning or intent of the technical specifications, and operation of the facility in accordance with the proposed amendment.

1. Would not involve a significant increase in the probability of occurrence or the consequences of an accident previously evaluated, because the proposed changes are either purely administrative changes (involving format, wording, or reporting requirements) or changes in containment leakage test requirements (minor scope changes or increased intervals between containment leakage tests). None of these changes are related to conditions which cause accidents. The proposed changes do not involve a change to the plant design or operation.

NUREG-1493, ''Performance-Based Containment Leak-Test Program,'' contributed to the technical bases for Option B of 10 CFR 50 Appendix J. NUREG-1493 contains a detailed evaluation of the expected leakage from containment and the associated consequences. The increased risk due to lengthening of the intervals between leakage tests was also evaluated and found to be acceptable. Using a statistical approach, NUREG-1493 determined the increase in the expected dose to the public from extending the testing frequency to be extremely small.

2. Would not create the possibility of a new or different kind of accident from any accident previously evaluated, because the testing or reporting requirements associated with this change do not involve a physical alteration of the plant design or changes in the methods governing normal plant operation. No safety related equipment or safety related functions are altered as a result of this change. As a result, the proposed change does not affect any of the parameters or conditions that could contribute to initiation of any accidents.

3. Would not involve a significant reduction in a margin of safety because the proposed changes are either purely administrative (involving format, wording, or reporting requirements) or changes in containment leakage test requirements (minor scope changes or increased intervals between containment leakage tests) such that the allowable containment leakage rates presently specified in the Technical Specifications remain unchanged. The Technical Specifications and the Reactor Building Leakage Rate Testing Program will ensure that containment system testing is performed in full compliance with 10 CFR 50 Appendix J.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location:

Law/Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, PA 17105.

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz

Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company, City of Austin, Texas, Docket Nos. 50-498 and 50-499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: May 1, 1995, as supplemented by letters dated June 22, August 28, November 22, and December 19, 1995, and January 4, 8 (two letters), and 23, June 27, and July 9, 1996.

Description of amendment request: The proposed amendment would allow extension of the standby diesel generator allowed outage time to 14 days, and extension of the essential cooling water loop and the essential chilled water loop allowed outage times to 7 days. The proposed change would also add to Administrative Controls a description of the Configuration Risk Management Program (CRMP) used to assess changes in core damage probability resulting from applicable plant configurations. This application was previously published in the Federal

Register on February 8, 1996, (61 FR 4805).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The Standby Diesel Generators are not accident initiators, therefore the increase in Allowed Outage Times for this system does not increase the probability of an accident previously evaluated. The three train design of the South Texas Project ensures that even during the seven days the Essential Cooling Water loop or the Essential Chilled Water loop is inoperable there are still two complete trains available to mitigate the consequences of any accident. If the Essential Cooling Water and the Essential Chilled Water loops are operable during the 14 days the Standby Diesel Generator is inoperable, the Engineered Safety Features bus and equipment in the train associated with the inoperable Standby Diesel Generator will be operable. This ensures that all three redundant safety trains of the South Texas Project design are operable. In addition the Emergency Transformer will be available to supply the Engineered Safety Features bus normally supplied by the inoperable Standby Diesel Generator. These actions will ensure that the changes do not involve a significant increase in the consequences of previously evaluated accidents.

The addition of the Configuration Risk Management Program to the Administrative Section of the Technical Specifications does not affect current accident analyses.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes affect only the magnitude of the Standby Diesel Generator, Essential Cooling Water and the Essential Chilled Water Allowed Outage Times as identified by the marked-up Technical Specification. As indicated above, the proposed change does not involve the alteration of any equipment nor does it allow modes of operation beyond those currently allowed. Therefore, implementation of these proposed changes does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed changes result in no significant increase in core damage or large early release frequencies. Three sets of PSA [probabilistic safety assessment] results have been presented to the NRC for the South Texas Project. One submitted in 1989 from the initial Level 1 PSA of internal and external events with a mean annual average CDF [core damage frequency] estimate of 1.7E-4, a second one submitted in 1992 to meet the IPE [individual plant examination] requirements from the Level 2 PSA/IPE with a CDF estimate of 4.4E-5, and an update of the PSA that was reported in the August 1993 Technical Specifications submittal with a variety of CDF estimates for different assumptions regarding the rolling maintenance profile and different combinations of modified Technical Specifications. The South Texas Project PSA was updated in March of 1995 to include the NRC approved Risk-Based AOTs [allowed outage times] and STIs [surveillance test intervals], Plant Specific Data and incorporate the Emergency Transformer into the model. This update resulted in a CDF estimate of 2.07E-5 per reactor year. When the requested changes are modeled, the resulting CDF estimate is 2.18E 10-5 (sic) [2.18E-5] per reactor year. This corresponds to 5.2% decrease in the Core Damage Frequency calculated for the previously submitted 21 Day AOT. The Large, Early Release Frequency is quantified as 4.69E-07 per reactor year which represents a decrease of 7.5% from the value calculated for the previously submitted 21 Day AOT. Therefore, it is concluded that there is no significant reduction in the margin of safety.

Based on the above evaluation, the South Texas Project has concluded that these changes do not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Local Public Document Room location: Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, TX 77488

Attorney for licensee: Jack R. Newman, Esq., Morgan, Lewis & Bockius, 1800 M Street, N.W., Washington, DC 20036-5869

NRC Project Director: William D. Beckner

IES Utilities Inc., Docket No. 50-331, Duane Arnold Energy Center, Linn County, Iowa

Date of amendment request: July 5, 1996

Description of amendment request: The proposed Technical Specification (TS) amendment would support implementation of Noble Metal Chemical Addition (NMCA) at the Duane Arnold Energy Center (DAEC) as a method to enhance the effectiveness of Hydrogen Water Chemistry (HWC) in mitigating Intergranular Stress Corrosion Cracking (IGSCC) in Boiling Water Reactor (BWR) vessel internal components. The proposed amendment would raise the reactor water conductivity limit in STARTUP and HOT SHUTDOWN only during the application of NMCA. The reactor water conductivity will be restored after the NMCA.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed TS amendment will not significantly increase the probability or consequences of any previously evaluated accidents.

It is expected that during the NMCA application period, the reactor water conductivity will increase and exceed the conductivity limit of 2.0 [micro]mhos/cm specified in our current TS. Our current TS requires that whenever the reactor is in STARTUP or HOT SHUTDOWN Mode, the conductivity shall not exceed 2.0 [micro]mhos/cm for more than 48 continuous hours or be in HOT SHUTDOWN within the next 12 hours and in COLD SHUTDOWN within the following 24 hours.

The expected increase in conductivity is due to the presence of noble metal chemistry in the reactor water and is appropriate during the [NMCA] application period. The deposited layer of noble metals is beneficial for mitigating IGSCC in reactor vessel internal components. Other reactor water chemistry parameters such as chloride and sulfate are not expected to change; pH is expected to change but not out of the acceptable range. The reactor water chemistry parameters will be analyzed to ensure they are within the normal range, on a frequency consistent with the existing TS, Sections 4.6.B.2.c and 4.6.B.2.d when conductivity is elevated during the NMCA application.

During and after the application, the Reactor Water Cleanup (RWCU) system will continue to operate to remove the excess ions from the reactor water and restore the reactor water conductivity to the limit specified in Section 3.6.B. Therefore, this proposed TS amendment will not significantly increase the probability or consequences of any previously evaluated accidents.

2. The proposed TS amendment will not create the possibility of a new or different kind of accident. The proposed TS amendment will only permit a higher value of the reactor water conductivity limit during the application period of NMCA. The application is anticipated to increase the reactor water conductivity.

During and after the application, the RWCU system will continue to operate to remove the excess ions and restore the reactor water conductivity to the limit specified in Section 3.6.B. As is discussed above, the deposited layer of noble metals is beneficial for mitigating IGSCC in reactor vessel internal components. Therefore, this proposed TS amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed TS amendment will only permit a higher value of the reactor water conductivity limit during the application period of NMCA. The increase in

conductivity is anticipated during the application and is appropriate. The deposited layer of noble metals is beneficial for mitigating IGSCC in reactor vessel internal components. During and after the application, the RWCU system will continue to operate to remove the excess ions and restore the reactor water conductivity to the limit specified in Section 3.6.B. Therefore, no margin of safety is reduced as a result of the anticipated increase in conductivity due to the addition of the known noble metals.

The NRC staff has reviewed the licensee's analysis and, based on thisreview, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S.E., Cedar Rapids, Iowa 52401

Attorney for licensee: Jack Newman, Kathleen H. Shea, Morgan, Lewis, & Bockius, 1800 M Street, NW., Washington, DC 20036-5869

NRC Project Director: Gail H. Marcus

Illinois Power Company and Soyland Power Cooperative, Inc., Docket No. 50-461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Date of amendment request: June 21, 1996

Description of amendment request: The proposed amendment would modify Section 5.7, ''High Radiation Areas,'' of the ''Administrative Controls'' section of the Clinton Power Station technical specifications (TS). The proposed changes include: (1) allowing utilization of a Radiation Work Permit (RWP) ''or equivalent'' to control entry into a high radiation area; (2) clarifying the example given in the TS of individuals who are qualified in radiation protection procedures; (3) clarifying the requirements for when specified access controls and barriers for high radiation areas within large areas like the containment must be established; (4) clarifying that it is acceptable for an RWP to specify a maximum dose, i.e., a specified setpoint on an alarming dosimeter in lieu of a stay time for entry into a high radiation area (where an individual could receive a deep dose equivalent of 3000 mrem in one hour); (5) eliminating the upper dose limit for specifying the applicability of the requirements of Specification 5.7.1; (6) providing additional flexibility regarding who may control the keys to locked doors for preventing unauthorized entry into high radiation areas; (7) reorganizing TS Sections 5.7.1, 5.7.2, and 5.7.3 into four sections (5.7.1, 5.7.2, 5.7.3 and 5.7.4); and (8) making minor edits to enhance readability.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

(1) None of the proposed changes involve a significant increase in the probability or consequences of any accident previously evaluated.

The proposed changes do not change the design or the operation of the plant. The proposed changes are only related to the control of access to high radiation areas for the purpose of controlling dose to plant personnel. Because no change to plant design is proposed, there is no impact to any accident mitigating system. Likewise, because there is no proposed change to plant operating procedures, plant operation is not impacted. This proposed change does not impact any accident scenario or the previously calculated post-accident doses. Therefore, the limits of 10 CFR 100 will continue to be met. No probability or consequence of any accident previously evaluated is impacted by the proposed changes to TS.

(2) None of the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendment is administrative in nature and does not impact directly or indirectly the design or the operation of the Clinton Power Station, thus no new accident can be created.

(3) None of the proposed changes involve a significant reduction in a margin of safety.

There is no reduction to the margin of safety because the operating limits and functional capabilities of plant safety systems are unaffected by the proposed changes to administrative requirements. As noted previously, the proposed changes do not impact any accident analyses, including the associated dose calculations. With respect to controls for controlling operational dose to plant personnel, the proposed changes are intended to provide clarity and/or flexibility with respect to the administration and programmatic controls for controlling such dose, and yet maintain an adequate margin of safety for minimizing dose to site personnel consistent with the requirements of 10 CFR 20 and guidance of Regulatory Guide 8.38.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727

Attorney for licensee: Leah Manning Stetzner, Vice President, General Counsel, and Corporate Secretary, 500 South 27th Street, Decatur, Illinois 62525

NRC Project Director: Gail H. Marcus

Illinois Power Company and Soyland Power Cooperative, Inc., Docket No. 50-461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Date of amendment request: June 28, 1996

Description of amendment request: The proposed amendment would allow removal of the Inclined Fuel Transfer System (IFTS) primary containment blind flange while primary containment is required to be operable. This will provide flexibility to operate the IFTS for the purpose of testing and exercising the system during such conditions. Primary containment integrity will be provided by an alternate means while the blind flange is removed. The change would be incorporated via a provisional note into Technical Specification (TS) Surveillance Requirement 3.6.1.3.3, associated with TS 3.6.1.3, ''Primary Containment Isolation Valves (PCIVs).''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

(1) The proposed change allows operation of the IFTS while primary containment operability is required. The proposed change does not involve any modifications to plant systems or design parameters or conditions that contribute to the initiation of any accidents previously evaluated. Therefore, the proposed change cannot increase the probability of any accident previously evaluated.

The proposed change potentially affects the leak-tight integrity of the containment structure which is designed to mitigate the consequences of a loss-of-coolant accident (LOCA). The function of the primary containment is to maintain functional integrity during and following the peak transient pressures and temperatures that result from any LOCA. The primary containment is designed to limit fission product leakage following the design basis LOCA. Because the proposed change does not alter the plant design, only the extent of the boundaries that provide primary containment isolation for the IFTS penetration, the proposed change does not result in an increase in primary containment leakage. However, temporarily using the IFTS transfer tube and its attached appurtenances as part of the primary containment boundary (which have not been fabricated or installed to exactly the same requirements as a fully certified primary containment penetration) can increase the probability that a LOCA would challenge the pressure retaining integrity of these components. Since the subject components have been built to withstand pressure, temperature, and seismic conditions similar to those of the existing penetration, they are judged to be an

acceptable barrier to prevent the uncontrolled release of post-accident fission products for the purposes of this amendment request.

Further, it has been shown that the largest potential leakage pathway, the IFTS transfer tube itself, would remain sealed by the depth of water required to be maintained in the fuel building fuel transfer pool. The transfer tube drain line constitutes the other possible leakage pathway, and will be required to be capable of being isolated via administrative control of the manual isolation valve in the drain line. Additionally, due to the physical relationships of the buildings and components involved, any leakage from either of these pathways is fully contained within the boundaries of the secondary containment and would be filtered by the Standby Gas Treatment System prior to release to the environment.

Based on the above, Illinois Power has concluded that the proposed change will not result in a significant increase in the probability or consequences of any accident previously evaluated.

(2) The proposed change does not involve a change to the plant design or operation (except when the IFTS is operated). As a result, the proposed change does not affect any of the parameters or conditions that could contribute to the initiation of any accidents. No new accident modes are created by this change. Extending the primary containment boundary to include portions of the IFTS has no influence on, nor does it contribute to the possibility of a new or different kind of accident or malfunction from those previously analyzed.

Based on the above, Illinois Power has concluded that the proposed change will not create the possibility of a new or different kind of accident not previously evaluated.

(3) The request does not involve a significant reduction in a margin of safety. The proposed change only affects the extent of a portion of the primary containment boundary. Precautions will be taken to administratively control the IFTS transfer tube drain path so that the proposed change will not increase the probability that an increase in leakage from the primary containment to the secondary containment could occur.

The margin of safety that has the potential of being impacted by the proposed change involves the offsite dose consequences of postulated accidents which are directly related to containment leakage rate. The containment isolation system is designed to limit leakage to L_a, which is defined by the Clinton Power Station Technical Specifications to be 0.65% of primary containment air weight per day at the calculated peak constant pressure (P_a). The limitation on containment leakage rate is designed to ensure that total leakage volume will not exceed the value assumed in the accident analyses at the peak accident pressure (P_a). The margin of safety for the offsite dose consequences of postulated accidents directly related to the containment leakage rate is maintained by meeting the 1.0 L_a acceptance criteria. The L_a value is not being modified by this proposed technical specification change. The IFTS will continue to provide an acceptable barrier to prevent containment leakage during a LOCA, and therefore this change will not create a situation causing the containment leakage rate acceptance criteria to be violated.

As a result, Illinois Power has concluded that the proposed change will not result in a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727

Attorney for licensee: Leah Manning Stetzner, Vice President, General Counsel, and Corporate Secretary, 500 South 27th Street, Decatur, Illinois 62525

NRC Project Director: Gail H. Marcus

Indiana Michigan Power Company, Docket Nos. 50-315 and 50-316, Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, Berrien County, Michigan

Date of amendment requests: June 11, 1996 (AEP:NRC:80027)

Description of amendment requests: The proposed amendments would remove from the technical specifications (TS) certain requirements for administrative controls, related to quality assurance requirements, in accordance with the guidance of NRC Administrative Letter 95-06,≥Relocation of Technical Specifications Administrative Controls Related to Quality Assurance.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

We have evaluated the proposed T/S changes and have determined that the changes should involve no significant hazards consideration based on the criteria established in 10 CFR 50.92(c). Operation of Cook Nuclear Plant in accordance with the proposed amendment will not satisfy any of the following criteria:

(a) Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change does not involve any physical alteration of plant configurations, changes to setpoints, or operating parameters. This proposed amendment is to relocate the T/S requirements for administrative controls that are related to quality assurance to the QAPD [Quality Assurance Program Description]. This is in accordance with the guidance provided in AL 95-06. Also, the relocated requirements and future changes are controlled by 10 CFR 50.54(a) which requires prior NRC approval for changes that reduce the commitments in the program description previously accepted by the NRC. Therefore, there will be no significant increase in the probability or consequences of an accident previously evaluated.

(b) Create the possibility of a new or different kind of accident from any previously analyzed.

The proposed change does not involve any physical alteration of plant configurations, changes to setponts, or operating parameters. This proposed amendment is to relocate the T/S requirements for administrative controls that are related to quality assurance to the QAPD. This is in accordance with the guidance provided in AL 95-06. Also, the relocated requirements and future changes are controlled by 10 CFR 50.54(a) which requires prior NRC approval for changes that reduce the commitments in the program description previously accepted by the NRC. Therefore, this proposed change does not create the possibility of a new of different kind of accident from any previously analyzed.

(c) Involve a significant reduction in a margin of safety.

The proposed change does not involve any physical alteration of plant configurations, changes to setpoints, or operating parameters. This proposed amendment is to relocate the T/S requirements for administrative controls that are related to quality assurance to the QAPD. This is in accordance with the guidance provided in AL 95-06. Also, the relocated requirements and future changes are controlled by 10 CFR 50.54(a), which requires prior NRC approval for changes that reduce the commitments in the program description previously accepted by the NRC. Therefore, this proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: Maud Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW, Washington, DC 20037

NRC Project Director: Mark Reinhart, Acting

Indiana Michigan Power Company, Docket No. 50-315, Donald C. Cook Nuclear Plant, Unit No. 1, Berrien County, Michigan

Date of amendment request: June 19, 1996 [AEP:NRC:1166AA]

Description of amendment request: The proposed amendment would modify the technical specifications (T/

S) to allow continued use of the 2-volt steam generator (SG) tube plugging criteria for future operating cycles as discussed in NRC Generic Letter 95-05, ''Voltage-Based Repair Criteria for the Repair of Westinghouse Steam Generator Tubes Affected by Outside Diameter Stress Corrosion Cracking.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

In accordance with the three factor test of 10 CFR 50.92(c), implementation of the proposed license amendment is analyzed using the following standards and found not to: 1) involve a significant increase in the probability or consequences of an accident previously evaluated; 2) create the possibility of a new or different kind of accident from any accident previously evaluated; or 3) involve a significant reduction in margin of safety. Conformance of the proposed amendment to the standards for a determination of no significant hazards as defined in 10 CFR 50.92 (three factor test) is shown in the following paragraphs:

1) Operation of Cook Nuclear Plant Unit 1, in accordance with the proposed license amendment, does not involve a significant increase in the probability or consequences of an accident previously evaluated. Testing of model boiler specimens for free span tubing

(no TSP [tube support plate] restraint) at room temperature conditions show burst pressures in excess of 5000 psi for indications of outer diameter stress corrosion cracking [ODSCC] with voltage measurements as high as 19 volts. Burst testing performed on pulled tubes from Cook Nuclear Plant Unit 1 with up to a 2.02 volt indication shows measured burst pressure in excess of 10,000 psi at room temperature. Burst testing performed on pulled tubes from other plants show burst pressures in excess of 5,300 psi at room temperatures. Correcting for the effects of temperature on material properties and minimum strength levels (as the burst testing was done at room temperature), tube burst resistance significantly exceeds the safety factor requirements of RG [Regulatory Guide] 1.121 [Bases for Plugging Degraded PWR Steam Generatory Tubes]. As stated earlier, tube burst criteria are inherently satisfied during normal operating conditions due to the proximity of the TSP. Test data indicates that tube burst cannot occur within the TSP, even for tubes which have 100% throughwall electric-discharge machined notches 0.75 inch long, provided the TSP is adjacent to the notched area. Since tube-to-tube support plate proximity precludes tube burst during normal operating conditions, it follows that use of the proposed plugging criteria must, therefore, retain tube integrity characteristics which maintain the RG 1.121 margin of safety of 1.43 times the bounding faulted condition (steam line break) pressure differential.

During a postulated main SLB [steamline break], the TSP has the potential to deflect during blowdown, thereby uncovering the intersection. Based on the existing data base, the RG 1.121 criterion requiring maintenance of a safety factor of 1.43 times the SLB pressure differential on tube burst is satisfied by 7/8 inch diameter tubing with bobbin coil indications with signal amplitudes less than V_{SL}, regardless of the indicated depth measurement. A 2 volt plugging criteria compares favorably with the current V_{SL} (8.8 volt) structural limit, considering the previously calculated growth rates for ODSCC within Cook Nuclear Plant Unit 1 SGs. Considering a voltage growth component of 0.8 volts (40% voltage growth based on 2 volts BOC [beginning of cycle] and a nondestructive examination uncertainty of 0.40 volts (20% voltage uncertainty based on 2 volts BOC), when added to the BOC plugging criteria of 2 volts, results in a bounding EOC [end of cycle] voltage of approximately 3.2 volts for a cycle operation. A 5.6 volt safety margin exists (8.8 - 3.2 volt EOC = 5.6 volt margin).

For the voltage/burst correlation, the EOC structural limit is supported by a voltage of 8.8 volts. Using this V_{SL} of 8.8 volts, a BOC maximum allowable repair limit can be established using the guidance of RG 1.121. The BOC maximum allowable repair limit should not permit a significant number of EOC indications to exceed the V_{SL} and should assure that acceptable tube burst probabilities are attained. By adding NDE [nondestructive examination] uncertainty allowances and an allowance for crack growth to the repair limit, the structural limit can be validated. The previous plugging criteria submittal established the conservative NDE uncertainty limit (V_{NDE}) of 20% of the BOC repair limit. For consistency, a 40% voltage growth allowance (V_{GR}) to the BOC repair limit is also included. This allowance is extremely conservative for Cook Nuclear Plant Unit 1. Therefore, the maximum allowable upper voltage repair limit V_{URL} for BOC, based on the V_{SL} of 8.8 volts, can be represented by the expression:

$V_{URL} + (V_{NDE} \times V_{URL}) + (V_{GR} \times V_{URL}) = 8.8$ volts, or,

the maximum allowable BOC repair limit can be expressed as, V_{URL} = 8.8 volt structural limit/1.6 = 5.5 volts.

This structural repair limit supports this application for plugging criteria implementation to repair bobbin indications greater than 2 volts based on RPC [rotating pancake coil] confirmation of the indication. Conservatively, an upper limit of 5.5 volts will be used to repair bobbin coil indications which are above 2 volts but do not have confirming RPC calls.

Relative to the expected leakage during accident condition loadings, it has been previously established that a postulated main SLB outside of containment, but upstream of the main steam isolation valve, represents the most limiting radiological condition relative to the plugging criteria. In support of implementation of the plugging criteria, it will be determined whether the distribution of crack indications at the TSP intersections at the EOC are projected to be such that primary-to-secondary leakage would result in site boundary doses within a small fraction of the 10 CFR 100 guidelines. A separate calculation has determined this allowable SLB leakage limit to be 8.4 gpm. Although not required by the Cook Nuclear Plant design basis, this calculation uses the recommended Iodine-131 transient spiking values consistent with NUREG-0800 [Standard Review Plan], and the T/S reactor coolant system activity limit of 1 micro curie per gram dose equivalent Iodine-131. Control room dose calculations were also performed and found to be less limiting than the offsite dose leakrate. Therefore, the more conservative offsite dose leakrate is used. The projected SLB leakage rate calculation methodology prescribed in GL 95-05 and WCAP 14277 [Steam Line Break Leak Rate and Tube Burst Probability Analysis Methods for Outside Diameter Stress Corrosion Cracking at Tube Support Plate Intersections] will be used to calculate EOC leakage, based on actual EOC distributions and EOC projected distributions. Due to the relatively low voltage growth rates at Cook Nuclear Plant Unit 1 and the relatively small number of indications affected by the plugging criteria, SLB leakage prediction per GL 95-05 is expected to be significantly less than the permissible level of 8.4 gpm in the faulted loop.

The inclusion of all intersections in the leakage model, along with application of a probability of detection of 0.6, will result in extremely conservative leakage estimations. Close examination of the available data shows that indications of less than 2.8 volts will not be expected to leak during SLB conditions.

The proposed amendment does not result in any increase in the probability or consequences of an accident previously evaluated within the cook Nuclear Plant Unit 1 Final Safety Analysis Report (FSAR).

2) The proposed license amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Implementation of the proposed SG tube plugging criteria does not introduce any significant changes to the plant design basis. Use of the criteria does not provide a mechanism which could result in an accident outside of the region of the TSP elevations. Neither a single nor a multiple tube rupture event would, under any plant conditions, be expected in a SG in which the plugging criteria has been applied. Specifically, we will continue to implement a maximum leakage rate limit of 150 gpd (0.1 gpm) per SG to help preclude the potential for excessive leakage during all plant conditions. The T/S limits imposed on primary-to-secondary leakage at operating conditions are a maximum of 0.4 gpm (600 gpd) for all SGs with a maximum of 150 gpd allowed for any one SG.

The RG 1.121 criteria for establishing operational leakage rate limits that require

plant shutdown are based upon leak-before-break (LBB) considerations to detect a free span crack before potential tube rupture during faulted plant conditions. The 150 gpd limit should provide for leakage detection and plant shutdown in the event of the occurrence of an unexpected single crack resulting in leakage that is associated with the longest permissible crack length. Regulatory Guide 1.121 acceptance criteria for establishing operating leakage limits are based on LBB considerations such that plant shutdown is initiated if the leakage associated with the longest permissible crack is exceeded. The longest permissible crack is the length that provides a factor of safety of 1.43 against bursting at faulted conditions maximum pressure differential. A voltage amplitude of 8.8 volts for typical ODSCC corresponds to meeting this tube burst requirement at a lower 95% prediction limit on the burst correlation coupled with 95/95 lower tolerance limit material properties. Alternate crack morphologies can correspond to 8.8 volts so that a unique crack length is not defined by the burst pressure versus voltage correlation. Consequently, typical burst pressure versus through-wall crack length correlations were used to define the ''longest permissible crack'' for evaluating operating leakage limits. Consistent with the cycle 13, 14 and 15 license amendment requests for plugging criteria, and Section 5 of Enclosure 1 of the GL, operational leakage limits will remain at 150 gpd per SG. Axial cracks leaking at this level are expected to provide LBB protection at both the SLB pressure differential of 2560 psi and, while not part of any established LBB methodology, LBB protection will also be provided at a value of 1.43 times the SLB pressure differential. Thus, the 150 gpd limit provides for plant shutdown prior to reaching critical crack lengths for SLB conditions. Additionally, this LBB evaluation assumes that the entire crevice area is uncovered during blowdown. Partial uncovery will provide benefit to the burst capacity of the intersection.

3) The proposed license amendment does not involve a significant reduction in margin of safety.

The use of the voltage-based bobbin probe interim TSP elevation plugging criteria at Cook Nuclear Plant Unit 1 is demonstrated to maintain SG tube integrity commensurate with the criteria of RG 1.121. Regulatory Guide 1.121 describes a method acceptable to the NRC staff for meeting GDC [General Design Criteria] 14, 15, 31, and 32 by reducing the probability or the consequences of SG tube rupture. This is accomplished by determining the limiting conditions of degradation of SG tubing, as established by in-service inspection, for which tubes with unacceptable cracking should be removed from service. Upon implementation of the criteria, even under the worst case conditions, the occurrence of ODSCC at the TSP elevations is not expected to lead to a SG tube rupture event during normal or faulted plant conditions. It will be confirmed by analysis and calculation that EOC distribution of crack indications at the TSP elevations will result in acceptable primary-to-secondary leakage during all plant conditions and that radiological consequences are not adversely impacted.

In addressing the combined effects of a LOCA [loss-of-coolant accident] and SSE [safe-shutdown earthquake] on the SG component (as required by GDC 2), it has been determined that tube collapse may occur in the SGs at some plants. The postulated tube collapse results from a deformation of TSPs as a result of lateral loads at the wedge supports at the periphery of the plate. The lateral loads result from the combined effects of the LOCA rarefaction wave and SSE loadings. The resulting pressure differential on the deformed tubes may then cause some of the tubes to collapse.

There are two issues associated with a postulated SG tube collapse. First, the collapse of SG tubing reduces the RCS [reactor coolant system] flow area through the tubes. The reduction in flow area increases the resistance to flow of steam from the core during a LOCA which, in turn, may potentially increase peak clad temperature. Second, there is a potential that partial through-wall cracks in tubes could progress to through-wall cracks during tube deformation or collapse.

Consequently, since the LBB methodology is applicable to the Cook Nuclear Plant Unit 1 reactor coolant loop piping, the probability of breaks in the primary loop piping is sufficiently low that they need not be considered in the structural design of the plant. The limiting LOCA event becomes either the accumulator line break or the pressurizer surge line break. Loss of coolant accident loads for the primary pipe breaks were used to bound the Cook Nuclear Plant Unit 1 smaller breaks. The results of the analysis using the larger break inputs show that the LOCA loads were found to be of insufficient magnitude to result in SG tube collapse or significant deformation.

Addressing RG 1.83 [In-Service Inspection of PWR Steam Generator Tubes] considerations, implementation of the bobbin coil probe, voltage-based interim tube plugging criteria of 2 volts is supplemented by enhanced eddy current inspection guidelines to provide consistency in voltage normalization, a 100% eddy current inspection sample size at the TSP elevation per T/S, and MRPC [motorized RPC] inspection requirements for the larger indications left in-service to characterize the principal degradation as ODSCC.

As noted previously, implementation of the TSP elevation plugging criteria will decrease the number of tubes which must be repaired. The installation of SG tube plugs reduces the RCS flow margin. Thus, implementation of the plugging criteria will maintain the margin of flow that would otherwise be reduced in the event of increased tube plugging.

Based on the above, it is concluded that the proposed license amendment request does not result in a significant reduction in margin with respect to plant safety as defined in the FSAR or any Bases of the plant T/Ss.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Maud Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW, Washington, DC 20037

NRC Project Director: Mark Reinhart, Acting

Northern States Power Company, Docket No. 50-282, Prairie Island Nuclear Generating Plant, Unit No. 1, Goodhue County, Minnesota

Date of amendment request: July 15, 1996

Description of amendment request: The proposed amendment would allow the use of the moveable incore detector system for measurement of the core peaking factors with less than 75% and greater than or equal to 50% of the detector thimbles available. The amendment request is a one-time only change for Prairie Island, Unit 1, Operating Cycle 18. It is being submitted to allow for continued operation if the number of detector thimbles drops below 75%.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes do not involve an increase in the probability of an accident previously evaluated. The moveable incore detector system is used only to provide confirmatory information on the neutron flux distribution and is not required for the daily safe operation of the core. The system is not a process variable that is an initial condition in the accident analyses. The only accident that the moveable incore detector system could be involved in is the breaching of the detector thimbles which would be enveloped by the small break loss of coolant accident (LOCA) analysis. As the proposed changes do not involve any changes to the system's equipment and no equipment is operated in a new or more harmful manner, there is no increase in the probability of such an accident.

The proposed amendments would not involve an increase in the consequences of an accident previously evaluated. The moveable incore detector system provides a monitoring function that is not used for accident mitigation (the system is not used in the primary success path for mitigation of a design basis accident). The ability of the reactor protection system or engineered

safety features system instrumentation to mitigate the consequences of an accident will not be impaired by the proposed changes. The small break LOCA analysis (and thus its consequences) continues to bound potential breaching of the system's detector thimbles.

With greater than or equal to 50% and less than 75% of the detector thimbles available, core peaking factor measurement uncertainties will be increased, which could impact the core peaking factors and as a result could affect the consequences of certain accidents. However, any changes in the core peaking factors resulting from increased measurement uncertainties will be compensated for by conservative measurement uncertainty adjustments in the Technical Specifications to ensure that pertinent core design parameters are maintained. Sufficient additional penalty is added to the power distribution measurements such that this change will not impact the consequences of any accident previously evaluated.

Therefore, based on the conclusions of the above analysis, the proposed changes will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously analyzed.

The proposed amendments would not create the possibility of a new or different kind of accident previously evaluated as they only affect the minimum complement of equipment necessary for operability of the moveable incore detector system. There is no change in plant configuration, equipment or equipment design. No equipment is operated in a new manner. Thus the changes will not create any new or different accident causal mechanisms. The accident analysis in the Updated Safety Analysis Report remains bounding.

Therefore, based on the conclusions of the above analysis, the proposed changes will not create the possibility of a new or different kind of accident.

3. The proposed amendment will not involve a significant reduction in the margin of safety.

The proposed changes will not involve a significant reduction in a margin of safety. The reduction in the minimum complement of equipment necessary for the operability of the moveable incore detector system could only impact the monitoring/calibration functions of the system. Reduction of the number of available moveable incore detector thimbles to the 50% level does not significantly degrade the ability of the system to measure core power distributions. With greater than or equal to 50% and less than 75% of the detector thimbles available, core peaking factor measurement uncertainties will be increased, but will be compensated for by conservative measurement uncertainty adjustments in the Technical Specifications to ensure that pertinent core design parameters are maintained. Sufficient additional penalty is added to the power distribution measurements such that this change does not impact the safety margins which currently exist. Also, the reduction of available detector thimbles has negligible impact on the quadrant power tilt and core average axial power shape measurements. Sufficient detector thimbles will be available to ensure that no quadrant will be unmonitored.

Based on these factors, the proposed changes in this license amendment will not result in a significant reduction in the plant's margin of safety, as the core will continue to be adequately monitored.

Based on the evaluation above, and pursuant to 10 CFR 50, Section 50.91, Northern States Power Company has determined that operation of the Prairie Island Nuclear Generating Plant in accordance with the proposed license amendment request does not involve any significant hazards considerations as defined by NRC regulations in 10 CFR 50, Section 50.92.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW, Washington, DC 20037

NRC Project Director: Mark Reinhart, Acting

Omaha Public Power District, Docket No. 50-285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: May 31, 1996

Description of amendment request: The proposed amendment would revise the Technical Specifications (TS) to add a Limiting Condition for Operation (LCO) for trisodium phosphate (TSP) and increase the minimum required amount of TSP contained in the containment sump mesh baskets.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Trisodium Phosphate Dodecahydrate (TSP) is stored in the containment sump to raise the pH of the sump and spray water following a loss of coolant accident (LOCA). As the pH of the water increases, more radioactive iodine is kept in solution and the possibility of airborne radioactivity leakage is decreased. An additional advantage of a higher pH is the beneficial reduction in chloride stress corrosion cracking (SCC) of austenitic stainless steel components in the containment following a LOCA.

This chemical is an accident mitigator, not an accident initiator in that it is not used until after an accident (i.e., a LOCA) has occurred. At the time it begins to go into solution, the accident has occurred, containment spray has been activated and water is collecting in the containment sump. Therefore, increasing the Technical Specification (TS) minimum amount of TSP verified to be in containment will not involve a significant increase of the probability of an accident previously evaluated.

The Updated Safety Analysis Report (USAR), Section 14.15, ''Loss of Coolant Accident,'' does not take credit for a post-LOCA minimum containment sump pH adjustment to 7.0 for the iodine removal and retention calculation until ten hours after initiation of the event. Increasing the amount of TSP (based on recent re-analysis) in the containment sump ensures that a pH greater than or equal to 7.0 is achieved and therefore does not increase the consequences of any accident previously evaluated.

The proposed change to TS 2.3(4) represents a new Limiting Condition for Operation (LCO) which is added to establish overall consistency with the CE STS [Combustion Engineering Standard Technical Specifications] for TSP requirements. The proposed change establishes a minimum TSP volume that must be maintained during operating Modes 1 and 2 to ensure that a pH greater than or equal to 7.0 is achieved within four hours following a LOCA; as well as, establishing times for accomplishing corrective actions should the LCO not be met. Therefore, this change does not significantly increase the probability or consequences of any accident previously evaluated.

The proposed change to TS 3.6(2)d(i) revises the required surveillance inventory of the TSP baskets consistent with the aforementioned calculation to ensure that a pH greater than or equal to 7.0 is achieved. Therefore, this change does not increase the consequences of any accident previously evaluated.

The proposed change to TS 3.6(2)d(ii) moves the surveillance test amounts of chemical and water used from the Specification to the Basis section. This relocation will not alter the test method or acceptance criteria.

In the Basis, the amount of TSP used in the test is changed to reflect the ratio of TSP to water that would be found in the containment sump following a LOCA. The specified concentration of boron in the test reflects the highest concentration that could be found in the containment sump following a LOCA. The test temperature is changed to 115 - 125°F, which is well below the temperature expected to be found in the containment sump following a LOCA. The decanting of the solution does not change the intent of the test method since the dissolving period will still be conducted without agitation. Therefore, these changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

TSP is currently present in the containment sump. The addition of TSP ensures that a pH greater than or equal to 7.0 is achieved following a LOCA. The increase in TSP inventory will be accomplished via a modification to be installed during the 1996 Refueling Outage.

The proposed change to TS 2.3(4) represents a new LCO which is added to establish overall consistency with the CE STS for TSP requirements. The proposed change establishes a minimum TSP volume that must be maintained during operating Modes 1 and 2 to ensure that a pH greater than or equal to 7.0 is achieved following a LOCA, as well as, establishing corrective action term limits should the LCO not be met. This proposed change does not create a possibility of a new or different kind of accident from any previously analyzed.

The proposed change to TS 3.6(2)d(ii) moves the surveillance test amounts of chemical and water used from the Specification to the Basis section to be consistent with the CE STS. This relocation will not alter the test method or acceptance criteria. In the Basis section, the amount of TSP used in the test is changed to reflect the ratio of TSP to water that would be found in the containment following a LOCA. The specified concentration of boron in the test reflects the highest concentration that could be found in the containment sump following a LOCA. The test temperature is changed to a range of 115 - 125°F which is well below the temperature expected to be found in the containment sump following a LOCA. The decanting of the solution does not change the intent of the test method since the dissolving period will still be conducted without agitation. Therefore, these changes will not create the possibility of a new or different type of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

TSP is stored in the containment lower level to raise the pH of the containment sump and recirculated spray water following a LOCA. As the pH of the water increases, more radioactive iodine is kept in solution and the possibility of airborne radioactivity leakage is decreased. Additionally, a higher pH has the beneficial effect of reducing the possibility of chloride stress corrosion cracking of austenitic stainless steel components in the containment.

The proposed change to TS 2.3(4) represents addition of a new LCO for TSP requirements during power operations and hot standby consistent with CE STS. This change does not involve a significant reduction in a margin of safety.

TS 3.6(2)d(i) requires verification that a minimum volume of TSP is contained in the storage baskets in containment. This change proposes to increase that volume consistent with the latest ABB/CE calculation. The increased volume will ensure that the containment sump, when filled with water from the Reactor Coolant System, Safety Injection Refueling Water Tank, Safety Injection Tanks and Boric Acid Storage Tanks, will have a pH greater than or equal to 7.0 within four hours following a LOCA. Therefore, this change does not involve a reduction in a margin of safety.

The proposed change to TS 3.6(2)d(ii) would move the surveillance test amounts of chemical and water used from the Specification to the Basis section. This relocation is consistent with the CE STS and will not alter the test method or acceptance criteria. In the Basis, the amount of TSP used in the test is changed to reflect the ratio of TSP to water that would be found in the containment following a LOCA. The specified concentration of boron in the test reflects the highest post-LOCA concentration that could be found in the containment. The test temperature is changed to a range of 115 - 125°F which is well below the temperature expected to be found in the containment sump following a LOCA. The decanting of the solution does not change the intent of the test method since the dissolving period will still be conducted without agitation. Therefore, these changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102

Attorney for licensee: Perry D. Robinson, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005-3502

NRC Project Director: William H. Bateman

Omaha Public Power District, Docket No. 50-285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: July 15, 1996

Description of amendment request: The proposed amendment would revise the Technical Specifications (TS) to allow the use of either zircaloy or ZIRLO cladding and add a reference to Westinghouse Topical Report, WCAP-12610, June 1990.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed revision to TS 4.3.2 is based on improved STS 4.2 of NUREG-1432. ZIRLO is similar in chemical composition, physical and mechanical properties to Zircaloy-4, but features improved corrosion performance and dimensional stability. These characteristics ensure that fuel rod cladding integrity and fuel assembly structural integrity are maintained. Fuel assemblies manufactured with ZIRLO clad fuel rods meet the same design bases requirements as fuel assemblies manufactured with Zircaloy-4 cladding and the regulatory requirements of 10 CFR 50.46 are applicable to either material.

No concerns have been identified pertaining to reactor operation with a core comprised of fuel assemblies manufactured with Zircaloy-4 clad rods and fuel assemblies manufactured with ZIRLO clad rods. ZIRLO clad fuel rods do not require a change to the FCS [Fort Calhoun Station] reload design and safety analysis limits. Radiological consequences of previously evaluated accidents are not increased because the safety analysis dose predictions are not sensitive to the type of cladding material used. The proposed limited substitution of zirconium alloy or stainless steel filler rods in accordance with NRC-approved fuel rod configurations will allow leaking fuel rods (or potential leakers) to be removed. Therefore, the radiological consequences of accidents previously evaluated in the FCS Updated Safety Analysis Report (USAR) are not increased by this change.

The revisions to TS 4.3.2 listed above will not result in a change to any of the process variables that might initiate an accident or affect the radiological release for an accident. The operating limits will not be changed and the analysis methods to demonstrate operation within the limits will remain in accordance with NRC-approved methodology. There are no physical changes to the plant associated with the change to TS 4.3.2 other than the changes to the fuel assemblies. Therefore, this revision does not involve a significant increase in the probability or consequences of an accident previously evaluated because the safety analysis to be performed for each cycle will continue to demonstrate compliance with all fuel safety design bases.

The proposed revision of TS 4.3.2 is supported by Westinghouse Topical Report, WCAP-12610, ''VANTAGE + Fuel Assembly Report,'' dated June 1990 (Westinghouse Proprietary). This topical report describes the fuel rod design bases, criteria and models, which are affected by the use of ZIRLO cladding. Consequently, WCAP-12610 is proposed for addition to the list of analytical methods located in TS 5.9.5b that are used to determine the core operating limits.

Based on the above discussion, these changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Fuel assemblies manufactured with ZIRLO clad fuel rods must meet original design criteria and thus they will not be an initiator for any new or different kind of accident. All design and performance criteria will continue to be met by fuel assemblies manufactured with ZIRLO clad fuel rods and

no new single failure mechanisms have been found.

The use of fuel assemblies manufactured with ZIRLO cladding does not involve any alterations to plant equipment or procedures that would introduce any new or unique operational modes or accident precursors. The substitution of zirconium alloy, stainless steel filler rods, or lead test assemblies for fuel rods will be limited to NRC-approved fuel rod configurations. Therefore, the possibility of a new or different kind of accident from any accident previously evaluated is not created by this change.

3. The proposed change does not involve a significant reduction in a margin of safety.

The use of fuel assemblies manufactured with ZIRLO clad rods does not change the proposed FCS reload design and safety analysis limits. The normal operating conditions allowed for in the Technical Specifications will be taken into consideration for the use of these fuel assemblies. For each cycle reload core, the fuel assemblies will be evaluated using NRC-approved reload design methods to include consideration of the core physics analysis peaking factors and core average linear heat rate effects.

NRC-approved methods will also be used to analyze each configuration of zirconium alloy or stainless steel filler rods in fuel assemblies to demonstrate continued safe operation within the limits that assure acceptable plant response to accidents and transients. Therefore, this change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102

Attorney for licensee: Perry D. Robinson, Winston & Strawn, 1400 L Street, N.W., Washington, DC 20005-3502

NRC Project Director: William H. Bateman

Power Authority of The State of New York, Docket No. 50-286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of amendment request: June 21, 1996

Description of amendment request: The proposed amendment would change the frequency of instrument channel calibrations in Table 4.1-1, ''Minimum Frequencies for Checks, Calibrations and Test of Instrument Channels'' to accommodate operation with a 24-month operating cycle.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does operation with the proposed license amendment involve a significant increase in the probability or consequences of any accident previously evaluated?

Response:

The proposed changes do not involve a significant increase in the probability or consequences of any accident previously evaluated. The proposed changes are being made to extend the calibration frequency to 24-months for the:

Pressurizer Pressure; Accumulator Level and Pressure; andVolume Control Tank Level.

These changes are being made, using the guidance of Generic Letter 91-04, to accommodate a 24-month operating cycle. The proposed changes in the calibration frequencies do not involve any plant hardware changes (other than alarm adjustments) or the way the systems function. The results of the instrumentation drift analysis, loop accuracy/set point calculations and the evaluation of channel uncertainties indicate the calibrations can be safely extended to accommodate the 24-month operating cycle.

The four pressurizer pressure channels are used for high and low pressure protection (i.e., reactor trip and safety injection) and for overpower-overtemperature protection. Three of the pressure channels are also used for pressure control and compensation signals for rod control. Pressurizer pressure indication is also provided in the control room for use during normal operation and while using the EOPs (emergency operating procedure). The loop accuracy/setpoint calculations confirm that sufficient margin exists between the pressurizer high and low pressure reactor trip, low pressurizer pressure SI [safety injection], and overtemperature delta-temperature analytical limits and the existing field trip settings based on an extended calibration interval. A small increase in pressurizer pressure normal indication uncertainty due to increased sensor drift is within the readability of the indicator and has been incorporated into the pressurizer pressure initial conditions used in the evaluation of channel uncertainties (Reference 15) [see application dated June 21, 1996]. The post-accident indication uncertainties remain bounded by the existing uncertainties used in the EOPs. Assurance that the RPS [reactor protection system] and ESF [engineered safety feature] instrumentation and protection logic relays will function as required is also provided by on-line surveillance (channel checks performed each shift and quarterly channel functional tests) that are designed to detect potential instrument failures and verify operability of pressurizer pressure channels.

Water level and pressure in each accumulator is monitored by two redundant channels designed to provide indication in the control room. High and low level alarm functions alert the operator to initiate operations to maintain the accumulator water volume or pressure within the Technical Specifications limits. The level and pressure instrumentation do not provide an active protective or control function and are not required to mitigate an accident condition. The level (or volume) and pressure limits are important since they are initial conditions assumed in the safety analysis. The loop accuracy/setpoint calculations for accumulator level and pressure were updated to include conservative values for 30-month calibration uncertainties using Westinghouse sensor drift values and extrapolated vendor specified uncertainties for rack and indicating components consistent with industry methods. The increased indicator uncertainty has been evaluated for both input parameters (accumulator level and pressure) assumed for the LOCA [loss-of-coolant accident] and Containment Integrity events (Reference 15) and a non significant increase in both the peak clad temperature and containment pressure was identified.

The volume control tank (VCT) level instrumentation is not required to mitigate the consequences of an accident. The instrumentation provides control room indication and initiates automatic actions of the chemical and volume control system (e.g., diverts letdown to the holdup tanks on high level, initiates makeup on low level, changes the charging pump suction on low low level). The loop accuracy/setpoint calculation for VCT level, updated based on the increased drift and uncertainty, determined that the existing setpoints remain valid to ensure the VCT instrumentation can perform the required design function.

2. Does operation with the proposed license amendment create the possibility of a new or different kind of accident from any previously evaluated?

Response:

The proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated. The proposed changes extend the calibration frequency to 24 months for the Pressurizer Pressure, Accumulator Pressure and Level, and Volume Control Tank Level instrumentation to accommodate a 24-month operating cycle. The proposed changes in calibration frequencies do not involve any plant hardware changes, nor do they change the way that the systems function.

The extension of the calibration and surveillance test intervals were evaluated and the results, documented in Reference 15, indicate that the calibrations can be safely extended to accommodate the 24-month operating cycle.

3. Does operation with the proposed license amendment involve a significant reduction in a margin of safety?

Response:

The proposed changes do not involve a significant reduction in a margin of safety. The proposed changes extend the calibration frequency to 24 months for the Pressurizer Pressure, Accumulator Pressure and Level, and Volume Control Tank Level instrumentation to accommodate a 24-month operating cycle.

The proposed changes result in an increased instrument channel uncertainty for the pressurizer pressure. An evaluation (Reference 15) has determined that: all

current cycle 9 safety analysis limits based on pressurizer pressure uncertainties remain bounding for extended surveillance intervals (high and low pressure trips); the safety analysis limits for K1 (a constant used in the overtemperature [DELTA] T trip setpoint) remain applicable; and, Engineered Safety Feature Actuation System trip settings based on pressurizer pressure uncertainty remain bounding (low pressure safety injection).

The proposed changes result in an increased instrument channel uncertainty for the accumulator level and pressure. An evaluation (Reference 15) has determined that increasing the uncertainty results in non-significant (defined by 10 CFR 50.46(a)(3)(i) as less than 50°F) increases in the total peak clad temperature (less than 35°F) for the large break and small break LOCA but the values remain well within regulatory acceptance criteria. The evaluation also determined that the peak calculated pressure in containment following a LOCA would increase due to the lower bound on pressure and the higher bound on volume in the accumulators. An assessment of the approximate effect on the peak containment pressure determined that the Technical Specification integrated leak rate testing value of 42.42 psig (the licensing basis peak pressure) remains bounding.

The proposed changes result in an increased instrument channel uncertainty for the VCT level but there are no changes to any margins of safety because this instrumentation supports a control function.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10601.

Attorney for licensee: Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019.

NRC Project Director: Jocelyn A. Mitchell, Acting Director

Southern California Edison Company, et al., Docket No. 50-206, San Onofre Nuclear Generating Station, Unit No. 1, San Diego County, California

Date of amendment request: December 22, 1995

Description of amendment request: The proposed change would revise the San Onofre Unit 1 License Condition to delete a reference to License Condition 2.C(4) from License Condition 2.D. This change is being requested to eliminate a reporting requirement for violations of the physical protection plans that is redundant to reporting requirements in 10 CFR 73.71 and 10 CFR 73 Appendix G.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will operation of the facility according to this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed change is considered an administrative change. It has no impact on the probability or consequences of any of the accidents previously evaluated. This change revises License Condition 2.D to remove the burden of duplicate reporting requirements. This change does not affect the physical protection program as previously approved by the Nuclear Regulatory Commission (NRC).

A reporting requirement in License Condition 2.D is being revised to remove the reference to License Condition 2.C(4) for the physical protection program. The reporting requirements for the physical protection program are located in the regulations, 10 CFR 73.71 and 10 CFR 73 Appendix G.

Therefore, the probability and consequences of an accidently previously evaluated are not affected by these proposed changes.

2. Will operation of the facility according to this proposed change create the possibility of a new or different kind of accident from any accident previously evaluated.

No. This proposed change is considered an administrative change. It has no impact on equipment, systems, or structures such that a new or different kind of accident is created. This change revises License Condition 2.D to remove duplicate and unnecessary reporting requirements for the physical protection program. There is no change associated with the implementation and maintenance of the physical protection program as previously approved by the NRC.

Therefore, the possibility of a new or different kind of accident from an accident previously evaluated is not created.

3. Will operation of the facility according to this proposed change involve a significant reduction in a margin of safety?

No. This proposed change is considered an administrative change only. It has no impact on the margin of safety associated with the physical protection program. This change revises License Condition 2.D to remove duplicative and unnecessary reporting requirements for the physical protection program. The maintenance and implementation of the physical protection program is not affected by this change.

Therefore, there will not be a significant reduction in a margin of safety.

The NRC staff has reviewed the analysis of the licensee and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Main Library, University of California, P.O. Box 19557, Irvine, California 92713

Attorney for licensee: James A. Beoletto, Esquire, Southern California Edison Company, P.O. Box 800, Rosemead, California 91770

NRC Project Director: Seymour H. Weiss

Southern California Edison Company, et al., Docket No. 50-206, San OnofreNuclear Generating Station, Unit No. 1, San Diego County, California

Date of amendment request: March 13, 1996

Description of amendment request: The proposed change would revise San Onofre Unit 1 License Condition 2.D in the Operating (Possession Only) License to remove a reporting requirement that is redundant to reporting requirements in 10 CFR 50.72 and 50.73. Additionally, the proposed change would make administrative and editorial changes in the Permanently Defueled Technical Specifications, which constitute Appendix A of the Operating (Possession Only) License.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will operation of the facility according to this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

No. San Onofre Nuclear Generating Station, Unit 1 (SONGS 1) has been permanently shut down with its reactor defueled and spent fuel from the reactor stored in the spent fuel pool. The proposed change will not modify any of the existing plant configurations, controls, procedures, or Permanently Defueled Technical Specifications (PDTS) requirements necessary to assure the integrity and safe operation of the spent fuel pool.

The requested change to License Condition 2.D will result in not requiring violations of the PDTS to be reported based on License Condition 2.D. The basis for this change is that all types of reportable events applicable to a defueled plant are covered by 10 CFR 50.72 and 50.73, which SONGS 1 is required to implement. Any other reporting requirements imposed through a license condition are redundant to reporting requirements contained in 10 CFR 50.72 and 50.73. Therefore, this change is administrative.

The requested changes to the PDTS are also administrative in nature. They consist of changes to reflect the current nuclear organization and responsibilities, modify administrative requirements relating to the Onsite Review Committee, modify a requirement relating to Final Safety Analysis Report documentation using NRC guidance, and make editorial corrections and improvements in the text. Since these changes are administrative, they have no effect on the accidents previously evaluated.

Therefore, operation of the facility in accordance with this proposed change will not involve a significant increase in the probability or consequences of an accidently previously evaluated.

2. Will operation of the facility according to this proposed change create the possibility of a new or different kind of accident from any accident previously evaluated.

No. The proposed changes do not alter the design, configuration, or method of operation of the plant. The changes to License Condition 2.D and the PDTS are administrative or editorial.

Therefore, operation of the facility in accordance with this proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Will operation of the facility according to this proposed change involve a significant reduction in a margin of safety?

No. The proposed changes do not alter the design, configuration, or method of operation of the plant. Since the proposed changes are administrative or editorial, the existing plant safety margins are not reduced.

Therefore, operation of the facility in accordance with this proposed change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the analysis of the licensee and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Main Library, University of California, P.O. Box 19557, Irvine, California 92713

Attorney for licensee: James A. Beoletto, Esquire, Southern California Edison Company, P.O. Box 800, Rosemead, California 91770

NRC Project Director: Seymour H. Weiss

Southern California Edison Company, et al., Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Unit Nos. 2 and 3, San Diego County, California

Date of amendment requests: May 29, 1996

Description of amendment requests: The licensee proposes to revise improved Technical Specification (TS) 3.5.1, ''Safety Injection Tanks (SITs),'' to increase the minimum boron concentration in the safety injection tanks from 1850 parts per million (ppm) to 2200 ppm. This TS change is being requested to support the planned increase in the operating cycle length.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Southern California Edison (Edison) is increasing the minimum boron concentration to maintain the ability of the Safety Injection Tanks (SITs) to perform their intended safety function consistent with the increase in fuel enrichment up to 4.8 weight percent (w/o) Uranium-235 and changing the burnable poison from B_4C to Erbia (Erbium-Oxide Er_2O_3 and fuel mixture) to increase the length of the operating cycle. Increasing the minimum boron concentration in the SITs will maintain the ability of the Emergency Core Cooling System (ECCS) to control core reactivity during and following an accident.

No change is being made to the design of the safety injection system. Consequently, there will be no impact on the probability of initiating an accident which has been previously evaluated.

Increasing the boron concentration in the SITs will ensure the ability of this system to mitigate the accidents for which it is required. No other accident conditions, design conditions, Technical Specifications, or Technical Specification Bases are affected by this proposed change in boron concentration.

Therefore, the operation of the facility in accordance with this proposed change does not involve an increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

There is no change in plant design or operational methodology imposed by the increase in SIT boron concentration. This increase in boron concentration is required because Edison is increasing the fuel enrichment up to 4.8 w/o Uranium-235 and changing the burnable poison from B_4C to Erbia to achieve a longer cycle length. Therefore, additional negative reactivity is required at the beginning of the fuel cycle for these alternate coolant sources.

Edison believes this change in the SIT minimum boron concentration limit is, in essence, an administrative change. The SITs are filled from the refueling water storage tank (RWST), which has a technical specification minimum boron concentration requirement of 2350 ppm. Edison maintains the RWST boron concentration higher than the minimum limit. As a result, for the past several years the SIT boron concentration has been approximately 2500 ppm, even though the technical specification lower limit is 1850 ppm. The maximum boron concentration limit is not being changed. Increasing the SIT minimum boron concentration limit of the technical specification narrows the existing operating band, and maintaining the boron concentration between 2200 ppm and 2800 ppm will keep the boron concentration between the current band of 1850 ppm to 2800 ppm. Therefore, changing the SIT minimum boron concentration from 1850 ppm to 2200 ppm does not involve a physical change to the plant.

Therefore, the operation of the facility in accordance with this proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

With the increase in fuel enrichment up to 4.8 w/o Uranium-235 and changing the burnable poison from B_4C to Erbia to increase the length of the operating cycle, increasing the minimum boron concentration in the SITs is required to maintain the current margins of safety.

The calculations were performed to ensure the core remains subcritical (i.e., conservatively 1% shutdown) with the proposed boron concentration. In addition to the conservative assumptions used in the calculation, 50 ppm was added to the results.

Therefore, the operation of the facility in accordance with this proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: Main Library, University of California, P. O. Box 19557, Irvine, California 92713

Attorney for licensee: T. E. Oubre, Esquire, Southern California Edison Company, P. O. Box 800, Rosemead, California 91770

NRC Project Director: William H. Bateman

Southern Nuclear Operating Company, Inc., Docket Nos. 50-348 and 50-364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama

Date of amendments request: June 12, 1996

Description of amendments request: The proposed amendments would revise the reactor core safety limits, Overtemperature delta T (OTDT) and Overpressure delta T (OPDT) reactor trip setpoints and allowable values, and the power distribution limits associated with implementation of Relaxed Axial Offset Control (RAOC) and F_Q surveillance. The proposed amendments also include changes to the Bases associated with these specifications and surveillances.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed safety limits, reactor trip setpoints, HNF [high neutron flux] setpoints for MSSVs [main steamline safety valves] out of service, F[delta]H for LOPAR [low parasitic], and RAOC strategy changes do not increase the probability or consequences of an accident previously evaluated in the FSAR [Final Safety Analysis Report]. The core safety limits and trip setpoints were determined using the NRC reviewed and approved DNB [departure from nucleate boiling] methodologies, namely RTDP, and approved DNB correlations. No new performance requirements are being imposed on any system or component in order to support the revised core limits. Overall plant integrity is not reduced. The DNB sensitive transients that are protected by [OPDT] and [OTDT] were reanalyzed or evaluated. The DNB design criterion continues to be met. None of these changes directly initiate an accident; therefore, the probability of an accident has not increased. No new performance requirements are imposed on any safety-related equipment. The acceptance criteria for the reanalyses continue to be met; therefore, the consequences of accidents previously evaluated in the FSAR are not significantly changed. All dose consequences have been evaluated for these changes and all acceptance limits continue to be met. All safety analyses that use the revised [OTDT] and [OPDT] setpoints continue to meet all acceptance criteria. [Loss-of-coolant accident] LOCA analyses are not affected by any of these proposed changes.

2. The proposed Technical Specifications changes do not create the possibility of a new or different kind of accident than any accident already evaluated in the FSAR. No new accident scenarios, failure mechanisms or limiting single failures are introduced as a result of the proposed changes. The proposed Technical Specifications changes have no adverse effects on any safety-related system and do not challenge the performance or integrity of any safety-related system. The DNB design criterion continues to be met. The use of the revised core limits, reactor trip setpoints and RAOC have been shown to allow FNP [Farley Nuclear Plant] to operate in a safe configuration. Therefore, the possibility of a new or different kind of accident is not created.

3. The proposed Technical Specifications changes do not involve a significant reduction in a margin of safety. All accident analysis acceptance criteria continue to be met. The DNB design criterion remains unchanged. The DNBR [departure from nucleate boiling ratio] design limit values have not changed. Therefore, the DNB design limit values associated with the DNB methodology and correlations, upon which the Technical Specifications changes are based, do not result in a significant reduction in the margin of safety because the DNB design criterion continues to be met. The proposed revisions to the Technical Specifications result in an operating configuration consistent with the analytic assumptions (including LOCA analyses) used to form the bases of the Technical Specifications.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Houston-Love Memorial Library, 212 W. Burdeshaw Street, Post Office Box 1369, Dothan, Alabama 36302

Attorney for licensee: M. Stanford Blanton, Esq., Balch and Bingham, Post Office Box 306, 1710 Sixth Avenue North, Birmingham, Alabama 35201

NRC Project Director: Herbert N. Berkow

Southern Nuclear Operating Company, Inc., Docket Nos. 50-348 and 50-364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama

Date of amendments request: June 20, 1996

Description of amendments request: The proposed amendments would revise the Technical Specifications (TS) to incorporate the requirements of 10 CFR Part 50, Appendix J, Option B. The Administrative Controls portion would be revised to establish and reference a ''Containment Leakage Rate Testing Program'' in accordance with the NRC's Regulatory Guide 1.163 dated September 1995.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability of consequences of an accident previously evaluated. The proposed changes provide a mechanism within the TS for implementing a performance-based leakage rate test program which was promulgated by the revision to 10 CFR [Part] 50 to incorporate Option B to Appendix J. The proposed changes do not involve any physical or operational changes to structures, systems or components. The proposed TS Limiting Conditions for Operation (LCO) are consistent with 10 CFR [Part] 50, Appendix J requirements and are equivalent to the current LCO requirements. The current safety analyses and safety design basis for the accident mitigation functions of the containment, the airlocks, and the containment isolation valves are maintained. Since the allowable containment leakage is still maintained within the analyzed limit assumed in the accident analyses, there is no adverse effect on either onsite or offsite dose consequences. Furthermore, containment leakage is not an accident initiator. Therefore, these changes will not increase the probability or consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously analyzed. The proposed changes do not involve any physical or operational changes to structures, systems or components. No new failure mechanisms beyond those already considered in the current plant safety analyses are introduced. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously analyzed.

3. The proposed changes do not involve a significant reduction in the margin of safety. Extending Type A, B, and C test intervals from those currently provided in the TS to those provided for in 10 CFR [Part] 50 Appendix J, Option B slightly increases risk due to an increased likelihood of containment leakage corresponding to the increased testing intervals. However, this is somewhat compensated by the corresponding risk reduction benefits received from the reduction in component cycling, stress, and wear associated with the increased intervals. When considering the total integrated risk, which includes all analyzed accident sequences, the additional risk associated with increasing test intervals is negligible.

The NRC letter to NEI [Nuclear Energy Institute] dated November 2, 1995, recognizes that changes similar to the proposed changes at FNP [Farley Nuclear Plant] are required to implement Option B of 10 CFR [Part] 50, Appendix J. In NUREG-1493, ''Performance-Based Containment Leak-Test Program,'' dated September 1995, which forms the basis for the Appendix J revision, the NRC concludes that adoption of performance-based test intervals for Appendix J testing will not significantly reduce the margin of safety. The containment leak rate data and component performance history at FNP are consistent with the conclusions reached in NUREG-1493 and NEI 94-01. Thus, the proposed license amendments do not involve a significant reduction in a margin of safety and will continue to support the regulatory goal of ensuring an essentially leak-tight containment boundary.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Houston-Love Memorial Library, 212 W. Burdeshaw Street, Post Office Box 1369, Dothan, Alabama 36302

Attorney for licensee: M. Stanford Blanton, Esq., Balch and Bingham, Post Office Box 306, 1710 Sixth Avenue North, Birmingham, Alabama 35201

NRC Project Director: Herbert N. Berkow

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of amendment request: May 28, 1996

Description of amendment request: The proposed amendment would increase the test interval for Technical Specification (TS) 3/4.3.1.1, Reactor Protection System Instrumentation from monthly on a staggered test basis to semiannually on a staggered test basis for the control rod drive trip breakers and the reactor trip module logic. Additionally, the proposed amendment would increase the test interval from monthly to semiannually for the output logic of the anticipatory reactor trip system (ARTS) instrumentation as specified in TS 3/4.3.2.3.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below: (1)

Operation of the DBNPS in accordance with the proposed license amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Increasing the surveillance interval will not affect the probability or consequences of an accident previously evaluated since performance of the surveillance test only ensures operability of the particular trip function at the time of the test. The licensee evaluated the maintenance history and surveillance test results of the control rod drive trip breakers, reactor trip module logic, and ARTS output logic to show these components have consistently met their design and operational requirements over the past 8 years.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not modify or affect system design, function, operation, or manner of testing.

(3) Involve a significant reduction in a margin of safety.

The licensee has performed a reliability evaluation that indicates insignificant change in reactor trip system unavailability and a reduction in the potential for spurious trips resulting from testing which support the conclusion that a significant reduction in a margin of safety will not occur.

Based on the NRC staff review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Toledo, William Carlson Library, Government Documents Collection, 2801 West Bancroft Avenue, Toledo, Ohio 43606

Attorney for licensee: Jay E. Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: Gail H. Marcus

Vermont Yankee Nuclear Power Corporation, Docket No. 50-271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of amendment request: June 28, 1996

Description of amendment request: The proposed amendment would revise the Technical Specifications for shutdown margin to allow calculational determination of the highest worth control rod. Editorial changes are also included.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) During refueling, maintenance may be performed on either the control rods or the control rod drive mechanisms. Controls, such as refueling interlocks, are provided to assure inadvertent criticality does not occur during this maintenance. There are no proposed revisions to these controls except to lower the threshold for applicability, which constitutes a more restrictive change.

These controls also continue to assure that the new, higher minimum shutdown margin is maintained to ensure the reactor can be returned to a subcritical condition should an inadvertent criticality occur. The proposed alternate calculational method for highest worth control rod has additional conservatism to account for any uncertainties in the calculation and provides equivalent margin. Therefore, this change will not significantly increase the probability or consequences of any previously analyzed accident.

(2) The proposed change does not necessitate a physical alteration of the plant in that no new or different type of equipment will be installed. The proposed change does propose a higher minimum shutdown margin and a lower threshold of applicability for CRD [control rod drive] maintenance, both of which are more restrictive. The proposed change will provide effective methods to preserve the safety functions associated with the prevention or automatic mitigation of design basis accidents. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) The proposed changes to the controls provided to allow control rod withdrawal for the purposes of maintenance are more restrictive and thus preserve the safety functions associated with the prevention or automatic mitigation of design basis accidents. The addition of a higher minimum shutdown margin requirement and the proposed calculational alternative for highest worth rod, does not decrease any of the safety controls or functions to prevent inadvertent criticalities and provides equivalent or higher margins. Therefore, this change will not significantly reduce a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Brooks Memorial Library, 224 Main Street, Brattleboro, VT 05301

Attorney for licensee: R. K. Gad, III, Ropes and Gray, One International Place, Boston, MA 02110-2624

NRC Project Director: Jocelyn A. Mitchell, Acting Directorboro, VT 05301

Wisconsin Public Service Corporation, Docket No. 50-305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of amendment request: July 3, 1996

Description of amendment request: The proposed amendment would modify Kewaunee Nuclear Power Plant (KNPP) Technical Specification (TS) Section 4.2.b, ''Steam Generator Tubes,'' to: revise the plugging criteria for tubes in the tubesheet crevice region; add new inspection criteria for tubes evaluated using the new plugging criteria; add definitions of terms used in the new plugging criteria; and add reporting requirements.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below:

1. Operation of the KNPP in accordance with the proposed license amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The revised plugging criteria ensure that tubes in the tubesheet with indication(s) are sufficiently inspected and evaluated and, if necessary, rolled to meet the proposed

acceptance criteria based on the new definitions of acceptable distance between the indication and the rolled area. With sufficient distance between the indication(s) and the hard rolled region of the tube in the tubesheet, tube rupture probability and the consequences of tube rupture are the same as previously analyzed. Additionally, the potential for leakage is within previously analyzed limits.

2. The proposed license amendment request does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Implementation of the proposed tube plugging criteria and proposed inspection acceptance criteria based on the proposed definitions does not introduce any significant changes to the plant design basis. Use of these criteria will not introduce a mechanism that will result in an accident initiated outside of the tubesheet crevice region. Any hypothetical accident as a result of tube indications in the tubesheet crevice region of the tube will be bounded by the existing tube rupture analysis. Therefore, application of the revised acceptance criteria for indication(s) within the tubesheet crevice region will not create the possibility of a new or different kind of accident.

3. The proposed license amendment does not involve a significant reduction in the margin of safety.

The use of the proposed inspection criteria and tube plugging acceptance criteria will maintain the integrity of the tube bundle commensurate with the requirements of Regulatory Guide 1.121 under normal and postulated accident conditions. The safety factors used in verification of the strength of tube(s) evaluated under the new plugging criteria are consistent with the safety factors in the ASME Boiler and Pressure Vessel Code used for steam generator design. The leak testing acceptance criteria are based on the primary-to-secondary leakage limits in the TSs and the Updated Safety Analysis Report accident analyses will be maintained. Therefore, the proposed TS change will not result in a significant reduction in the margin of safety.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Wisconsin, Cofrin Library, 2420 Nicolet Drive, Green Bay, Wisconsin 54311-7001

Attorney for licensee: Bradley D. Jackson, Esq., Foley and Lardner, P. O. Box 1497, Madison, Wisconsin 53701-1497

NRC Project Director: Gail H. Marcus

Previously Published Notices Of Consideration Of Issuance Of Amendments To Facility Operating Licenses, Proposed NoSignificant Hazards Consideration Determination,And Opportunity For A Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the Federal Register on the day and page cited. This notice does not extend the notice period of the original notice.

Northeast Utilities Service Company, Docket No. 50-336, Millstone Nuclear Power Station, Unit No. 2, New London, Connecticut

Date of amendment request: July 3, 1996Brief

Description of amendment request: The proposed amendments would provide a one-time change to Technical Specification 3.9.1, ''Refueling Operations, Boron Concentration.'' The proposed change would remove the requirement that the boron concentration in all filled portions of the Reactor Coolant System be ''uniform.''

Date of publication of individual notice in Federal Register: July 11, 1996 (61 FR 36583)

Expiration date of individual notice: August 12, 1996

Location Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut and the Wateford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut

Southern California Edison Company, et al., Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Unit Nos. 2 and 3, San Diego County, California

Date of application for amendment: June 3, 1996, as superseded by application dated June 25, 1996

Brief description of amendment request: The proposed amendment would revise Technical Specifications 3.3.11, ''Post Accident Monitoring Instrumentation,'' and 5.5.2.13, ''Diesel Fuel Oil Testing Program.'' The amendment would reinstate provisions of the current San Onofre Nuclear Generating Station, Unit Nos. 2 and 3 technical specifications that were revised as part of Amendment Nos. 127 and 116. These amendments adopted the recommendations of NUREG-1432, ''Standard Technical Specifications Combustion Engineering Plants.''

Date of individual notice in Federal Register: July 2, 1996 (61 FR 34452)

Expiration date of individual notice: August 1, 1996

Local Public Document Room location: Main Library, University of California, P.O. Box 19557, Irvine, California 92713

Washington Public Power Supply System, Docket No. 50-397, Nuclear Project No. 2, Benton County, Washington

Date of application for amendment: April 25, 1995

Brief description of amendment request: The proposed amendment would add a reactor water cleanup system high blowdown containment isolation trip function and associated limiting condition for operation and surveillance requirements.

Date of individual notice in Federal Register: June 28, 1996 (61 FR 33777)

Expiration date of individual notice: July 29, 1996

Local Public Document Room location: Richland Public Library, 955 Northgate Street, Richland, Washington 99352

Washington Public Power Supply System, Docket No. 50-397, Nuclear Project No. 2, Benton County, Washington

Date of application for amendment: June 6, 1995, as supplemented by letter dated April 22, 1996.

Brief description of amendment request: The proposed amendment would make administrative and editorial changes to Section 6.0 of the technical specifications for WNP-2.Date of individual notice in Federal Register: June 28, 1996 (61 FR 33779)

Expiration date of individual notice: July 29, 1996

Local Public Document Room location: Richland Public Library, 955 Northgate Street, Richland, Washington 99352

Notice Of Issuance Of Amendments To Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application

complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the Federal Register as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved.

Carolina Power & Light Company, Docket No. 50-261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of application for amendment: March 29, 1996.

Brief description of amendment: The amendment revises the technical specifications (TS) to add an allowance to complete a TS-required surveillance within 24 hours of discovery of a missed surveillance in accordance with the guidance of Generic Letter (GL) 87-09, ''Sections 3.0 and 4.0 of the Standard Technical Specifications (STS) on the Applicability of Limiting Conditions for Operation and Surveillance Requirements.''

Date of issuance: July 8, 1996

Effective date: July 8, 1996

Amendment No. 170

Facility Operating License No. DPR-23. Amendment revises the Technical Specifications.

Date of initial notice in Federal Register: May 22, 1996 (61 FR 25669) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 8, 1996.No significant hazards consideration comments received: No

Local Public Document Room location: Hartsville Memorial Library, 147 West College Avenue, Hartsville, South Carolina 29550

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: November 2, 1994

Brief description of amendments: The amendments delete the content of Appendix B, ''Environmental Protection Plan (EPP) (Nonradiological),'' and modify License Condition 2.C.(2) to delete that portion which refers to the EPP.

Date of issuance: July 8, 1996

Effective date: As of the date of issuance to be implemented within 30 days

Amendment Nos.: 149 and 143

Facility Operating License Nos. NPF-35 and NPF-52: Amendments revised the Environmental Protection Plan and License Conditions.

Date of initial notice in Federal Register: May 22, 1996 (61 FR 25702) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 8, 1996. No significant hazards consideration comments received: No

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Mississippi Power & Light Company, Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of application for amendment: April 18, 1996

Brief description of amendment: The amendment deleted a restriction on the 24-hour emergency diesel generator operation test in Surveillance Requirement 3.8.1.14 of the Technical Specifications for the Grand Gulf Nuclear Station, Unit 1. The deletion allows the test to also be conducted during power operation (i.e., during Modes 1 and 2), instead of the current requirement to only conduct the test when the plant is shut down.

Date of issuance: July 15, 1996

Effective date: July 15, 1996

Amendment No: 124

Facility Operating License No. NPF-29: Amendment revises the Technical Specifications.

Date of initial notice in Federal Register: May 8, 1996 (61 FR 20847) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 15, 1996. No significant hazards consideration comments received: No

Local Public Document Room location: Judge George W. Armstrong Library, 220 S. Commerce Street, Natchez, MS 39120.

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Entergy Mississippi, Inc., Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of application for amendment: May 6, 1996

Brief description of amendment: The amendment reflects that the name of Mississippi Power & Light Company (MP&L) has been changed to Entergy Mississippi, Inc. The amendment revises Operating License No. NPF-29 and the Antitrust Conditions for the Grand Gulf Nuclear Station, Unit 1 (GGNS) to (1) add the phrase ''(now renamed Entergy Mississippi, Inc.)'', (2) replace the name of Mississippi Power & Light Company (MP&L) by the name Entergy Mississippi, Inc., and (3) replace a footnote by the statement: ''Amendment 125 resulted in a name change for Mississippi Power & Light Company (MP&L) to Entergy Mississippi, Inc.''.

Date of issuance: July 16, 1996

Effective date: July 16, 1996

Amendment No: 125

Facility Operating License No. NPF-29. Amendment revises the operating license.

Date of initial notice in Federal Register: June 5, 1996 (61 FR 28613) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 16, 1996.No significant hazards consideration comments received: No

Local Public Document Room location: Judge George W. Armstrong Library, 220 S. Commerce Street, Natchez, MS 39120.

Florida Power and Light Company, et al., Docket No. 50-335 St. Lucie Plant, Unit No. 1, St. Lucie County, Florida

Date of application for amendments: June 1, 1996

Brief description of amendments: Revise Technical Specifications to reflect reduced reactor coolant system

flows resulting from increased percentage of plugged steam generator tubes.

Date of Issuance: July 9, 1996

Effective Date: July 9, 1996

Amendment Nos.: 145

Facility Operating License Nos. DPR-67 and NPF-16: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: June 7, 1996 (61FR29140). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 9, 1996.No significant hazards consideration comments received: No.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34954-9003

Florida Power and Light Company, Docket Nos. 50-250 and 50-251, Turkey Point Plant Units 3 and 4, Dade County, Florida

Date of application for amendments: July 26, 1995

Brief description of amendments: The amendments modify the Technical Specifications to allow operation with up to plus or minus 18 steps of rod misalignment at or below 90 percent power.

Date of issuance: July 12, 1996

Effective date: July 12, 1996

Amendment Nos. 186 and 180Facility Operating Licenses Nos. DPR-31 and DPR-41: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: September 13, 1995 (60FR47616) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 12, 1996.No significant hazards consideration comments received: No

Local Public Document Room location: Florida International University, University Park, Miami, Florida 33199.

GPU Nuclear Corporation, et al., Docket No. 50-219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of application for amendment: May 7, 1996 (TSCR 247)

Brief description of amendment: The amendment adopts the provisions of the Standard Technical Specifications, NUREG-1433, Rev. 1 which clarify surveillance requirement applicability and allow a maximum period of 24 hours to complete a surveillance requirement upon discovery that the surveillance has been missed.

Date of Issuance: July 15, 1996

Effective date: July 15, 1996

Amendment No.: 185

Facility Operating License No. DPR-16. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: June 5, 1996 (61 FR 28615). The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated July 15, 1996. No significant hazards consideration comments received: No.

Local Public Document Room location: Ocean County Library, Reference Department, 101 Washington Street, Toms River, NJ 08753

PECO Energy Company, Public Service Electric and Gas Company Delmarva Power and Light Company, and Atlantic City Electric Company, Docket Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Unit Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: December 21, 1995

Brief description of amendments: The amendments modify the Peach Bottom Atomic Power Station Units 2 and 3 Facility Operating Licenses to provide for elimination of outdated or superseded material regarding, among other things, environmental monitoring and modifications to the low pressure coolant injection system, and for making the FOLs for both units consistent.

Date of issuance: July 15, 1996

Effective date: Units 2 and 3, as of the date of issuance, to be implemented within 30 days.

Amendments Nos.: 215 and 220

Facility Operating License Nos. DPR-44 and DPR-56: The amendments revised the Facility Operating Licenses.

Date of initial notice in Federal Register: March 13, 1996 (61 FR 10396) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 15, 1996.No significant hazards consideration comments received: No

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Public Service Electric & Gas Company, Docket No. 50-311, Salem Nuclear Generating Station, Unit No. 2, Salem County, New Jersey

Date of application for amendment: May 7, 1996, as supplemented June 14, 1996

Brief description of amendment: The amendment made a one-time change to Technical Specification 3/4.7.6, ''Control Room Emergency Air Conditioning System,'' which permits refueling of Unit 2 with the Control Room Emergency Air Conditioning System (CREACS) inoperable in Modes 5 and 6. This change will expire after the completion of the Control Room and CREACS upgrade, currently in progress, and the restart and entry into Mode 4 of Unit 2 from the current outage.

Date of issuance: July 10, 1996

Effective date: As of date of issuance, to be implemented within 30 days.

Amendment No. 165

Facility Operating License No. DPR-75: This amendment revised the Technical Specifications.

Date of initial notice in Federal Register: May 22, 1996 (61 FR 25710) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 10, 1996.No significant hazards consideration comments received: No

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of application for amendments: April 22, 1996, as supplemented June 12, 1996

Brief description of amendments: The amendments change the Technical Specifications to implement 10 CFR Part 50, Appendix J, Option B, for the Type A test by referring to Regulatory Guide 1.163, ''Performance Based Containment Leakage-Test Program.''

Date of issuance: July 11, 1996

Effective date: Both units, As of date of issuance, to be implemented within 30 days.

Amendment Nos. 184 and 166

Facility Operating License Nos. DPR-70 and DPR-75. The amendments revised the Technical Specifications.

Date of initial notice in Federal Register: May 8, 1996 (61 FR 20856) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 11, 1996.No significant hazards consideration comments received: No

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079

Southern Nuclear Operating Company, Inc., Alabama Power Company, Docket Nos. 50-348 and 50-364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama

Date of application for amendments: June 24, 1996

Brief description of amendments: The amendments approve a unit cycle

specific (Unit 1, Cycle 14 and Unit 2, Cycle 11) Technical Specification change to Note 4 of Table 4.3-1 that permits continued operation of both Farley units without performing the required surveillance of the manual safety injection input to the reactor trip circuitry for the current operating cycle until the next unit shutdown, following which, this testing has to be performed prior to entering Mode 2.

Date of issuance: July 19, 1996

Effective date: July 19, 1996

Amendment Nos.: 120 and 112

Facility Operating License Nos. NPF-2 and NPF-8: The amendments revised the Technical Specifications.Public comments requested as to proposed no significant hazards consideration: Yes. (61 FR 34880 dated July 3, 1996). The notice provided an opportunity to submit comments on the Commission's proposed no significant hazards consideration determination. No comments have been received. The notice also provided for an opportunity to request a hearing by August 2, 1996, but indicated that if the Commission makes a final no significant hazards consideration determination, any such hearing would take place after issuance of the amendment.

The Commission's related evaluation of the amendment, finding of exigent circumstances, and a final no significant hazards consideration determination are contained in a Safety Evaluation dated July 19, 1996.

Local Public Document Room location: Houston-Love Memorial Library, 212 W. Burdeshaw Street, P.O. Box 1369, Dothan, Alabama

Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application for amendment: January 2, 1996, as supplemented by letter dated April 12, 1996.

Brief description of amendment: The amendment would revise TS 3.9.4 and its associated Bases to allow the containment personnel airlock doors to be open during core alterations and movement of irradiated fuel in containment.

Date of issuance: July 15, 1996

Effective date: July 15, 1996, to be implemented within 30 days of the date of issuance.

Amendment No.: 114

Facility Operating License No. NPF-30: The amendment revised the Technical Specifications.

Date of initial notice in Federal Register: February 14, 1996 (61 FR 5819). The April 12, 1996, supplemental letter provided clarifying information and did not change the original no significant hazards consideration determination.The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 15, 1996.No significant hazards consideration comments received: No.

Local Public Document Room location: Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251.

Vermont Yankee Nuclear Power Corporation, Docket No. 50-271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of application for amendment: April 4, 1996

Brief description of amendment: The amendment revises the Technical Specifications regarding secondary containment integrity including addition of required actions in the event secondary containment integrity is not maintained when required. It also requires surveillance of the secondary containment isolation valves under the licensee's in-service testing program.

Date of issuance: July 10, 1996

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 147

Facility Operating License No. DPR-28: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: May 8, 1996 (61 FR 20859) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 10, 1996No significant hazards consideration comments received: No

Local Public Document Room location: Brooks Memorial Library, 224 Main Street, Brattleboro, VT 05301

Dated at Rockville, Maryland, this 24th day of July 1996.

For the Nuclear Regulatory Commission

Steven A. Varga, Director,

Division of Reactor Projects - I/II Office of Nuclear Reactor Regulation

[Doc. 96-19317 Filed 7-30-95; 8:45 am]

BILLING CODE 7590-01-F

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–22097; File No. 812–9992]

Continental Assurance Company, et al.

July 25, 1996.

AGENCY: Securities and Exchange Commission (''SEC'' or ''Commission'').

ACTION: Notice of application for exemptions under the Investment Company Act of 1940 (''1940 Act'').

APPLICANTS: Continental Assurance Company (''CAC''), Valley Forge Life Insurance Company (''VFL,'' together with CAC, the ''Companies''), Continental Assurance Company Variable Life Separate Account (''CAC Account''), Valley Forge Life Insurance Company Variable Life Separate Account (''VFL Account''), and CNA Investor Services, Inc.

RELEVANT 1940 ACT SECTIONS: Sections 6(c), 27(a)(3), 27(c)(2), and 27(e), and Rules 6e–3(T)(b)(13)(ii), 6e–3(T)(b)(13)(vii), 6e–3(T)(c)(4)(v), and 27e–1 thereunder.

SUMMARY OF APPLICATION: Applicants seek an order to the extent necessary to permit them or any other variable life insurance separate account established in the future by the Companies (''Future Accounts,'' collectively with the CAC Account and the VFL Account, the ''Accounts'') to support certain flexible premium variable life insurance policies offered currently or in the future through the Accounts (collectively, ''Policies'') to: (1) deduct from premium payments received under the Policies a charge that is reasonable in relation to each Company's increased federal tax burden related to the receipt of such premium payments that results from the application of Section 848 of the Internal Revenue Code of 1986, as amended, (''Code''); (2) deduct sales charges from premium payments received in connection with Policies in a manner that results, in some instances, in sales charges on subsequent premium payments exceeding sales charges on prior premium payments; (3) compute sales surrender charges on such premium payments in a manner that results, in some instances, in sales surrender charges on subsequent premium payments exceeding sales surrender charges on prior premium payments; and (4) refrain from sending owners of Policies a written notice of certain refund and withdrawal rights.

FILING DATE: The application was filed on February 14, 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 Secretary of the SEC 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 16, 1996 and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested.

Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549: Applicants. Donald M. Lowry, Esq., Senior Vice President and General Counsel, CNA Insurance Companies, CNA Plaza, 43 South, Chicago, Illinois 60685.

FOR FURTHER INFORMATION CONTACT: Edward P. Macdonald, Staff Attorney, or Wendy F. Friedlander, Deputy Chief, Division of Investment Management (Office of Insurance Products), at (202) 942–0670.

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the Public Reference Branch of the SEC.

Applicants' Representations

1. CAC, a stock life insurance company organized under the laws of Illinois in 1911, has been a registered investment adviser since 1966. CAC is authorized to transact business in all 50 states, the District of Columbia, all provinces of Canada, Guam, Puerto Rico, and the U.S. Virgin Islands. CAC is a wholly-owned subsidiary of Continental Casualty Company, all of the voting securities of which are owned by CNA Financial Corporation, a Delaware corporation. Loews Corporation, a publicly traded Delaware corporation, owns a majority of the outstanding voting securities of CNA Financial Corporation.

2. VFL, a stock life insurance company organized under the laws of Pennsylvania in 1956, is authorized to transact business in the District of Columbia, Puerto Rico, Guam and all states except New York. Valley Forge is a wholly-owned subsidiary of CAC.

3. The CAC Account was established by CAC as a separate account pursuant to Illinois insurance law on January 30, 1996, to be a funding medium for variable life insurance contracts. The CAC Account is registered as a unit investment trust with 18 subaccounts, each of which invests exclusively in the shares of a designated investment portfolio.

4. The VFL Account was established by VFL as a separate account under Pennsylvania insurance law on October 18, 1995, to be a funding medium for variable life insurance contracts. It is registered as a unit investment trust with 18 subaccounts each of which invest exclusively in the shares of a designated investment portfolio.

5. CNA Investor Services, Inc., an affiliate of the Companies, is the principal underwriter of the Policies. It is registered under the Securities Exchange Act of 1934 as a broker-dealer and is a member of the National Association of Securities Dealers, Inc.

6. The Policies are flexible premium variable life insurance contracts. The Companies will deduct 1.25% from each premium payment of the Policies to cover each Company's federal income tax costs attributable to the amount of premium received.

7. The Companies will deduct a sales charge from each premium payment. For Policy years 1 through 10 the sales charge is 4% of premium payments made in that Policy year, up to the target premium payment[1] for the initial specified amount. For Policy years 11 and later, the sales charge is 2% of premium payments made in that Policy year, up to the target premium payment for the initial specified amount. The target premium payment is an amount of premium payments, computed separately for each increment of specified amount under a Policy, used to compute sales charges and surrender charges. Any premium payments received in excess of the target premium payment for the specified amount in any year are not subject to a sales charge.

8. If the Policy owner increases the specified amount, a target premium payment is established for the increase. Therefore, there is a target premium payment for each increment of specified amount and the Companies deduct the sales charge from premium payments attributable to an increase. For purposes of computing and deducting sales charges, all premium payments made after an increase in specified amount are apportioned to each increment of specified amount on the basis of the relative guideline annual premium payments, as defined in Rule 6e–3(T)(c)(8), for each such increment. For the first ten 12-month periods following an increase in specified amount, the charge is 4% of premium payments made in that 12-month period attributable to the increase, up to the target premium for the increase. For subsequent 12 Policy month periods, the sales charge is 2% of premium payments made during the 12 month period attributable to the increase up to the target premium for the increase.

9. If an owner surrenders the Policy, makes a withdrawal, decreases the specified amount, or if the Policy lapses, each Company may deduct a surrender charge from any Policy value. The surrender charge has two components: an administrative surrender charge and a contingent deferred sales charge (''CDSC'').

10. The CDSC in connection with the initial specified amount is calculated in Policy years 1 through 6 based on premium payments up to the target premium. Specifically, the CDSC is 34% of premium payments made in the first Policy year up to the target premium payment for the initial specified amount, and 33% of premium payments made in each of Policy years 2 through 6 up to the target premium payment for the initial specified amount in each such year until the total CDSC equals 100% of a single target premium payment of the initial specified amount.

11. The CDSC in connection with the initial specified amount during the first two Policy years will not exceed the sum of: (1) 26% of the first guideline annual premium payment for the initial specified amount, (2) 6% of the second guideline annual premium payment for the initial specific amount, and (3) 5% of all additional premium payments attributable to the initial specified amount.

12. After the first six Policy years, the total surrender charge in connection with the initial specified amount to which a Policy may be subject is reduced on a Policy year basis. The total surrender charge decrease 10% per year from 80% of total surrender charges in Policy year 7 to no charge in Policy years 15 and later.

13. If the initial specified amount is decreased during the first fourteen Policy years, the surrender charge imposed will equal the portion of the total surrender charge that corresponds to the percentage by which the initial specified amount is decreased. In the event of a decrease in the initial specified amount, the pro-rated surrender charge will be allocated to each subaccount and to the fixed account based on the proportion of Policy value in each subaccount and in the fixed account. A surrender charge imposed in connection with a reduction in the initial specified amount reduces the remaining surrender charge that may be imposed in connection with a surrender of a Policy.

14. The surrender charge is computed and assessed separately for the initial specified amount and for each increase in specified amount. Only the CDSC component of the surrender charge, however, is assessed in connection with an increase in specified amount. For purposes of computing and assessing the CDSC attributable to an increase in

[1] A target premium payment is an amount of premium shown in the Policy that is based on the insured's age sex, rate class, the specified amount under the Policy, and certain assumptions made by the Companies. It is never larger than the corresponding guideline annual premium payment under a Policy.

specified amount, all premiums made after an increase in specified amount are apportioned to each increment of specified amount on the basis of the relative guideline annual premium payments of each such increment. Likewise, Policy value is apportioned to each increment of specified amount on the basis of the relative guideline annual premium payments for each such increment.

15. The CDSC for an increase in specified amount is as follows: in the first 12 Policy months following the increase, the CDSC is 34% of premium payments received up to the first target premium payment for the increase in specified amount, and, in each of the five subsequent 12 Policy month periods following the increase, the charge is 33% of premium payments received up to the first target premium payment for the increase in specified amount in each such 12 month period until the total CDSC for the increase equals 100% of a single target premium payment for the increase in specified amount. Notwithstanding the foregoing, the CDSC during the first 24 Policy months following an increase in specified amount is never more than the sum of: (1) 26% of the first guideline annual premium payment for the increase in specified amount, (2) 6% of the second guideline annual premium payment for the increase in specified amount, and (3) 5% of all additional premium payments attributable to the increase in specified amount. Beginning with the 73rd Policy month following an increase in specified amount, the CDSC computed in connection with the increase grades off during the subsequent 96 Policy months in the same manner as does the surrender charge associated with the initial specified amount.

Deferred Acquisition Cost

16. In the Omnibus Budget Reconciliation Act of 1990, Congress amended the Code by, among other things, enacting Section 848 thereof which requires that life insurance companies capitalize and amortize over a period of ten years part of their general expenses for the current year. Upon prior law, these expenses were deductible in full from the current year's gross income. Section 848, in effect, accelerates the realization of income from specified insurance contracts for federal income tax purposes and, therefore, the payment of taxes on the income generated by those contracts. Taking into account the time value of money, Section 848 increases the tax burden borne by the insurance company because the amount of general deductions that must be capitalized and amortized is measured by premium payments received under specified contracts, such as the Policies (the ''DAC tax charge''). In this respect, the impact of Section 848 can be compared with that of a state premium tax.

17. The Policies to which the tax burden charge will apply fall into the category of life insurance contracts identified under Section 484 as those for which the percentage of net premiums that determines the amount of otherwise currently deductible general expenses to be capitalized and amortized is 7.7 percent.

18. The increased tax burden resulting from the applicability of Section 848 to every $10,000 of net premiums received may be qualified as follows. In the year when the premiums are received, each Company's general deductions are reduced by $731.50—i.e., an amount equal to (a) 7.7 percent of $10,000 ($770) minus (b) one-half year's portion of the ten-year amortization ($38.50). Using a 35 percent corporate tax rate, this computes to an increase in tax for the current year of $256.03 (i.e., $731.50 multiplied by .35). This increase in tax will be partially offset by increased deductions that will be allowed during the next ten years as a result of amortizing the remainder of the $770—$77 in each of the following nine years, and $38.50 in the tenth year.

19. Capital which must be used by each Company to satisfy its increased federal tax burden under Section 848 (resulting from the receipt of premiums) is not available to the Companies for investment. Because they seek an after tax rate of return of at least 10 percent on their invested capital,[2] each Company submits that a discount rate of at least 10 percent is appropriate for use in calculating the present value of its future tax deductions resulting from the amortization described above.

20. Using a corporate tax rate of 35 percent, and assuming a discount rate of 10 percent, the present value of the tax effect of the increased deductions allowable in the following ten years comes to $160.40. Because this amount partially offsets the increased tax burden, applying Section 848 to the specified contracts imposes an increased tax burden on each Company equal to a present value of $95.63 (i.e., $256.03 minus $160.40) for each $10,000 of net premiums.

21. Each Company does not incur incremental income tax when it passes on state premium taxes to Policy owners, because state premium taxes are deductible when computing federal income taxes. In contract, federal income taxes are not tax-deductible when computing each Company's federal income taxes. Therefore, to offset fully the impact of Section 848, each Company must impose an additional charge that would make it whole not only for the $95.63 additional tax burden attributable to Section 848, but also the tax on the additional $95.63 itself. This additional charge can be computed by dividing $95.63 by the complement of the 35 percent federal corporate income tax rate (i.e. 65 percent), resulting in an additional charge of $147.12 for each $10,000 of net premiums, or 1.47 percent.

22. Tax deductions are of value to the Companies only to the extent that it has sufficient gross income to fully utilize the deductions. Based upon its prior experience, both Companies submit that it is reasonable to expect that virtually all future deductions will be fully taken.

23. Each Company submits that a DAC tax charge of 1.25 percent of premium payments would reimburse it for the impact of Section 848 on its federal tax liabilities. Each Company represents that a 1.25 percent charge is reasonably related to its increased tax burden under Section 848, taking into account the benefit to each Company of the amortization permitted by Section 848, and the use by each Company of a 10 percent discount rate in computing the future deductions resulting from such amortization, such rate being the equivalent of each Company's cost of capital.

Applicants' Legal Analysis

1. Section 6(c) of the 1940 Act authorizes the SEC by order upon application, conditionally or unconditionally to exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision(s) of the 1940 Act or from any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of

[2] Both Companies have computed their cost of capital as the after tax rate of return that each seeks to earn on its surplus. The Companies took into account a number of factors in computing this rate. First, they identified the level of investment return that can be expected to be earned risk-free over the long term. This rate is based upon the expected yield on 30-year Treasury bonds. Then, this rate was increased by market risk premium that is demanded by equity investors to compensate such investors for the risks associated with equity investment. This premium is based on the average excess return earned by investing in equities as compared to that earned by investing in risk-free instruments (i.e., long-term Treasury bonds). Finally, the resulting rate was modified to reflect the relative volatility of portfolio investments. Both Companies represent that these are appropriate factors to consider in determining their cost of capital.

investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

Exemption From Section 27(c)(2) of the 1940 Act and From Rule 6e–3(T)(c)(4)(v)

2. Section 2(a)(35) of the 1940 Act defines ''sales load'' as the difference between the price of a security offered to the public and that portion of the proceeds from its sale which is received and invested or held by the issuer (or in the case of a unit investment trust, by the depositor or trustee), less any portion of such difference deducted for trustee's or custodian's fees, insurance premiums, issue taxes, or administrative expenses or fees which are not properly chargeable to sales or promotional activities.

3. Section 27(c)(2) of the 1940 Act prohibits a registered investment company or a depositor or underwriter for such company from making any deduction from purchase payments made under periodic payment plan certificates other than a deduction for sales load.

4. Rule 6e–3(T)(b)(13)(iii), among other things, provides relief from Section 27(c)(2) of the 1940 Act to the extent necessary to permit the deduction of certain charges other than sales load, including ''[t]he deduction of premium or other taxes imposed by any state or other governmental entity.'' Applicants represent that the requested exemption is necessary if they are to rely on certain provisions of Rule 6e–3(T)(b)(13).

5. Rule 6e–3(T)(c)(4) defines ''sales load'' during a contract period as the excess of any payments made during that period over certain specified charges and adjustments, including ''[a] deduction for and approximately equal to state premium taxes.'' Applicants submit that the proposed DAC tax charge is akin to a state premium tax charge and, therefore, should be treated as other than sales load for purposes of the 1940 Act and the rules thereunder.

6. Applicants acknowledge that the proposed DAC tax charge does not fall squarely into any of the itemized categories of charges or adjustments set forth in Rule 6e–3(T)(c)(4); a literal reading of that rule arguably does not exclude such a ''tax burden charge'' from sales load. Applicants maintain, however, that there is no public policy reason why a tax burden charge designed to cover the expense of federal taxes should be treated as sales load. Applicant also assert that nothing in the administrative history of Rule 6e–3(T) suggests that the SEC intended to treat tax charges as sales load.

7. Applicants assert that the public policy that underlies Rule 6e–3(T)(b)(13)(i), like that which underlies Sections 27(a)(1) and 27(h)(1), is to prevent excessive sales loads from being charged in connection with the sale of periodic payment plan certificates. Applicants submit that the treatment of a tax burden charge attributable to the receipt of purchase payments as sales load would in no way further this legislative purpose because such a charge has no relation to the payment of sales commissions or other distribution expenses. Applicants further submit that the Commission has concurred with this conclusion by excluding deductions for state premium taxes from the definition of sales load in Rule 6e–3(T)(c)(4).

8. applicants assert that the genesis of Rule 6e–3(T)(c)(4) supports this analysis. In this regard, Applicants note that Section 2(a)(35) of the 1940 Act provides a scale against which the percent limits of Sections 27(a)(1) and 27(h)(1) thereof may be measured. Applicants submit that the intent of the SEC in adopting Rule 6e–3(T)(c)(4) was to tailor the general terms of Section 2(a)(35) to flexible premium variable life insurance contracts in order, among other things, to facilitate verification by the SEC of compliance with the sales load limits set forth in Rule 6e–3(T)(b)(13)(i). Applicants submit that Rule 6e–3(T)(c)(4) does not depart, in principal, from Section 2(a)(35).

9. Applicants further assert that Section 2(a)(35) excludes from the definition of sales load under the 1940 Act deductions from premiums for ''issue taxes.'' Applicants submit that, by extension, the exclusion from ''sales load'' (as defined in Rule 6e–3(T) of charges to cover an insurer's expenses attributable to its federal tax obligations is consistent with the protection of investors and the purposes intended by the policies and provisions of the 1940 Act.

10. Applicants also submit that the reference in Section 2(a)(35) to administrative expenses or fees that are ''not properly chargeable to sales or promotional activities'' suggests that the only deductions intended to fall within the definition of sales load are those that are properly chargeable to such activities. Because the proposed DAC tax charge will be used to compensate each Company for its increased federal tax burden attributable to the receipt of premiums, and such deductions are not properly chargeable to sales or promotional activities. Applicants assert that the language of Section 2(a)(35) is another indication that not treating such deductions as sales load is consistent with the purposes intended by the policies of the 1940 Act.

11. Applicants agree to comply with the following conditions for relief: (a) Each Company will monitor the reasonableness of the 1.25 percent proposed DAC tax charge; (b) the registration statement for the Policies under which the 1.25 percent charge is deducted will: (i) Disclose the charge; (ii) explain the purposes of the charge; and (iii) state that the charge is reasonable in relation to each Company's increased federal tax burden resulting from the application of Section 848 of the Code; and (c) the registration statement for the Policies under which the 1.25 percent charge is deducted will contain as an exhibit an actuarial opinion as to: (a) The reasonableness of the charge in relation to each Company's increased federal tax burden resulting from the application of Section 848 of the Code; (ii) the reasonableness of the targeted rate of return that is used in calculating such charge; and (iii) the appropriateness of the factors taken into account by each Company in determining such targeted rate of return.

12. Applicants also request exemptions for any Future Account that either Company may establish to support flexible premium variable life insurance contracts as defined in Rule 6e–3(T)(c)(1). Applicants believe that the terms of any exemption sought for Future Accounts to permit the deduction of a tax burden charge would be substantially identical to those in this application. Applicants assert that any additional requests for exemptive relief for such Future Accounts would present no issues under the 1940 Act that have not already been addressed in this application. Nevertheless, unless such relief were granted, the Companies would have to obtain exemptions for each Future Account that either establishes unless that relief is granted in response to this application.

13. The requested exemptions are appropriate in the public interest because they would promote competitiveness in the variable life insurance market by eliminating the need for the Companies to file redundant exemptive applications, thereby reducing its administrative expenses and maximizing the efficient use of its resources. The delay and expense involved in having to repeatedly seek the same exemptions would impair both Companies' ability to effectively take advantage of business opportunities as they arise. Likewise, the requested exemptions are consistent with the protection of investors and the purposes intended by the policy and provisions of the 1940 Act for the same

reasons. Investors would receive no benefit or additional protection if each Company were required to repeatedly seek Commission orders with respect to the same issues. In fact they might be disadvantaged as a result of the Companies' increased overhead expenses.

Exemption From Section 27(a)(3) of the 1940 Act and From Rule 6e–3(T)(b)(13)(ii)

14. Section 27(a)(3) provides that the amount of sales charge deducted from any of the first twelve monthly purchase payments on a periodic payment plan certificate by any registered investment company issuing such certificates or any depositor or underwriter for such company may not exceed proportionately the amount deducted from any other such payment, and that the amount deducted from any subsequent payment may not exceed proportionately the amount deducted from any other subsequent payment.

15. Rule 6e–3(T)(b)(13)(ii) provides an exemption from Section 27(a)(3) in connection with flexible premium variable life insurance contracts, provided that the proportionate amount of sales charge deducted from any premium payment for such a contract does not exceed the proportionate amount deducted from any prior premium payment, unless an increase is caused by reductions in the annual cost of insurance or reductions in sales load for amounts transferred to a variable life insurance contract from another plan of insurance.

16. The Policies have both a sales charge deducted from certain premium payments and a CDSC that is computed as a percentage of certain premium payments. For any increment of specified amount, the sales charge deducted from any premium payments is a percentage of the payments made in a Policy year up to the target premium for that increment in that Policy year. No sales charge is deducted from premium payments made in a Policy year in excess of that target premium. Thus, where an owner of a Policy makes premium payments in any Policy year in excess of the target premium and makes any premium payment during the next Policy year, the sales charge on the first dollar paid in the next Policy year will always exceed that paid on the last dollar paid in the prior Policy year.

17. Likewise for any increment of specified amount, the CDSC is computed as a percentage of premium payments made in a Policy year up to the target premium for that increment and no CDSC is associated with premium payments made in a policy year in excess of that target premium. Thus, where an owner of a Policy makes premium payments in excess of the target premium during any of the first five Policy years and makes any premium payment during the next Policy year, the CDSC associated with the first dollar paid in the next Policy year will always exceed that associated with the last dollar paid in the prior Policy year. Applicants state that this sales charge structure appears to violate the ''stair-step'' provisions in Section 27(a)(3) of the Act. Moreover, the exemption provided by Rule 6e–3(T)(b)(13)(ii) does not appear to cover this type of charge structure.

18. Because Section 27(a)(3) and Rule 6e–3(T)(b)(13)(ii) appear to prohibit this structure, Applicants apply for an order under Section 6(c) of the Act exempting them and any Future Accounts from these provisions to the extent necessary to: (1) Permit the deduction of sales charges from premium payments up to one target premium paid during any Policy year (or, in connection with an increase in specified amount, any 12 month period) to exceed the sales charge deducted on premium payments made in excess of one target premium in any prior Policy year (or 12 month period), and (2) to permit the deduction of the CDSC computed on the same basis with a similar result.

19. Applicants state that the Policies could continue to comply with all of the other sales charge limitations and requirements in Rule 6e–3(T), if the sales charges were deducted from, and the CDSC were computed on the basis of, all premium payments. Applicants assert that such charges, however, would be less favorable to Policy owners than that provided under the Policies. Under such a sales charge structure Applicants argue, sales charges would be recovered by the companies earlier than is the case under the Policies' sales charge structure. Under such a surrender charge structure, CDSCs could be greater than under the Policies' CDSC. Applicants submit that the sales charge structure under the Policies benefits Policy owners by spreading the sales charges over a longer period of time, thereby permitting a greater portion of a Policy owner's premium payments in excess of a target premium to be invested in the Policy.

20. Applicants assert that the imposition of a sales charge only on premiums paid up to the target premium in any Policy year in part reflects the fact that the Companies will usually incur lower overall distribution costs in connection with premium payments in excess of the targets over the life of the Policies. Applicants argue that to impose the sales charge on such ''excess'' premium payments could generate more revenue than the Companies believe is necessary to cover such costs. Thus, the sales charge design provides a significant benefit to Policy owners by passing through to them a portion of the Companies' lower distribution costs with respect to ''excess'' premiums. The same can generally be said of the CDSC. Applicants submit that it would not be in the best interest of Policy owners to require the imposition of a sales charge on ''excess'' premiums that is higher than Applicants consider necessary.

21. Applicants further argue that Section 27(a)(3) was designed to address the perceived abuse of periodic payment certificates that deducted large amounts of front-end sales charges so early in the life of the plan that an investor redeeming in the early period would recoup little of his or her investment. Applicants assert that, by imposing no sales charge on ''excess'' premium payments made in any Policy year, the Company will cause a greater proportion of total sales charges to be deducted later than otherwise would be the case under the Policies. Likewise, by assessing no CDSC in connection with ''excess'' premium payments, the CDSC would, in certain circumstances, be less than otherwise would be the case under the Policies.

22. Applicants argue that one purpose behind Section 27(h)(3) of the 1940 Act, as provision similar to Section 27(a)(3), is to discourage unduly complicated sales charges. This purpose also may be deemed to be a purpose of Section 27(a)(3) and Rule 6e–3(T)(b)(13)(ii). Therefore, Applicants submit that the sales charge structure under the Policies is straightforward, easily understood, and less complicated than that of any many variable life insurance products that currently are being offered and sold.

23. Applicants submit that, under the Policies, premium payments up to the target premium have higher levels of actual sales expenses associated with them than premium payments made in excess of such a target premium. Because the ''excess'' premium payments have a lower level of sales expenses, Applicants argue that it is entirely appropriate that the sales charge structures for the two types of payments be analyzed separately, the sales charge or CDSC related to premium payments up to the target premium each year will comply with Rule 6e–3(T)(b)(13)(ii), and the sales charge or CDSC related to ''excess'' premium payments will remain level at

zero and therefore never increase from one excess premium payment to the next.

24. Moreover, Applicants concede that the Companies could avoid the potential ''stair-step'' issue simply by imposing the higher sales charges equally on premium payments in any Policy year, subject to the overall sales charge limits under the 1940 Act; Applicants argue, however, that Policy owners benefit from the lower sales charge imposed in connection with ''excess'' premium payments under the sales charge structure of the Policy.

Exemption From Section 27(e) of the 1940 Act and Rule 27e–1 Thereunder, and From Rule 6e–3(T)(b)(13)(vii)

25. Section 27(e) requires, with respect to any periodic payment plan certificate sold subject to Section 27(d), written notification of the right to surrender and receive a refund of the excess sales load. Rule 27e–1 establishes the requirements for the notice mandated by Section 27(e) and prescribes from N–27E–1 for that purpose. Rule 6e–3(T)(b)(13) in essence modifies the requirements of Section 27 of the 1940 Act and the rules thereunder. Rule 6e–3(T)(b)(13)(vii) adopts Form N–27I–1 and requires it to be sent to a Policy owner upon issuance of the Policy and again during any lapse period in the first two Policy years. The Form requires statements of: (a) the Policy owner's right to receive back the excess sales load for a surrender during the first two Policy years, (b) the date that the right expires, and (c) the circumstances in which the right may not apply upon lapse. Thus Section 27(e) of the 1940 Act, and Rules 27e–1 and 6e–3(T)(b)(13)(vii) thereunder, require a notice of right of withdrawal, and refund on Form N–27I–1 to be provided to owners of the Policies entitled to a refund of sales load in excess of the limits stated in paragraph (b)(13)(v)(A) of Rule 6e–3(T).

26. The Policies have a sales charge and a CDSC that does not, during the first two Policy years (or, as to an increase in specified amount, during the first twenty-four months after the increase), exceed the limits described by paragraph (b)(13)(v)(A) of Rule 6e–3(T) beyond which sales charges are characterized as ''excess sales charge'' is ever paid by an owner surrendering, withdrawing, reducing his or her specified amount, or lapsing in the first two Policy years (or, as to an increase in specified amount, during the first twenty-four months after the increase).

27. Applicants represent that the sales charge and the CDSC on premium payments (and with respect to the CDSC applicable to an increase in specified amount, after the first twenty-four months following that increase) may exceed the limits described by paragraph (b)(13)(v)(A) of Rule 6e–3(T). Therefore, Applicants are requesting the relief sought in this application.

28. Rule 27e–1, pursuant to which Form N–27I–1 was first prescribed, specifies in paragraph (e) that no notice need be mailed when there is otherwise no entitlement to receive any refund of sales charges. Applicants stat that Rules 27e–1 and 6e–2 (from which Rule 6e–3(T) was derived) were adopted in the context of front-end loaded products only and in the broader context of the companion requirements in Section 27 for the depositor or underwriter to maintain segregated funds as security to assure the refund of any excess sales charges.

29. Applicants assert that requiring delivery of a Form N–27I–1 could confuse Policy owners at best, and, at worst, encourage them to surrender during the first two Policy years (or surrender or decrease to specified amount of their Policies during the first twenty-four Policy months following a specified amount increase) when it may not be in their best interests to do so. Applicants submit that an owner of a Policy with a declining CDSC, unlike a policy with a front-end sales charge, does not foreclose his or her opportunity, at the end of the first two Policy years (or twenty-four Policy months following a specified amount increase), to receive a refund of most monies spent. Not only has such an owner not paid any excess sales charges, but because the deferred charge declines over the life of the policy, the owner may never have to pay the deferred charge. Applicants thus assert that encouraging a surrender during the first two Policy years could, in the end, cost such an owner more in total sales charges (relative to total premium payments) than he or she would otherwise pay if the Policy, which is designed as a long-term investment vehicle, were held for the period originally intended.

30. Applicants submit that the absence of ''excess sales charges,'' and, therefore, the absence of an obligation to assure repayment of that amount, do not create a right in an owner which Form N–27I–1 was designed to highlight. In the absence of this right, Applicant's argue that the notification contemplated by Form N–27I–1 is an unnecessary and counter-productive administrative burden the cost of which appears unjustified, and any other purpose potentially served by the Form N–27I–1 would already be addressed by the required Form N–27I–2 Notice of Withdrawal Right, generally describing the charges associated with the Policy, and prospectus disclosure detailing the sales charge design. Applicant's submit that neither Congress, in enacting Section 27, nor the Commission, in adopting Rule 27e–1, could have contemplated the applicability of Form N–27I–1 in the context of an insurance policy with a declining contingent deferred sales charge.

Conclusion

For the reasons summarized above, the Applicants represent that the requested relief from Sections 27(a)(3), 27(c)(2), and 27(e) of the 1940 Act, paragraphs (b)(13)(ii), (b)(13)(vii), and (c)(4)(v) of Rule 6e–3(T) thereunder, and 27e–1 thereunder, is necessary or appropriate in the public interest and otherwise meets the standards of Section 6(c) of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–19373 Filed 7–30–96; 8:45 am]

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[Rel. No. IC–22096; No. 812–9996]

Keyport Life Insurance Company, et al.

July 25, 1996.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of Application for an Order pursuant to the Investment Company Act of 1940 (the ''1940 Act'').

APPLICANTS: Keyport Life Insurance Company (''Keyport''), KMA Variable Account (''KMA Account''), Variable Account A (''Account A''), Independence Life and Annuity Company (''Independence life''), Independence Variable Annuity Separate Account (''VA Account''), Liberty Life Assurance Company of Boston (''Liberty Life,'' together with Keyport and Independence Life, the ''Insurance Companies''), Variable Account K (''Account K,'' together with KMA Account, Account A and VA Account, the ''Separate Accounts''), and Keyport Financial Services Corporation (''KFSC'').

RELEVANT 1940 ACT SECTIONS: Order requested pursuant to Section 6(c) of the 1940 Act granting exemptions from the provisions of Sections 26(a)(2)(C) and 27(c)(2) thereof.

SUMMARY OF APPLICATION: Applicants seek an order permitting the deduction of mortality and expense risk charges

from the assets of: (a) the Separate Accounts in connection with the offering of certain flexible premium variable annuity contracts (''Existing Contracts''); and (b) any other separate account (''Future Accounts'') established by Applicants in connection with the offering of variable annuity contracts (''Future Contracts,'' together with Existing Contracts, ''Contracts'') which are substantially similar in all material respects to the Existing Contracts. Exemptive relief also is requested to the extent necessary to permit the offer and sale of Contracts for which certain broker-dealers other than KFSC (''Future Underwriters'') serve as the principal underwriter.

FILING DATE: The application was filed on February 16, 1996, and amended on July 16, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on August 20, 1996, and must be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549. Applicants, c/o Bernard R. Beckerlegge, Esq., General Counsel, Keyport Life Insurance Company, 125 High Street, Boston, Massachusetts 02110.

FOR FURTHER INFORMATION CONTACT: Kevin M. Kirchoff, Senior Counsel, Office of Insurance Products (Division of Investment Management), at (202) 942–0670.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from the Public Reference Branch of the Commisison.

Applicants' Representations

1. Keyport is a stock life insurance company authorized to do business in the Virgin Islands, the District of Columbia and all states except New York. Keyport is an indirect subsidiary of Liberty Mutual Insurance Company (''Liberty Mutual'').

2. Independence Life, a Rhode Island corporation and subsidiary of Keyport, is authorized to do business in the District of Columbia and all states except New York.

3. Liberty Life is a stock life insurance company incorporated in Massachusetts and licensed to do business in all states and in the District of Columbia. Liberty Life is a subsidiary of Liberty Mutual and Liberty Mutual Fire Insurance Company.

4. Keyport established KMA Account and Account A pursuant to the laws of Rhode Island on January 9, 1980, and January 30, 1996, respectively. Independence Life established VA Account pursuant to the laws of Michigan on June 26, 1987. Liberty Life established Account K pursuant to the laws of Massachusetts on September 13, 1989, Each of the Separate Accounts is divided into sub-accounts (''Sub -Accounts'') that correspond to portfolios of certain registered investment companies (''Existing Funds''). The Separate Accounts now or in the future may serve as funding media for the Contracts.

5. Future Accounts will be registered pursuant to the 1940 Act as either open-end management investment companies or unit investment trusts. Separate Accounts and Future Accounts may invest in Existing Funds and in other management investment companies (''Other Funds''). Future Accounts organized as open-end management investment companies also may invest directly in portfolio securities.

6. KFSC, the principal underwriter of the Contracts, is registered as a broker-dealer pursuant to the Securities Exchange Act of 1934 and is a member of the National Association of Securities Dealers, Inc. (''NASD''). Keyport is the corporate parent of KFSC.

7. Future Underwriters will be members of the NASD, and will control, be controlled by, or be under common control with any of Keyport, Independence Life or Liberty Life.

8. The Existing Contracts are group flexible purchase payment variable annuities. Certificates will be issued to individuals under group contracts. The Contracts also may be offered as individual contracts. The Contracts will be offered through various distribution channels, including banks and affiliated and unaffiliated broker-dealers (''Channels''). The Contracts will accommodate varying design requests of the Channels by offering choices of various fees, charges and certain contract features (including death benefits, funding media, withdrawal rights, transfer privileges, annuity options, dollar cost averaging, systematic withdrawals and account rebalancing).

9. The Existing Contracts will be offered with a variety of investment options, including Steinroe Trust, Keyport Trust and Manning & Napier Insurance Fund, each of which is registered pursuant to the 1940 Act as an open-end management investment company.

10. Three alternative death benefits will be offered, all or only certain of which may be available under a particular Contract. At the time of issuance of a Contract, the death benefit is the initial purchase payment; thereafter, the death benefit is as follows:

a. Death Benefit 1 is the prior death benefit plus any additional purchase payments, less any partial withdrawals, including the amount of any applicable surrender charge.

b. Death Benefit 2 at issue is the initial purchase payment. Thereafter, the death benefit is calculated for each valuation period by adding any additional purchase payments, and deducting any partial withdrawals. The certificate value for each certificate anniversary (the ''Anniversary Value'') is determined. Each Anniversary Value is increased by any purchase payments made after that anniversary. This resultant value is then decreased by an amount calculated at the time of any partial withdrawal made after that anniversary. The amount is calculated by taking the amount of any partial withdrawal, and dividing by the certificate value immediately preceding the partial withdrawal, and then multiplying by the Anniversary Value immediately preceding the withdrawal. The greatest Anniversary Value, as so adjusted, (the ''greatest Anniversary Value'') is the death benefit unless the sum of net purchase payments is higher. The sum of net purchase payments will be the death benefit if such amount is higher than the greatest Anniversary Value.

c. Death Benefit 3 is calculated for each valuation period by applying a death benefit interest rate to the previously calculated death benefit, adding any purchase payments made during the current valuation period, and deducting any partial withdrawals (including any applicable surrender charge) taken during the current valuation period. The death benefit interest rate is applied to each separate purchase payment until it equals the maximum guaranteed death benefit. Initially, the maximum guaranteed death benefit is equal to a multiple of two times the initial and each additional purchase payment made. Thereafter, the maximum guaranteed death benefit at of the effective date of a partial withdrawal

is reduced first by the amount of the withdrawal representing appreciation and second in proportion to the reduction in certificate value for any partial withdrawal representing purchase payments.

11. Partial withdrawals may be permitted during the accumulation period without imposition of a surrender charge, as follows:

a. In any certificate year, Contract owners may withdraw an aggregate amount not to exceed, at the time of the withdrawal: (i) the certificate value, less (ii) the portion of the purchase payments not previously withdrawn.

b. In any certificate year after the first, Contract owners may withdraw the positive difference, if any, between the amount withdrawn pursuant to ''a'' above, in any such subsequent year and a specified percentage (currently 10 percent) of the certificate value as of the preceding certificate anniversary.

Surrender charges will be deducted with respect to withdrawals in excess of these amounts. The Contracts will provide varying free withdrawal amounts, minimum withdrawal amounts and minimum required remaining certificate values.

12. Applicants contemplate offering the Contracts with the following payment options: (a) income for a fixed number of years; (b) life income with 10 years of payments guaranteed; and (c) joint and last survivor income. Each option is available in two forms—as a variable annuity for use with the Separate Accounts and Future Accounts and as a fixed annuity for use with the general accounts of the Insurance Companies. Applicants do not currently anticipate offering any additional variable annuity options, but may offer additional fixed annuity options. Other fixed annuity options may be arranged by mutual consent.

13. The Contracts will specify minimum amounts to be transferred and minimum required remaining values in the Sub-Account from which the transfer is made, the number of transfers that can be made during the accumulation period and annuity period and the limitations on transfers from the fixed account. The Contracts will reserve the right to impose a charge for transfers exceeding a specified number.

14. The Contracts may offer dollar cost averaging, Sub-Account rebalancing and programs of systematic monthly transfer between Sub-Accounts and withdrawals.

15. The Contracts will provide for variations in sales load structures, including an asset-based charge, a contingent deferred sales charge (''CDSC''), or both. Applicants state that sales loads in the aggregate will not exceed 9 percent of purchase payments.

16. Charges for mortality and expense risks will range from a minimum charge of 0.35 percent to a maximum charge of 1.25 percent per annum. Variations in the mortality and expense risk charge from the minimum charge will be based on additional mortality and expense risks experienced by Applicants as a result of the particular Contract design features. The mortality and expense risk charge may be a source of profit for Applicants and the excess may be used for, among other things, the payment of distribution expenses.

17. The mortality and expense risk charge is imposed to compensate Applicants for bearing certain mortality and expense risks under the Contracts. Applicants assert that the mortality and expense risk charge is a reasonable charge to compensate Applicants for the risks that: (a) annuitants will live longer than was anticipated when the annuity rates guaranteed in the Contracts were set; (b) the death benefit will be greater than the Contract value; and (c) administrative expenses will exceed the charges guaranteed for the Contracts.

18. Other charges will be deducted in any appropriate manner permitted and subject to the conditions and requirements of applicable rules under the 1940 Act including, but not limited to, any ''at-cost'' standards. Applicants represent that the administrative charges will represent compensation for the administrative costs, without profit, expected to be incurred over the duration of the Contracts.

Applicants' Legal Analysis

1. Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act prohibit a registered unit investment trust, its depositor or principal underwriter, from selling periodic payment plan certificates unless the proceeds of all payments, other than sales loads, are deposited with a qualified bank and held under arrangements that prohibit any payment to the depositor or principal underwriter except a reasonable fee, as the Commission may prescribe, for performing bookkeeping and other administrative services.

2. Section 6(c) of the 1940 Act authorizes the Commission to exempt any person, security or transaction, or any class or classes of persons, securities or transactions, from the provisions of the 1940 Act and the rules thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

3. Applicants request an order pursuant to Section 6(c) of the 1940 Act granting exemptions from Sections 26(a)(2)(C) and 27(c)(2) thereof to the extent necessary to permit them to assess charges for mortality and expense risks ranging from a minimum of 0.35 percent to a maximum of 1.25 percent per annum from the assets of the Separate Accounts under the Contracts and Future Accounts under Future Contracts. Applicants also seek exemptive relief for Future Underwriters to serve as principal underwriters of the Contracts.

4. Applicants submit that the relief requested with respect to the Contracts meets the standards set forth in Section 6(c) of the 1940 Act and is consistent with existing precedent. Applicants assert that, without the requested relief, they would be required to request and obtain exemptive relief in the future in connection with the Contracts. Applicants represent that such additional requests for exemptive relief would present no issues under the 1940 Act that have not already been addressed in their current application.

5. Applicants state that the requested relief is appropriate in the public interest because it would promote competitiveness in the variable annuity market by eliminating the need for each Applicant and its affiliates to file redundant exemptive applications, thereby reducing administrative expenses and maximizing the efficient use of resources. Applicants assert that investors would not receive any benefit or additional protection by requiring Applicants repeatedly to seek exemptive relief with respect to the same issues addressed in this application. Applicants assert that the delay and expense involved would impair the ability of Applicants to take effective advantage of business opportunities as they arise and would disadvantage investors as a result of the increased expenses of Applicants.

6. Applicants submit that the exemptive relief requested with respect to the offering of the Contracts through Future Underwriters is consistent with the standards set forth in Section 6(c) of the 1940 Act. Applicants assert that, without the requested relief, they would be required to request and obtain exemptive relief in connection with Future Underwriters. Applicants represent that such requests for exemptive relief would present no issues under the 1940 Act that are not addressed in their current application.

7. Applicants submit that the mortality and expense risk charges are

reasonable and proper insurance charges imposed to compensate Applicants for bearing certain mortality and expense risks under the Contracts.

Applicants' Conditions

1. Applicants represent that the mortality and expense risk charges will range from a minimum of 0.35 percent to a maximum of 1.25 percent, that each form of the Contracts will include a mortality and expense risk charge that is within the range of industry practice for comparable variable annuity contracts, and the differentials between mortality and expense risk charges for different forms of the Contracts are reasonable in relation to the differentials in mortality or expense risks assumed. Applicants undertake not to offer any form of the Contracts without first making the required analysis and determinations that the mortality and expense risk charge is within the range of industry practice and that the differentials between mortality and expense risk charges for different forms of the Contracts are reasonable in relation to the differentials in mortality or expense risks assumed. Applicants state that these determinations will be made with respect to all forms of the Contracts, based on analysis by Applicants of publicly available information about similar industry products, taking into consideration such factors as current charge levels and benefits provided, the existence of expense charge guarantees and guaranteed annuity rates. Each Applicant undertakes to maintain at its principal office, available to the Commission upon request, a memorandum setting forth in appropriate detail the products analyzed, the methodology, and the results of the analysis, in making the foregoing determinations.

2. Applicants acknowledge that, if a profit is realized from the mortality and expense risk charge under the Contracts, all or a portion of such profit may be available to pay distribution expenses not reimbursed by the CDSC. Applicants state that, notwithstanding the foregoing, Applicants will not commence offering a form of the Contracts until the relevant Applicant has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements will benefit the Separate Account of the Applicant and the affected Contract owners. Each Applicant represents that is will maintain at its principal office, and make available to the Commission, upon request, a memorandum setting forth the basis for such conclusion.

3. Each form of the Contracts will be offered by a separate prospectus and statement of additional information that will be filed pursuant to either Rule 497 or Rule 485 under the Securities Act of 1933. Applicants undertake to include in the letter transmitting each such filing representations that the relevant Applicants have made determinations that: (a) the mortality and expense risk charge is within the range of industry practice; (b) the differential between mortality and expense risk charges provided by the form of the Contract and such charges provided by other forms of the Contracts is reasonable in relation to the differentials in mortality or expense risks assumed; and (c) there is a reasonable likelihood that the distribution financing arrangements will benefit the Separate Account of the Applicant and the affected Contract owner.

4. Each Applicant represents that its Separate Account will invest only in a management investment company that undertakes, in the event it adopts a plan pursuant to Rule 12b–1 under the 1940 Act to finance distribution expenses, to have such plan formulated and approved by a board of directors, a majority of whom are not interested persons of such investment company.

5. Each Applicant undertakes to abide by the terms and conditions of any rule that may be adopted by the Commission in the future with regard to the deduction of mortality and expense risk charges.

Conclusion

For the reasons summarized above, Applicants submit that the exemptions requested are necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–19374 Filed 7–30–96; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 22098; 811–4457]

Prudential U.S. Government Fund; Notice of Application

July 25, 1996.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: Prudential U.S. Government Fund.

RELEVANT ACT SECTION: Order requested under section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

FILING DATE: The applicant was filed on March 20, 1996, and amended on July 8, 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 applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 19, 1996, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, One Seaport Plaza, New York, N.Y. 10292.

FOR FURTHER INFORMATION CONTACT: Christine Y. Greenlees, Senior Counsel, (202) 942–0581, 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. Applicant is an open-end management investment company organization as a business trust under the laws of the Commonwealth of Massachusetts.[1] On November 4, 1985, applicant registered under the Act and filed a registration statement on Form N–1A under section 8(b) of the Act and the Securities Act of 1933. The registration statement was declared effective and applicant commenced its initial public offering on November 7, 1986. Applicant has three classes of shares: Class A, Class B and Class C.

2. On September 28, 1995, applicant's trustees approved a resolution to adopt an Agreement and Plan of

[1] Applicant was organized initially as a Maryland corporation. Pursuant to Articles of Transfer, which were effective in Maryland on October 2, 1986, applicant's assets and liabilities were transferred to an unincorporated business trust organized under the laws of the Commonwealth of Massachusetts.

Reorganization and Liquidation (''Agreement'') between applicant and Prudential Government Income Fund, Inc. (''Government Income Fund''), a registered open-end management investment company organized as a corporation under the laws of Maryland. On January 12, 1996, applicant's shareholders approved the Agreement.

3. Applicant and Government Income Fund could be deemed to be affiliated persons under the Act solely by reason of having a common investment adviser, common trustees/directors, and/or common officers. Applicant therefore relied on the exemption provided by rule 17a–8 under the Act to effect the merger.[2] In accordance with the rule, the trustees of applicant found that the sale of applicant's assets to the Government Income Fund was in the best interests of applicant and that the interest of applicant's shareholders would not be diluted as a result of the reorganization contemplated by the Agreement. The board of directors of Government Income Fund also found that the sale of applicant's assets to the Government Income Fund was in the best interests of Government Income Fund, and the interests of Government Income Fund's shareholders would not be diluted as a result of the reorganization contemplated by the Agreement.

4. On January 19, 1996, applicant had total net assets of $125,590,639, comprising 4,731,652 Class A shares at a net asset value of $10.49 per share, 7,215,308 Class B shares at a net asset value of $10.49 per share, and 21,833 Class C shares at a net asset value of $10.49 per share.

5. Pursuant to the Agreement, on January 19, 1996, applicant transferred all of its assets to Government Income Fund, and Government Income Fund assumed all of applicant's liabilities. The transfer was based on the relative net asset value per Class A, Class B and Class C shares of applicant and Class A, Class B and Class C shares, respectively, of the Government Income Fund on such date. Such shares of Government Income Fund were then distributed *pro rata* to the shareholders of Class A, Class B and Class C shares of applicant, respectively.

6. Expenses incurred in connection with the merger included approximately $83,000 in printing expenses, $20,000 in solicitation expenses, $30,000 in legal fees and expenses, and $9,000 in mailing expenses. Applicant and Government Income Fund agreed to pay the expenses in proportion to their respective asset levels. Since all of applicant's assets have been transferred to Government Income Fund and Government Income Fund has assumed all of applicant's liabilities, these expenses will be satisfied from the assets of Government Income Fund.

7. As of the date of the application, applicant had no shareholders, assets, or liabilities, and was not a party to any litigation or administrative proceeding. Applicant is not presently engaged, nor does it propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

8. Applicant intends to file a Certificate of Termination with the Office of the Secretary of the Commonwealth of Massachusetts to effect the termination of the applicant as a Massachusetts business trust as soon as practicable.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–19468 Filed 7–30–96; 8:45 am]

BILLING CODE 8010–01–M

[2] Rule 17a–8 provides relief from the affiliated transaction prohibition of section 17(a) of the Act for a merger of investment companies that may be affiliated persons of each other solely by reason of having a common investment adviser, common directors, and/or common officers.

[Release Nos. 33–7314; 34–37480; International Series Release No. 1010; File No. S7–19–96]

RIN 3235–AG83

Securities Act Concepts and Their Effects on Capital Formation

AGENCY: Securities and Exchange Commission.

ACTION: Concept Release.

SUMMARY: The Securities and Exchange Commission (the ''Commission'') has received the Report of the Advisory Committee on the Capital Formation and Regulatory Processes (the ''Advisory Committee'') chartered by the Commission. In addition to its consideration of the Report of the Advisory Committee (the ''Advisory Committee Report''), the Commission is reexamining the application of the Securities Act of 1933 and the rules thereunder to securities offerings. Information and comment are being sought with regard to what reforms could or should be undertaken, consistent with the Commission's investor protection mandate, to reform the current regulation of the capital formation process. Varying approaches, including a ''company registration'' concept recommended by the Advisory Committee, are being considered.

DATES: Comments should be received by September 30, 1996.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, 450 Fifth Street, N.W., Stop 6–9, Washington, D.C., 20549. Comments also may be submitted electronically to the following electronic mail address: rule-comment@sec.gov. All comment letters should refer to File No. S7–19–96; this file number should be included in the subject line if electronic mail is used. Comment letters will be available for public inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Electronically submitted comment letters will be posted on the Commission's Internet Web site (http://www.sec.gov).

FOR FURTHER INFORMATION CONTACT: Anita Klein, Office of Chief Counsel, Division of Corporation Finance, (202) 942–2900. For copies of the Advisory Committee Report, please fax a request to the Office of Commissioner Wallman at (202) 942–9563 or call (202) 942–0800.[1]

SUPPLEMENTARY INFORMATION:

I. Introduction

The Securities Act of 1933 (the ''Securities Act'')[2] and the rules and regulations thereunder have long provided the foundation for a capital formation system whose integrity, fairness and liquidity are unparalleled. Because U.S. capital formation methods and markets are characterized by innovation, the Commission vigilantly seeks to identify ways to improve its regulatory framework governing that system.[3] Two studies presented to the

[1] The Advisory Committee Report is also available through the Commission's Public Reference Room and the Commission's Internet Web site (http://www.sec.gov). For further information with respect to the Advisory Committee Report, contact the Advisory Committee staff: David A. Sirignano, Staff Director, at (202) 942–2870; Dr. Robert Comment (202) 942–8036; Catherine T. Dixon, (202) 942–2920; Meridith Mitchell (202) 942–0890; or Luise M. Welby (202) 942–2990.

[2] 15 U.S.C. §§ 77a *et seq.*

[3] The current reexamination of the Securities Act registration system is the most recent step in the modern reevaluation of the regulatory framework that many date back to the publication of the 1966 article by Milton Cohen which first suggested the integration of the Securities Act and the Securities Exchange Act of 1934 (the ''Exchange Act'') (15 U.S.C. §§ 78a *et seq.*) disclosure systems. *See* M. Cohen, ''Truth in Securities'' Revisited, 79 *Harv. L. Rev.* 1340 (1966). Since the publication of that article, the Commission has conducted or arranged several studies related to the disclosure system, including those completed by the Commission's Disclosure Policy Study Group in 1969 and the Commission's Advisory Committee on Corporate Disclosure in 1977. *See* Disclosure to Investors—A

Commission this year are assisting the Commission with its most recent efforts to reexamine that regulatory framework.

The first report delivered to the Commission was the Report of the Task Force on Disclosure Simplification (the ''Task Force'') of March 1996 (the ''Task Force Report'').[4] Among many other recommendations, the Task Force identified a number of areas in which modernization and simplification of the registration and disclosure processes could be accomplished.[5]

Today, the second report is being presented to the Commission by the Advisory Committee, chaired by Commissioner Steven M.H. Wallman.[6] The Advisory Committee has been studying the securities offering process and the Commission's rules regulating it since February 1995.[7] The objective of the Advisory Committee has been to assist the Commission in evaluating the efficacy of the regulatory process relating to the public offering of securities, securities market trading, and corporate reporting. The Advisory Committee Report is being published contemporaneously with this release and reflects 18 months of extensive study and analysis of the regulatory framework.[8] The Advisory Committee's work has assisted the Commission in focusing on diverse developments in the markets (some of which are more recent in origin and some of which reflect longer-term trends) and their current effects on the regulatory framework. Those developments and effects are the impetus for the Commission's current reexamination of some of the fundamental concepts of the regulatory framework. The Advisory Committee Report and its recommendations will be the subject of an ongoing review by the Commission and its staff.[9]

The Advisory Committee Report's primary recommendation is that the Commission further its integrated disclosure system by implementing a system based on a ''company registration'' concept first envisioned by the American Law Institute's Federal Securities Code.[10] As formulated by the Advisory Committee, a company registration system generally would be accomplished through the following steps:

On a one-time basis, the issuer[11] files a registration statement (deemed effective immediately) that includes information similar to that currently provided in an initial short-form shelf registration statement. This registration statement could then be used for all types of securities and all offerings (including those offered in furtherance of business acquisitions) and all offerings could be subject to Section 11 strict liability;

Current and future Exchange Act reports are incorporated by reference into that registration statement;

Around the time of the offering, transactional and updating disclosures are filed with the Commission, usually in a Form 8–K that is incorporated by reference into the registration statement and subject to Section 11 strict liability, but in certain cases, at the option of the issuer, through a prospectus supplement like those traditionally filed in shelf takedowns;

Other than a nominal fee paid at the initial filing, registration fees would be paid at the time of sale rather than prior to making any offers (the ''pay as you go'' feature);

Issuers would be required to adopt some disclosure enhancements (and encouraged to adopt others) that seek to improve the quality and timeliness of disclosure provided to investors and the markets; and

Formal prospectuses would be required to be physically delivered only in non-routine transactions and, when so required to be delivered, they would have to be delivered in time to be considered in connection with the investment decision. In almost all instances, an issuer could incorporate by reference filed information into selling materials or the confirmation of sale to satisfy the legal obligation to deliver a prospectus (which, under the statute, must precede or accompany a confirmation of sale).

The Commission seeks comment with respect to the Advisory Committee's company registration system, as a whole, as well as each of the separate recommendations contained in the Advisory Committee Report.[12] The Commission is not today proposing and is not in a position to endorse or reject the views or recommendations expressed in the Advisory Committee Report, the Task Force Report or any other ideas contained herein.

Reappraisal of Administrative Policies under the '33 and '34 Acts (Mar. 1969) (commonly referred to as the ''Wheat Report''); Report of the Advisory Committee on Corporate Disclosure to the Securities and Exchange Commission (Nov. 1977). Those efforts paved the way for significant integration of the Securities Act and Exchange Act disclosure systems by the Commission in 1982. *See* Securities Act Release No. 6383 (Mar. 3, 1982) [47 FR 11380].

Further refinement of the Securities Act registration system included, for example, the development of the short-form shelf registration system, which has enabled ''seasoned issuers'' to conduct a primary offering on a delayed or continuous basis if certain requirements are met. Shelf registration has afforded an eligible registrant a certain degree of flexibility by enabling it to time its offering when market conditions are most advantageous. The Commission's subsequent adoption of a ''universal'' shelf registration system in 1992 increased this flexibility even further by permitting an eligible company to register debt, equity, and other securities on a single shelf registration statement, without having to specify the amount of each class of securities to be offered. *See* Securities Act Release Nos. 6499 (Nov. 17, 1983) [48 FR 52889] and 6964 (Oct. 22, 1992) [57 FR 48970].

[4] Report of the Task Force on Disclosure Simplification (March 1996).

[5] Comment is being solicited *infra* Section II.B.2, II.B.5 and II.B.6 with respect to a limited number of specific aspects of the Task Force Report.

[6] Report of the Advisory Committee on the Capital Formation and Regulatory Processes (July 24, 1996).

[7] The Advisory Committee consisted of: The Honorable Steven M.H. Wallman, Chairman; Professor John C. Coffee, Jr.; The Honorable Barber B. Conable, Jr.; Robert K. Elliott; Edward F. Greene; Dr. George N. Hatsopoulos; A. Bart Holaday; Paul Kolton; Roland M. Machold; Dr. Burton G. Malkiel; Claudine B. Malone; Charles Miller; Karen M. O'Brien; and Larry W. Sonsini. The Commission gratefully acknowledges the time and efforts of the members and staff of the Advisory Committee in producing a thoughtful and comprehensive report.

The Advisory Committee held eight public meetings and Committee members and staff met with a number of groups and individuals concerned with or affected by the Commission's regulation of the capital formation process.

[8] Given the concurrent publication of the Advisory Committee Report and the recent publication of the Task Force Report, both of which are available on the Commission's Internet Web site and through the Commission's Public Reference Room, this release does not attempt to explain in full the varying proposals to reform the capital formation regulatory process that give rise to many of the questions asked in this release. Familiarity with the detailed discussions contained in those documents is assumed, as is familiarity with many basic Securities Act concepts. The Commission strongly urges interested parties to read the Advisory Committee Report in its entirety, as well as Section III of the Task Force Report.

[9] *See* the comprehensive discussions contained in the Advisory Committee Report concerning market developments and the effects they have had on the operation of the Securities Act framework. Advisory Committee Report at pp. 4–9 and Appendix A (''App. A''). Similarly, *see* the Task Force Report at pp. 23–28.

[10] The American Law Institute's Federal Securities Code was developed, after many years of effort, under the direction of Professor Louis Loss. *See* American Law Institute, Federal Securities Code (1980). *See also* L. Loss, ''The American Law Institute's Federal Securities Code Project,'' 25 *Bus. Law.* 27 (1969).

[11] The Advisory Committee recommends that eligibility for an initial pilot be limited to issuers that: have registered at least one public offering under the Securities Act; have been reporting under the Exchange Act for two years; have a public float of at least $75 million; and have securities listed on the New York Stock Exchange, the American Stock Exchange or NASDAQ NMS. Foreign issuers would be eligible if they file annual, quarterly and other periodic reports with the Commission on forms designed for domestic issuers, although the Advisory Committee specifically requests the Commission to consider whether current foreign issuer eligibility requirements for Form F–3 primary offerings should be sufficient for eligibility in the pilot. Most foreign countries (other than Canada) do not require their issuers to prepare quarterly reports.

[12] Comment also is solicited *infra* Section II.B.1 with respect to a limited number of specific aspects of the Advisory Committee Report.

Consideration of public comment on the recommendations in the Advisory Committee Report, the Task Force Report, and other ideas herein will be undertaken prior to any future Commission action. In the event the Commission determines to take such action, a specific proposal will be published for comment.

II. Securities Act Concepts

The Securities Act and the issuer disclosure provisions of the Exchange Act are premised on the view that investors are best protected in making investment decisions if they are presented with full and fair disclosure of all material information about the investments. The continuing challenge for the Commission lies in adapting the statutory disclosure framework to developments in the capital markets while ensuring that investors receive full and fair disclosure in a manner[13] and at a time that allows such informed decision-making.

Faced with the following developments, among others: increasing institutionalization of the markets; advances in technology and communication media; continuing globalization of securities markets; and the erosion of distinctions between private and public transactions, the Commission is examining whether the existing investor protection mechanisms, such as registration of both offers and sales and physical delivery of final prospectuses to investors around the time of sale, remain the best methods for accomplishing this full disclosure objective. The Commission is considering as well whether specific aspects of the integration of the registration requirements under the Securities Act and the periodic reporting requirements under the Exchange Act, if adjusted, could better serve investors' needs for full disclosure. Finally, the Commission is considering whether certain distinctions between public and private offerings of public companies remain necessary and how the increasingly institutional nature of investors should be reflected in the regulatory framework.

A. Request for Comments on Securities Act Concepts

In this release, the Commission seeks comment on the best methods for eliminating unnecessary obstacles to capital formation while improving the quality and timing of disclosure and, therefore, investor protection. To assist the Commission in its deliberations, certain concepts that are central to the current capital-raising process and transcend any one approach to reform are highlighted below. Comment is solicited regarding the best approach to resolving concerns raised by those concepts, whether that approach is one or more of the approaches mentioned herein, a combination thereof, or any approach not described in this release. In commenting on the issues and approaches discussed in this release, commenters are requested to focus on how those matters impact on full and fair disclosure to investors in a manner and at a time that allows for informed investment decisions.

1. Quality of ongoing disclosure. Investors in primary offerings for repeat issuers and investors in the secondary markets generally rely on periodic disclosure prepared pursuant to the Exchange Act.[14] The existing Securities Act registration system for larger, seasoned issuers is heavily dependent upon incorporation of disclosure from such reports into the registration statement.[15] Some observers have suggested that, while issuers undertaking registration of public offerings often devote significant resources to developing disclosure of the quality required under the Securities Act, equivalent resources are not necessarily devoted to preparing disclosure in Exchange Act periodic reports.

Given the importance of investor protection, both with respect to investors in primary offerings and investors in the secondary trading markets,[16] the Commission solicits comment regarding whether, in fact, a significant difference exists in the quality of disclosure between Securities Act and Exchange Act documents. If such a difference exists, what Commission action should be taken to address this concern? Should enhancement of current safeguards (such as the application of liability provisions) or the adoption of newly devised safeguards,[17] or both, be used to ensure that disclosure in Exchange Act documents is equal in quality to that in Securities Act documents?

Are there particular aspects of Exchange Act disclosure that are in need of improvement, and thus require specific Commission focus? Is there information in Securities Act disclosure that should be mandated in Exchange Act reports?[18] To enhance disclosure quality, should further participation of persons independent of the issuer, such as independent accountants, be required in the preparation of Exchange Act reports?

If various reforms would result in disclosure less often being prepared specifically in connection with the offering process, or would allow issuers quicker, more frequent (potentially continuous) access to the capital markets, would any concern about existing Exchange Act disclosure quality be exacerbated? Are improvements needed to ensure that Exchange Act reports provide a more current stream of information to investors? For example, should consideration be given to adopting a requirement, similar to certain self-regulatory organizations' requirements, that information that could materially affect the market for an issuer's securities be disclosed promptly in a public filing with the Commission?[19] Should the filing dates for Exchange Act reports (*e.g.* Form 8–K) be accelerated or should the events that trigger such reports be broadened?[20] Should the disclosure of particular events be accelerated?[21]

2. Informing Investors. a. Constructive versus Physical Delivery The Securities Act prohibits persons from sending securities through interstate commerce ''for the purpose of sale or for delivery after sale, unless accompanied or preceded by a prospectus that meets the requirements'' of Securities Act Section 10(a).[22] In addition, the Section 10(a) prospectus must be sent or given prior to or at the same time with any communication, such as selling

[13] In accordance with a Task Force Report recommendation, the Commission is currently contemplating the ''plain English'' approach to prospectus writing in another context. *See* Task Force Report at pp. 17–18. This release focuses on the content of the information delivered rather than the language in which information is presented.

[14] For domestic companies, Exchange Act periodic disclosure is generally provided in annual reports on Form 10–K (17 CFR 249.310) due 90 days after the end of the fiscal year, quarterly reports on Form 10–Q (17 CFR 249.308a) due 45 days after the end of the fiscal quarter and ''material events'' reports on Form 8–K (17 CFR 249.308) due within a specified number of days (either 5 business days or 15 calendar days) after the event occurs.

[15] *See* Form S–3, 17 CFR 239.13.

[16] It is estimated that the secondary trading market for equity securities was roughly 35 times as large (in aggregate dollar terms) as the amount registered for primary offerings in 1995. *See* Advisory Committee Report at p. 2.

[17] *See, e.g.,* Advisory Committee Report regarding certain disclosure enhancements at pp. 26–28 and *infra* Section II.B.1.b.

[18] *See, e.g.,* Advisory Committee Report regarding Risk Factors at p. 27 and Appendix B (''App. B''), pp. 56–57.

[19] *See, e.g.,* New York Stock Exchange Listed Company Manual § 202.05; American Stock Exchange Company Guide § 1102; and National Association of Securities Dealers By-laws, Schedule D.

[20] *See, e.g.,* Advisory Committee Report at p. 27 and App. B, pp. 55–56.

[21] *See, e.g.,* Advisory Committee Report at p. 27.

[22] 15 U.S.C. § 77j(a). Section 5(b)(2) of the Securities Act, 15 U.S.C. § 77e(b)(2).

materials or confirmations, that would otherwise fall within the broad definition of ''prospectus.''[23] These prospectus delivery provisions, which were established to ensure that investors would be fully informed, today are fulfilled in some cases by physical delivery of written prospectuses and in some cases by a mixture of physical delivery of transaction-specific information and constructive delivery (through the issuer incorporating the information by reference from filed documents) of company information. Through the 1995 adoption of Rule 434, the Commission has allowed constructive delivery of some transaction-specific information in limited circumstances by larger issuers.[24]

The Commission is considering whether there are circumstances under which constructive delivery to investors of all offering information (including both company and transaction-specific disclosure) would provide sufficient investor protection. Have advances in technology and communications now established a system whereby ''accessibility'' provides roughly the same amount of investor protection as physical delivery? Should reliance solely on constructive delivery be permitted only if access is assured not only through the Commission but also through other media? Is the broad dissemination of publicly available information regarding a company, which the ''efficient market hypothesis'' assumes,[25] in fact a reality for most investors, and not just sophisticated ones, at any given time? Does it matter, under the ''efficient market hypothesis'' or otherwise, if just sophisticated investors have this information? Is it useful to require this information to be physically delivered if, as under the current system, it is not required to be delivered until days after the investment decision is made? On what basis are investors in the secondary markets making investment decisions?

Where constructive delivery is being used, is there nevertheless a minimum amount of basic offering information not typically contained in a confirmation that the Commission should mandate be physically delivered, such as in a newly developed short-form profile prospectus, regardless of the nature of the offering or investor? If so, why?

Comment also is solicited regarding whether the same method of delivery should be required for all purchasers in a single offering. Should issuers be permitted to choose different methods of delivery for different investors, without regard to the investor's level of sophistication?[26] If different delivery methods are appropriate, should the choice be dependent upon the nature of the purchaser, the size of the offering, the type of security offered, or a combination of such factors? If the nature of the purchaser is a determining factor, would the ''accredited investor'' test,[27] the ''qualified institutional buyer'' test[28] or another test serve as the best criterion for determining whether constructive or physical delivery is used? If the Commission were to require information to be delivered to unsophisticated investors in a more costly manner, would issuers and underwriters be less likely to permit such investors to participate in an offering? Would it depend on the type of offering? Would additional flexibility provided to issuers and underwriters to tailor disclosure documents to unsophisticated investors encourage inclusion of such investors by issuers and underwriters?

Would constructive delivery be appropriate in every offering of a particular type of securities (e.g. debt), or would the appropriateness of constructive delivery be dependent as well on the size of the offering or the identity of the purchasers?[29] Would investors know in what manner information would be delivered if the issuer could employ multiple delivery options? In the view of commenters, would this information matter to investors?

b. Timing of delivery. One key element of the full disclosure objective is ensuring that investors are given sufficient time to consider material information in making investment decisions. Under current rules, prospectus delivery is required prior to or at the same time with the confirmation in primary offerings. In practice, therefore, Section 10(a) prospectuses may be unlikely to be sent to investors in advance of the decisions to purchase. In some cases, preliminary prospectuses are delivered, but they generally are not required to be delivered if the issuer is reporting under the Exchange Act.[30] For reporting issuers, material company information for the most part will have been widely available at the time of any offering, but information regarding the offering transaction and any information that reflects material developments since the last Exchange Act report was filed would not have been.[31] Comment is requested with regard to whether investors in primary offerings by reporting companies receive transactional and material developments information in the traditional physical form in sufficient time to make informed investment decisions. If not, what Commission action would be appropriate to ensure that result?

To the extent that transaction-specific information is constructively delivered through public filings rather than physically delivered to individual offerees, does such an approach delay or aid absorption of that information by investors in the primary offering or by the market? If such information is filed just prior to sale, would investors have more, less, or the same opportunity to make informed decisions under constructive delivery as they have today under the shelf registration system, where the transaction-specific information is physically delivered with the confirmation sometime after the investment decision is made?

c. Limitations on written communications other than the statutory prospectuses. The drafters of the Securities Act intended that the

[23] See Section 2(10)(a) of the Securities Act, 15 U.S.C. § 77b(10)(a).

[24] *See* Securities Act Release No. 7168 (May 11, 1995) [60 FR 26604]. For larger, seasoned issuers, Securities Act Rule 434 (17 CFR 230.434) currently allows constructive delivery of transaction-specific information (other than that relating to the description of the securities offered) and company information (other than material issuer developments) in firm commitment underwritten offerings for cash.

[25] The ''efficient market hypothesis'' generally provides that the price of a company's publicly traded securities fully reflects all available information about the company at any given time. *See, e.g.,* L. Loss and J. Seligman, 1 *Securities Regulation* 1, 184–86, n. 41 (1994). While there are different versions of the ''efficient market hypothesis,'' perhaps the most widely accepted version is the ''semi-strong'' variant, which posits that all *publicly* available information is quickly disseminated into the marketplace and reflected in the price of a company's stock. *See* Loss and Seligman, *supra* at 185, note 41. The Commission has previously relied on such a version of the ''efficient market hypothesis,'' for example, when adopting Securities Act Rule 415 concerning shelf registration. *See* Securities Act Release No. 6499.

[26] See Advisory Committee Report at pp. 18–22.

[27] ''Accredited investor'' is defined in Securities Act Rule 501(a), 17 CFR 230.501(a). See Advisory Committee Report at p. 21.

[28] ''Qualified institutional buyer'' is defined in Securities Act Rule 144A(a)(1), 17 CFR 230.144A(a)(1).

[29] See Advisory Committee Report at pp. 19–22 and App. B, p. 16.

[30] Exchange Act Rule 15c2–8, 17 CFR 240.15c2–8.

[31] For non-shelf offerings today, such information may be on file with the Commission for some time prior to the offering, although the amount of time is dependent upon many factors, including whether the staff reviews that registration statement. To the extent pre-transaction staff review for repeat issuers' registration statements would be limited or eliminated in the future, that time is likely to become shorter, and could become materially shorter.

statutory prospectus be the written selling document for securities. ''Free writing'' outside the statutory prospectus is not generally permitted except in the post-effective period when the Section 10(a) prospectus has been delivered to investors. Comment is solicited with respect to whether more flexibility to inform investors by use of written vehicles other than the traditional prospectus should be permitted. For example, should simplified profile prospectuses be permitted or required? With respect to offerings by seasoned issuers, if significant ongoing information is and has been available to investors with respect to such issuers, is the potential for harm from allowing or encouraging non-prospectus information delivery minimized? Would investor protection be likely to improve to the extent that issuers are encouraged to provide written, rather than oral, information about the basic terms of the transaction? Alternatively, would more flexibility be likely to result in use of selling materials driven by marketing needs that (in the distributed form) significantly differ from the prospectus envisioned by the Securities Act? If so, would investors' focus shift to the marketing language instead of the mandated prospectus disclosure, particularly if the latter is constructively rather than physically delivered? What standard of liability should attach to such other selling materials?

Would a system allowing incorporation by reference of the required prospectus disclosure from a registration statement previously filed with the Commission facilitate the use of simplified term sheets or other types of ''free writing?'' Would that system facilitate free writing if such selling materials had to be filed and subject to liability under Section 12(a)(2)? Would sufficient investor protection exist where Section 12(a)(2) liability is applied?

To what extent would issuers be more inclined to provide selling materials under that sort of system than under the current system? Would the requirement to have a Section 10(a) prospectus (and the selling materials) on file by the time of use of the selling materials present any difficulty as a practical matter, even though statutory disclosure may be wholly incorporated by reference rather than delivered physically? [32]

3. Timeliness of disclosure—informing the market. Under the current shelf system, information concerning shelf takedowns (contained in a prospectus supplement) is not required to be filed until the second business day following the earlier of: the date of determination of the offering price, or the date of first use in connection with the offering. Some have expressed concern that the current structure of the shelf registration system does not require timely disclosure to the secondary markets of all material information that is being disclosed to investors in the primary offering. [33]

Does the post-takedown filing of prospectus supplements strike an appropriate balance between quick access to capital and timely disclosure to investors in the secondary markets for such securities? Is this balance appropriate if the prospectus supplement is available earlier? Are the secondary markets having difficulty assimilating such information during the period before it is filed with the Commission because of limited access to such information? What role do wire services and others play in disseminating such information? If all this information is already fully disseminated to the secondary markets at the time investors make the decision to purchase in the primary offering, is it necessary to require any filing or mandate any specific form of information delivery for transactions? As procedures are developed permitting issuers to access the capital markets more quickly, what changes, if any, are likely to occur to the underwriting process and investor participation?

If information that is not filed with the Commission is not being fully assimilated prior to the making of investment decisions, comment is requested with respect to whether, regardless of any other reforms, the shelf registration system should be amended to require the filing of complete offering disclosure (including the price and other terms of the securities) at some point prior to the takedown in order to allow time for the market to assimilate such information. [34] If so, how long does it take for such information to be assimilated by the market? Would the answers to these questions be dependent upon the nature of the securities involved in the offering, the nature of the offering, or the size of the issuer?

Does it matter if transaction-specific disclosure that does not amount to a material development is not assimilated until some time after the offering? Should a special requirement apply in cases where the offering involves a type of security never before sold by the issuer? Should there be certain events (*e.g.* a percentage of equity being offered) that will always be deemed material developments?

In addition, comment is requested with regard to whether takedown information should be filed in an Exchange Act report that is incorporated by reference into the registration statement. Should all Securities Act Rule 424(b) prospectus supplements be deemed to be a part of the effective registration statement, as is the case with prospectus supplements filed in connection with Rule 430A?

4. The role of ''gatekeepers'' in maintaining quality of disclosure. The civil liability provisions of the Securities Act registration system provide strong incentives for certain parties independent of the issuer (such as underwriters, accounting professionals, and others) to take steps to ensure the quality of disclosure. [35] Given the interest of issuers in quick access to the capital markets, some commenters and reports have argued that these ''gatekeepers'' may not currently be given the amount of time they wish or need in which to perform their traditional ''due diligence'' role, particularly in connection with delayed shelf offerings. [36] Comment and specific data are solicited with respect to the nature and prevalence of such difficulties. Comment is requested on whether there is tension between the traditional role of ''gatekeepers'' and the issuer's desire to have quick access to the capital markets.

Can the independent ''gatekeepers'' role be reconfigured in order to facilitate the issuer's ability to access the capital markets quickly while maintaining or enhancing investor protection? If not, should reliance on such ''gatekeepers'' continue if a collateral effect may be to slow down access to the capital markets? Is the increasing ability of issuers to access the securities markets directly by themselves affecting the role of underwriters as ''gatekeepers,'' particularly in light of advances in technology and communications? Has there been a change in the role other parties play, such as analysts and rating agencies, that should be considered in evaluating the role of traditional ''gatekeepers?'' In what ways has the

[32] The Section 10(a) prospectus would be required to be on file subject to, if applicable, Rule 430A (17 CFR 230.430A) and Rule 424 (17 CFR 230.424).

[33] *See, e.g.,* Advisory Committee Report at pp. 5–6. *See also* Securities Act Rule 424(b), 17 CFR 230.424(b).

[34] *See, e.g.,* Advisory Committee Report at p. 17.

[35] *See* Securities Act Section 11, 15 U.S.C. 77k. *See also* Securities Act Section 12, 15 U.S.C. § 77l.

[36] *See, e.g.,* Committee on Federal Regulation of Securities, ''Report of Task Force on Sellers' Due Diligence and Similar Defenses Under the Federal Securities Laws,'' 48 *Bus. Law.* 1185 (1993).

''due diligence'' process changed to reflect these changes?

Are there mechanisms that could be adopted to allow such ''gatekeepers'' to operate effectively? Have advances in technology and communications and the existence, in some cases, of auditors engaging in interim reviews, and analysts and rating agencies made performance of the ''gatekeeper'' function possible on a continuous basis, or with little notice, due to the dissemination of information about issuers on a continuing basis?

Would requiring a separate filing that is subject to Section 11 liability (such as an Exchange Act filing incorporated by reference into the registration statement) focus the issuer and other parties on the quality of disclosure and the need to undertake due diligence? If so, should the timing thereof be dependent upon the type of security involved and the size of the offering? Should there be a different or supplemental mechanism (for example, a requirement that independent ''gatekeepers'' be notified of (or engaged for, as applicable) an offering at least several days in advance, or a requirement that a certificate be filed by independent ''gatekeepers'' prior to the offering that they have performed due diligence)? Would these mechanisms be consistent with today's demands for quick access to capital?

Would a ''disclosure committee'' of an issuer's board of directors operate as an effective ''gatekeeper?'' [37] Would such a ''disclosure committee'' likely improve the monitoring of disclosure by directors or improve the accuracy of disclosure? Would it result in a diminished oversight role for the rest of the board? What effect would it have on the liability of the directors serving on the committee? What effect would it have on the liability of the other directors on the board? Would board members be willing to serve on such a committee if there were no Commission guidance on liability? [38] How would it operate differently from the audit committee?

5. Staff review. The Advisory Committee Report states that the uncertainty surrounding whether there will be staff review of registration statement disclosure, in cases other than initial public offerings and major restructurings, results in delays and uncertainties that may not be justified in terms of public interest and investor protection benefits.[39] The Advisory Committee Report suggests that, for those issuers in a company registration system, under certain circumstances, staff review be eliminated with respect to pre-transaction filings in favor of enhanced reviews of Exchange Act filings that could provide a similar deterrent effect.

Only a small percentage of the Commission's current reviews of Securities Act registration statements focus on issuers that are neither making their initial public offering nor offering securities in connection with major restructurings.[40] Many of those reviews involve issuers that are either financially troubled or are offering a new type of security to the public. Comment is requested with respect to whether the Commission staff should shift its review of repeat issuers from Securities Act registration statements to the review of Exchange Act reports. If so, under what circumstances? Should the Commission instead consider: making public its criteria used to determine whether to review repeat issuers' registration statements; limiting its review of repeat issuers' registration statements to those issuers that are financially troubled or are engaging in an extraordinary transaction; or allowing repeat issuers to request review of their Exchange Act reports well in advance of a public offering? [41]

B. Request for Comment on Aspects of Specific Approaches

1. The Advisory Committee Report. a. Scope of the system. If the Commission were to ultimately adopt a version of company registration, should it be preceded by a temporary pilot program to test the system? If ultimately adopted, should it apply to issuers on a voluntary or mandatory basis? Should it be mandated for some issuers, and if so, which ones? Would it be appropriate for smaller issuers without significant additional investor protection mechanisms? Are the benefits of the company registration system that do not exist in the current shelf registration system likely to attract the participation of issuers given the different requirements of company registration, including the investor protection enhancements? If available only to larger issuers on a voluntary basis, are such issuers likely to opt in? The company registration system, in its recommended pilot stage, would not be available to all issuers currently eligible to rely on shelf registration for delayed offerings because, for example, it requires two years of reporting history as opposed to one year. The Advisory Committee believed that the extra ''seasoning'' from an additional year could help ensure the quality of the Exchange Act reporting structure. Is such an additional requirement appropriate?

If a voluntary company registration system were implemented, eligible issuers could be operating under one of two separate registration systems: the Form S–3 (allocated or universal shelf or non-shelf) registration, or company registration (modified or full). If such a system were to be implemented, should issuers electing to be part of the system be required to rely on company registration for all subsequent offerings of securities if they are to receive certain other benefits,[42] or should issuers be permitted to use a company registration system except when they issue unregistered securities in reliance upon statutory exemptions or Commission exemptive rules or regulations? Should any period of ineligibility to choose a company registration system be applied if an issuer changes its mind about participation in the system? Are there offerings of certain exempt securities and exempt transactions that an issuer should be permitted to make on an unregistered basis while participating in company registration? Should debt securities and equity securities be treated differently with regard to mandatory inclusion?

The current Securities Act regulatory framework applies different liability standards to registered offerings than

[37] *See* the full description of this concept at pp. 31–34 of the Advisory Committee Report. This concept is recommended by the Advisory Committee, although it is not identified as an essential element of company registration.

[38] Although the Advisory Committee Report stops short of recommending a particular change in the application of liability to ''gatekeepers,'' three members of the Advisory Committee, in a separate statement, expressed doubt that practitioners would recommend, or that corporations would adopt, some of the reforms proposed by the Advisory Committee, and particularly the disclosure committee concept, unless the Commission accompanied it with a transition in liability rules. *See* ''Separate Statement of John C. Coffee, Jr., Edward F. Greene, and Lawrence W. Sonsini'' in the Advisory Committee Report at Section IV., p. 38.

[39] *See* Advisory Committee Report at App. A, pp. 6–14.

[40] The Commission staff does not currently review takedown disclosure in a shelf registration statement prior to use, although the staff selectively reviews shelf registration statements prior to their effective date and selectively reviews other registration statements of repeat issuers, as well as Exchange Act reports of repeat issuers.

[41] *See* the discussion of staff review in the Advisory Committee Report at App. B, pp. 21–22.

[42] *See* Advisory Committee Report at App. B, pp. 34–39. Under the Advisory Committee recommendations, issuers that choose full company registration would be entitled to rely upon a narrower application of the resale limitations for ''affiliates'' and a narrower definition of who is an ''underwriter'' with respect to their securities. *See* Advisory Committee Report at App. B, p. 34.

unregistered offerings.[43] For example, strict liability under Section 11 applies to registered offerings but does not apply to unregistered offerings. Is this liability distinction likely to lead an issuer to prefer to retain the option of making unregistered exempt or offshore offerings? What would be the benefits to investors of a system in which all offerings are registered (full company registration) as opposed to the current system in which some offerings are registered and some are unregistered? What would be the negative consequences? Are the reasons that issuers choose unregistered private offerings (such as the need to keep certain information confidential, the activities of arbitrageurs or the identity of the purchasers) they addressed by the company registration model?[44]

b. Disclosure enhancements. The Advisory Committee Report suggests that a number of ''disclosure enhancements'' be a part of the company registration system, largely as methods to ensure the quality and currency of Exchange Act disclosure.[45] Comment is requested with respect to the effect of each of those enhancements and whether any resulting benefit would justify any additional cost of complying. For example, would a benefit be provided by the management certification (which is not filed but subject to penalty) that is not currently provided by the signature requirements? Would management be more likely to read the disclosure document or would it provide the certification, much in the same way some management reportedly execute signature pages, without reading the disclosure document?

The recommended mandatory enhancements focus on internal issuer action to improve disclosure, rather than seeking enhancement of Exchange Act reports through persons independent of the issuer. Comment is requested with respect to the relative costs and benefits of focusing on internal issuer action as compared to greater participation of independent ''gatekeepers.'' Should any voluntary enhancement involving independent parties (*e.g.* the review of interim financial results under SAS 71)[46] be mandated? Should any of the mandatory enhancements be voluntary? Are there additional or alternative enhancements that would provide investor protection at reasonable cost? For example, should other communications from the auditors to the issuer be reported in the Form 8–K filings (*e.g.* internal control weaknesses)? Should sales be prohibited during the days following the occurrence of any event (or certain specified events) triggering a Form 8–K before the report has been filed? As recommended by the Advisory Committee, should sales be prohibited until the market assimilates the information after such filing?

Could aspects of any of the proposed enhancements be modified to provide greater investor protection without disproportionately increasing the costs? For example, are there events currently reported on Form 10–Q that should be subject to an accelerated reporting schedule on Form 8–K?[47] Would any of the enhancements operate instead to reduce investor protection? Would any of these enhancements suggest that fewer persons take responsibility for the disclosure? If enhancements are beneficial, should they be mandated for some or all issuers reporting under the Exchange Act, regardless of participation in company registration?

2. Task Force Report Recommendations. The Task Force Report sets forth a list of recommended reforms for the regulatory system. The main focus of those recommendations was on revising the existing shelf registration system to provide more flexibility and accessibility. Those recommendations included:

- Allowing smaller issuers that have been reporting for a year to make delayed offerings (without altering the disclosure requirements or permitting forward incorporation by reference);
- Eliminating ''at the market'' offering restrictions;
- Allowing universal shelf registration for secondary offerings;
- Allowing issuers and majority-owned subsidiaries to be named as possible issuers on a shelf registration (without designating the issuer until takedown);
- Allowing reallocation of securities on a shelf registration statement by post-effective amendment;
- Allowing registration by seasoned issuers without any specification of the classes registered; and
- Allowing seasoned issuers to pay registration fees at the time of takedown.[48]

The Commission seeks comment with respect to each of the Task Force's recommendations relating to reforming shelf registration. In addition, the Commission requests comment specifically on the following aspects of the Task Force's suggested reforms.

1. Many Task Force shelf registration revisions are similar to the streamlining aspects of the company registration system. If a company registration approach is implemented, would any of the Task Force recommendations to revise the shelf system provide an added benefit to ineligible (or eligible) issuers without loss of investor protection?

2. Would the Task Force reforms eliminate any remaining concern of issuers regarding market overhang effects when equity securities may be issued from a universal shelf?

3. Would reform of the shelf registration process as suggested in the Task Force Report be appropriate only if investor protection enhancements also were added? If so, what enhancements would be needed? Would the shelf registration reforms minimize or exacerbate concerns about ensuring current information for the secondary markets?

3. Liberalizing the resale of unregistered securities. One approach to reforming the registration system involves the expansion of Rule 144A under the Securities Act.[49] Rule 144A has facilitated the creation of a private, relatively liquid, limited institutional market made up of qualified

[43] *See* Securities Act Sections 11, 12 and 17, 15 U.S.C. §§ 77k, 77*l*, and 77q. *See also Gustafson v. Alloyd Co. Inc.*, 115 S. Ct. 1061 (1995).

[44] *See* Advisory Committee Report at App. A, pp. 18–19, 36–38 and at App. B, p. 45.

[45] *See* Advisory Committee Report at pp. 26–28. Those enhancements include: a certification that is sent with the filing of each mandatory periodic report that two of four senior officers have reviewed the issuer's Exchange Act reports and that, to the best of their knowledge, they do not contain any material false or misleading information; a one-time management report to the audit committee or to the board of directors, if there is no audit committee, describing the procedures followed to ensure integrity of reports and to avoid insider trading (updated only if materially changed); an alteration of the due dates for Forms 8–K to 5 business days after the occurrence of the event where such reports currently allow 15 calendar days; an expansion of the events that require *per se* a filing of a Form 8–K; a new requirement that risk factors disclosure be included in the Form 10–K (amplified by a discussion of the benefits of ownership at the issuer's option); a review of interim financial information under SAS 71 by independent accountants at the time of filing (a voluntary enhancement); and a ''disclosure committee'' of the board of directors (a voluntary enhancement).

[46] *See* AICPA Statement on Auditing Standards No. 71 (May 1992).

[47] *See, e.g.*, the recommendations regarding acceleration of reporting of certain events in the Advisory Committee Report at p. 27.

[48] *See* the Task Force Report at pp. 36–40. The Task Force also recommended allowing smaller issuers that are not eligible for Form S–3 but have been reporting for a year to deliver their Exchange Act reports with their prospectuses (rather than reiterating that information in the prospectuses). All but the first and fourth of these recommendations noted above are recommendations of the Advisory Committee. *See* Task Force Report at pp. 36–40 and the Advisory Committee Report at p. 35, n. 40 and accompanying text.

[49] 17 CFR 230.144A.

institutional buyers (''QIBs''). Suggestions have been made that easing the restrictions on the types of securities and buyers that may participate in the Rule 144A market would reduce the cost of capital formation without a corresponding loss of investor protection.[50] Should the Commission consider expanding the use of Rule 144A as an alternative to, or in combination with, aspects of company registration? For example, should the fungibility restriction of Rule 144A[51] be revised and, if so, should it be eliminated or simply eased for a particular class of issuers or securities? Comment also is requested regarding whether the group of institutions eligible to be QIBs should be expanded and, if so, in what manner.[52] Would the expansion of this separate institutional market lessen investor protection in any way or harm the public interest?

If the Commission were to expand the use of Rule 144A, revise Rule 152,[53] and address further the problematic practices under Regulation S,[54] would enough of the complexity of the ''restricted versus unrestricted securities'' and ''private versus public offering'' dichotomies be eliminated, or would such actions move the line of demarcation but otherwise retain all the distinctions?[55] Would the complexity be eliminated if, in addition, the Commission shortened the holding period in Rule 144 or would this change move the line of demarcation?[56] Rule 144 is commonly viewed as setting the restrictions on resale of most unregistered securities (including sale of Rule 144A securities outside the QIB market). As such, would reducing the Rule 144 holding period have the effect of making the alternative of not registering securities more attractive to issuers and purchasers and, therefore, tend to minimize the need for further reform of the registration process? Would rule changes that encourage more offerings to be unregistered impact investor protection?

4. The four-part approach. Another recently articulated approach to modernizing the regulatory framework governing the offering process consisted of: (i) focusing on the nature of purchasers as one of the factors considered in defining the regulation of registered offerings; (ii) exempting offers from registration; (iii) allowing communications other than the statutory prospectus during the offering period, subject to Section 12(a)(2) (but not Section 11) liability; and (iv) allowing prospectus delivery by incorporation by reference of the full prospectus, where appropriate, and pre-confirmation physical delivery of prospectuses in all other cases.[57] Some of these ideas, such as use of constructive delivery and allowing non-statutory prospectus communications, are discussed above.

Comment is solicited with respect to whether the implementation of these reforms would suffice to achieve full disclosure in the modern offering process. If not, what other actions would be needed? Would the deregulation of offers resolve some of the complexities resulting from the statutory distinction between private and public offerings?

Would there be any loss of investor protection as a result of the deregulation of offers due to the fact that no document need be filed until the time of sales, especially with respect to issuers that do not file under the Exchange Act? Conversely, would there be an increase in information without the diminution of investor protection if the deregulation resulted in the freedom to provide written, profile disclosure not conforming to the traditional prospectus? Are there classes of registered offerings regarding which the capital markets have no need for advance notice of the issuers' intentions to offer securities? Should this approach be considered only for certain classes of issuers and, if so, which ones?

5. ''Pink herring'' concept. Another recent suggestion is that offers be permitted to be made by any issuer after filing a ''pink herring'' registration statement consisting of limited information regarding the price, the type of security, the method of distribution and financial results.[58] An initial nominal fee would be paid with the pink herring filing. Thereafter, public offers and general solicitations could be made. Although all offers would be registered under this approach, whether public or private, unregistered sales to qualified non-retail investors could be made thereafter in compliance with, for example, Regulation D.[59]

Comment is solicited with respect to whether this proposal would resolve much of the strain resulting from the erosion of distinctions between private and public offerings. Would there be a loss of investor protection due to the fact that only limited disclosure need be filed until the time of sales? Would there be increased investor protection from this proposal in comparison to a system where offers are not regulated at all and no filing is made with the Commission until the time of sale? Would a benefit result from the potential involvement of some ''gatekeepers?'' Would there be a benefit from requiring a filing with the Commission that could be reviewed by offerees or used by the Commission in the event of fraudulent offers? Should this approach be considered only for certain classes of issuers, such as non-reporting issuers, and, if so, for which ones? Should a pink herring filing include limited company information as well as limited transaction-specific information?

6. Private and public offerings—revisiting rule 152. Issuers that undertake a private offering may later decide to make a public offering instead. The safe harbor provided by Securities Act Rule 152[60] deems the Section 4(2) exemption to continue to apply to the private transaction in those circumstances if the private offering has been terminated prior to the

[50] *See, e.g.,* J. Coffee, Jr., ''Re-Engineering Corporate Disclosure: The Coming Debate Over Company Registration,'' 52 Wash. & Lee L. Rev. 1143, 1177–79 (1995).

[51] Under current Rule 144A, securities that are fungible when issued with those traded on a national securities exchange or quoted in a U.S. automated inter-dealer quotation system may not be sold in the 144A market. *See* Rule 144A(d)(3), 17 CFR 230.144A(d)(3).

[52] Under Rule 144A, securities may only be offered or sold to QIBs. To be eligible to be a QIB, an institution must own and invest on a discretionary basis at least $100 million in securities of unaffiliated entities, or, if a registered dealer (acting for its own accounts or on behalf of other QIBs), at least $10 million in securities of unaffiliated entities. Banks, savings associations and equivalent foreign institutions must also have a net worth of at least $25 million to be eligible.

[53] See *infra* Section II.B.6.

[54] Securities Act Release No. 7190 (June 27, 1995) [60 FR 35663].

[55] Perceived difficulties arising from these distinctions include: prohibitions on combining a private offer and a public sale; Section 5 ''gun-jumping'' issues arising from converting a private offering to a public offering; and general solicitation and integration concerns arising when converting an offering begun after filing a registration statement to a private offering. *See* S. Keller, ''Basic Securities Act Concepts Revisited,'' INSIGHTS, vol. 9 at pp.5–12 (May 1995) and Advisory Committee Report, App. A at pp. 22–32.

[56] *See* Securities Act Release No. 7187 (June 27, 1995) [60 FR 35645]. Rule 144 provides a safe harbor for sales under Securities Act Section 4(1), 15 U.S.C. 77d(1), for persons selling unregistered restricted securities and for affiliates of the issuer selling any issuer securities. The participation of brokers and dealers acting as intermediaries in such resales is exempt under Securities Act Section 4(3) or 4(4), 15 U.S.C. 77d(3) or 77d(4).

[57] These suggestions were made in a 1995 speech to the Committee on Federal Regulation of Securities of the American Bar Association by Linda C. Quinn, then Director of the Division of Corporation Finance. *See* L. Quinn, ''Reforming the Securities Act of 1933—A Conceptual Framework,'' INSIGHTS, vol. 10, pp. 25–29 (1995).

[58] This approach is described in more detail in the Task Force Report at p. 31.

[59] 17 CFR 230.501 through 230.508 and Preliminary Notes thereto.

[60] 17 CFR 230.152.

commencement of the public offering. In the absence of the safe harbor, the exemption for the private offering may be in doubt, as it could be integrated with the public offering. The Task Force Report recommended that Rule 152 be revisited with a view towards permitting a company to switch from a private offering to a public offering without an intervening termination of the private offering.[61] Comment is solicited with respect to whether this proposal would resolve much of the strain resulting from the erosion of distinctions between private and public offerings. Would this enhance an issuer's ability to access the capital markets more efficiently? Would there be a loss of investor protection from such a change? If Rule 152 is expanded, should its availability be limited to offerings other than those that may give rise to disclosure abuses (*e.g.* blind pools, blank check companies or penny stocks)?

Similarly, should the Commission modify its view that the act of filing a registration statement in connection with a non-shelf offering is deemed to commence a public offering in all cases? Should the Commission create a safe harbor for private offerings that are undertaken while the issuer has ''quietly'' filed a registration statement?[62]

7. General solicitation. Effective June 10, 1996, the Commission adopted Rule 1001,[63] which exempts from registration under the Securities Act certain small offerings that are exempt from state law registration under the California Corporations Code.[64] The California law provides an exemption for offerings by California-related issuers to ''qualified purchasers'' (which are similar to accredited investors as defined in Securities Act Regulation D). Under the California law, a general announcement with limited contents may be widely published and circulated, much like that under the Commission's Regulation A ''test the waters'' process. Comment is solicited with respect to whether the Commission should extend the approach in Rule 1001 to offerings on a nationwide basis so that a general solicitation could precede an exempt sale to qualified purchasers.

Comment also is requested with respect to a broader relaxation of general solicitation prohibitions on offerings made under Regulation D Rules 505 and 506.[65] Is the inability to reach out broadly to find qualified investors for such Regulation D offerings unnecessarily hampering the utility of the regulation and raising costs to issuers? Would relaxation of such prohibition be appropriate?[66]

8. Other Questions. Would modification of the existing shelf registration system provide the equivalent benefits to issuers and other participants in the markets, and investors, in both the primary and secondary markets, as the new company registration system may provide?

Would modifications to the existing regulatory system (including shelf registration) provide equivalent benefits to eliminating the need for regulatory distinctions (such as ''private versus public,'' ''domestic versus offshore,'' and other similar issues) as would the new company registration system if companies opted into full company registration?

Would it be better to have a pilot program for company registration, while maintaining the current system, or should instead the current system be modified?

III. Conclusion

The Commission is soliciting public comment on a variety of issues relating to the Securities Act offering process, including the effect of any changes in the regulatory scheme on the operation of both the primary and secondary markets. In addition to responding to the questions presented in this release, the Commission encourages commenters to provide any information to supplement the information and assumptions contained herein regarding the functioning of the capital-raising process, the roles of market participants, the advantages and disadvantages of suggested reforms, the expectations of investors, and the other matters discussed. The Commission also invites commenters to provide views and data as to the costs and benefits associated with possible changes discussed above in comparison to the costs and benefits of the existing regulatory framework. The Commission also seeks comment concerning whether, given the passage of time and the evolution of the capital markets since adoption of the registration system, legislative reform is needed. In order for the Commission to assess the impact of changes to the Securities Act regulatory scheme on capital formation and the protection of investors, comment is solicited from the point of view of investors, issuers, underwriters, broker-dealers, analysts, and other interested parties, including accountants and attorneys involved in the registration process.

By the Commission.

Dated: July 25, 1996.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–19461 Filed 7–30–96; 8:45 am]

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[61] *See* Task Force Report at pp. 29–30.

[62] An issuer ''quietly'' files a registration statement when the filing of such document with the Commission is not accompanied by a marketing effort for the securities, including the circulation of a preliminary prospectus.

[63] 17 CFR 230.1001 (Regulation CE).

[64] Securities Act Release No. 7285 (May 1, 1996) [61 FR 21356].

[65] 17 CFR 230.505 and 230.506.

[66] See the discussion and solicitation of comment contained in Securities Act Release No. 7185 (June 27, 1995) [60 FR 35638]. Comment letters have been received in response to that solicitation of comments and are available in the Commission's Public Reference Room File No. S7–15–95. Such letters will be considered in connection with this release and need not be resubmitted.

[Release No. SIPA–159/July 25, 1996]

Securities Investor Protection Act of 1970; Securities Investor Protection Corporation; Notice of Determination That WestLB Securities Americas Inc. Is a Member of SIPC

Notice is hereby given that on June 11, 1996, the Securities Investor Protection Corporation (''SIPC'') informed the Securities and Exchange Commission (''Commission'') that WestLB Securities Americas Inc. (''WestLB'') is no longer eligible for the exclusion from SIPC membership under section 3(a)(2)(A)(i)[1] of the Securities Investor Protection Act of 1970 (''SIPA''). The Commission is publishing this notice to inform the public that, pursuant to SIPC's determination, WestLB is now a member of SIPC.

I. Introduction

Section 3(a)(2)[2] of SIPA provides that, with certain exceptions, all broker-dealers registered pursuant to Section 15(b)[3] of the Securities Exchange Act of 1934 are members of SIPC. Section 3(a)(2)(A)(i) provides an exception to SIPC membership for broker-dealers whose principal business, in the determination of SIPC, taking into account the business of affiliated entities, is conducted outside the United States and its territories and possessions.

II. Background and Discussion

WestLB, formerly known as RWS Securities, Inc., is a corporation organized under the laws of the United States and is a wholly owned subsidiary of Westdeusche Landesbank

[1] 15 U.S.C. § 78ccc(a)(2)(A)(i) (1995).

[2] 15 U.S.C. § 78ccc(a)(2)(A) (1995).

[3] 15 U.S.C. § 78o(b) (1995).

Gironzentrale (''Westdeusche Landesbank''). WestLB registered with the Commission pursuant to Section 15(b) on June 4, 1976 and is a member of the National Association of Securities Dealers, Inc. In 1985, SIPC determined that WestLB qualified for an exception from SIPC membership under Section 3(a)(2)(A)(i), and on July 17, 1985, the Commission affirmed SIPC's determination that WestLB was a person whose business was conducted outside the United States, its territories and possessions, and therefore was not a member of SIPC.[4] At that time, WestLB had only one customer, Westdeusche Landesbank, located in Germany, and the firm cleared all of its transactions on a fully disclosed basis through a SIPC member. Although WestLB received revenues from its clearing broker in the United States, those revenues stemmed exclusively from transactions conducted by WestLB for Westdeusche Landesbank, acting on behalf of its customers located in Germany.

However, on June 11, 1996, SIPC determined that WestLB is no longer eligible for exclusion from SIPC membership under Section 3(a)(2)(A)(i) of SIPA because WestLB's principal business is no longer conducted outside the United States, its territories or possessions.[5] In the information supplied to SIPC, WestLB now reports that it has U.S. customers and that the majority of its gross revenues from the securities business for its latest fiscal year arise out of transactions in the United States, its territories, and possessions.

III. Protection Under SIPA

The effect of SIPC's determination is that WestLB now is a member of SIPC; therefore, WestLB's customers are afforded the protections of SIPA. In the event of a broker-dealer's liquidation, under SIPA, customers of a failed firm receive securities that are in the possession of the firm, that are registered in their names and that are not in negotiable form. Customers are then entitled to their pro rata share of all remaining cash and securities of customers held by the firm. After the above distribution, SIPC funds are available to satisfy the remaining claims of each customer up to a maximum of $500,000, including no more than $100,000 for cash claims (as distinct from claims for securities).

Margaret H. McFarland,

Deputy Secretary.

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[4] Release No. SIPA–124 (July 17, 1985).

[5] Letter from Stephen P. Harbeck, Secretary, SIPC, to Arthur Levitt, Chairman, SEC, dated June 11, 1996.

[Release No. 34–37456; File No. SR–CBOE–96–48]

Self-Regulatory Organization; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to the Consolidation of Minor Rule Violation Cases Involving the Same or a Related Transaction or Occurrence

July 19, 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 10, 1996, the Chicago Board Options Exchange, Incorporated (''CBOE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the CBOE, the Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Chicago Board Options Exchange, Incorporated (''CBOE'' or the ''Exchange'') proposes to amend its Minor Rule Violation rule to permit the consolidation of, into one hearing, the review of certain conduct involving trading conduct or decorum fines levied against different members and involving the same or related transaction or occurrence. The text of the proposed rule change is available at the Office of the Secretary, CBOE 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, CBOE 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 CBOE 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, Proposed Rule Change

The purpose of the proposed rule change is to amend the Exchange's Minor Rule Violation rule to permit the Exchange's Business Conduct Committee (''BCC'') to consolidate in a single hearing the review of trading conduct or decorum fine exceeding $2500 and the review of such fines not exceeding $2500 where the alleged violations involve the same or a related transaction or occurrence.[1] If the review of a fine is to be based upon written submissions, then that review may not be consolidated. Currently, subsection (c)(1) of Rule 17.50 permits any person against whom a fine exceeding $2500 has been imposed pursuant to subsection (g)(6) (Violations of Trading Conduct and Decorum Policies) of the Rule to contest the determination by filing a written answer pursuant to Exchange Rule 17.5, at which point the matter becomes subject to review by the BCC. On the other hand, subsection (d)(1) of Rule 17.50 requires a person contesting a fine not exceeding $2500 imposed pursuant to subsection (g)(6) to make a written application pursuant to Rule 19.2(a), at which point the matter becomes subject to review by the Appeals Committee. In short, matters involving violations of the trading conduct and decorum policies pursuant to subsection (g)(6) are subject to review by different Exchange Committees depending upon whether the fine is (i) above $2500 (Business Conduct Committee) or (ii) $2500 or below (Appeals Committee).

The Exchange has been faced with at least one situation where a trading conduct and decorum policy incident on the floor resulted in fines of varying amounts for the participants involved, which subsequently lead to separate hearings for the different individuals before different Exchange Committees. The Exchange believes that granting the BCC the authority to conduct a consolidated hearing covering all violations resulting from the same or a related transaction or occurrence would

[1] Examples of conduct that are considered to be violations of the Exchange's trading conduct and decorum policy are: use of abusive language, abusing Exchange property, violation of the Exchange's book priority, physical violence, food or drink on the floor, and unbusinesslike conduct. The Exchange periodically distributes to its membership a list of the conduct considered to be violative of the policy and a fine schedule for the various types of conduct. Currently, the fine schedule permits Exchange Floor Officials to fine a member more than $2,500 under the trading conduct and decorum policy only when the conduct involves fighting on the floor.

save time and staff resources. In addition, this proposal generally would be less burdensome on the individuals involved, who under the current rules must often appear at two hearings either as the subject or as a witness.

A request to consolidate Minor Rule Violation cases under Rule 17.50(g)(6) could be made to the BCC by any of the persons who were fined or by the Exchange before the start of either of the hearings. In addition, the BCC could decide to consolidate hearings involving the same or a related transaction or occurrence on its own without a request from the parties involved. After receiving a request to consolidate or after deciding to consolidate on its own, the BCC would grant all parties to the hearings a reasonable opportunity to submit a written statement in support of or in opposition to the decision to consolidate a final decision to consolidate would be made by the BCC which would consider all factors deems relevant, including the staff resources and time that may be saved by the consolidation and whether the consolidation could potentially be prejudicial to the parties involved.

By establishing a procedure to consolidate certain cases involving Minor Rule Violations, the Exchange would be able to save staff resources and time, thereby improving the efficiency with which the Exchange performs its regulatory functions. For these reasons, this policy furthers the objectives of Section 6(b)(7) of the Act in that it is designed to provide a fair procedure for the disciplining of members and persons associated with members. This policy also furthers the objectives of Section 6(b)(5) of the Act in that it is designed 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 to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE 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 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 fix 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 Room. Copies of the filing will also be available for inspection and copying at the principal office of CBOE. All submissions should refer to the file number of the caption above and should be submitted by August 21, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–19471 Filed 7–30–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37471; File No. SR–NASD–96–17]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the Definitions of Bona Fide Independent Market and Bona Fide Independent Market Maker

July 23, 1996.

I. Introduction

On April 24, 1996, the National Association of Securities dealers, Inc. (''NASD'' or ''Association'') 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 Rule 2720 of the NASD's Conduct Rules [3] to amend the definitions of ''bona fide independent market'' and ''bona fide independent market maker.'' A notice of the proposed rule change appeared in the Federal Register on May 24, 1996.[4] The Commission received one comment letter endorsing the proposed rule change.[5] The Commission is approving the proposed rule change.

The proposed rule change addresses potential conflicts of interest that arise regarding the conduct of due diligence and the pricing of securities issued by an NASD member, its parent, or an affiliate of a member that is going public (''Rule 2720 offering''). Rule 2720 also would apply to an issuer with which the member has a conflict of interest. The Rule prohibits a member from underwriting or participating in the underwriting or distribution of a Rule 2720 offering of equity or debt unless the price of the equity offering is established no higher, or the yield of the debt offering is established no lower, than the price recommended by a qualified independent underwriter. The qualified independent underwriter also must participate in the preparation of the registration statement and prospectus, offering memorandum, or

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1995).

[3] Prior to the NASD *Manuel* reorganization, this rule was designated as Schedule E of the NASD's By-Laws. *See*, NASD *Notice to Members* 96–24 (April 1996).

[4] Securities Exchange Act Release No. 37223 (May 17, 1996), 61 FR 26239. Also, the NASD granted an extension of the time for Commission action on this rule filing to July 31, 1996. Letter to Katherine A. England, Assistant Director, Division of Market Regulation, SEC, from John Ramsay, Deputy General Counsel, NASD Regulation, Inc. (''NASDR''), dated July 19, 1996.

[5] Letter from Carter K. McDowell, Assistant General Counsel, BANC ONE Corporation, to Jonathan G. Katz, Secretary, SEC, dated June 13, 1996.

similar document, and exercise the usual standards of ''due diligence'' regarding the offering. Rule 2720, however, provides an exception from the qualified independent underwriter requirement for offerings of equity securities for which a bona fide independent market exists. Rule 2720 defines a bona fide independent market as a market in a security which has, among other things, at least three bona fide independent market makers.

The NASD reviewed the definitions of bona fide independent market and bona fide independent market maker, which were part of the original version of Rule 2720 when it was adopted as schedule E in 1972. The NASD proposes to revise the definitions to incorporate new requirements for listing, public float, trading volume, price, number of bona fide independent market makers, and limitations on the relationship of the bona fide independent market maker to the issuer that will significantly improve the criteria used for determining if a market of sufficient depth and duration exists to constitute an efficient pricing mechanism for the securities to be distributed. The proposed new definitions will permit members, in appropriate situations, to conduct a secondary offering without the burden and expense of engaging a qualified independent underwriter. However, in situations where the market cannot be relied on to price the securities appropriately, a member would still be required to enlist the services of such an underwriter.

II. Description of the Proposal

Bona Fide Independent Market Definition

Registration Requirement

The proposed rule change retains the current requirement in the definition of bona fide independent market that it must be a market in a security which is registered pursuant to Sections 12(b) or 12(g) of the Act of issued by a company subject to Section 12(d) of the Act.

Price Requirement

The current definition of bona fide independent market does not contain a price requirement. The NASD is concerned that a public float requirement, as set forth blow, without a corresponding standard for the market price of the securities does not establish a valid benchmark for a bona fide independent market. Therefore, the NASD is proposing to adopt a new provision in the definition of a bona fide independent market that would require that the security have a market price of at least five dollars ($5.00) per share as of the close of trading on the day immediately preceding the filing of the registration statement or offering circular, and have traded at a price of $5 or more per share on at least 20 of the 30 trading days immediately preceding the date on which the offering circular or registration statement was filed.

Listing and Market Maker Requirements

The current definition of bona fide independent market does not contain a listing requirement. The NASD believes that a listing on a national securities exchange or the Nasdaq Stock Market indicates that the security trades in an efficient, regulated, and active market and strengthens the definition of bona fide independent market by adding the qualitative standards of a regulated trading environment, such as quote transparency and real-time transaction reporting. Therefore, the NASD is proposing to adopt as one of the requirements for the definition of a bona fide independent market that the security, for at least 90 calendar days immediately preceding the filing of the registration statement or offering circular, have been listed on, and is in compliance with, the requirements for continued listing on (i) a national securities exchange, or (ii) The Nasdaq Stock Market so long as such Nasdaq listing has two bona fide independent market makers for a period of at least 30 trading days immediately preceding the filing of the registration statement or offering circular and the effective date of the offering. Securities quoted on the NASD OTC Bulletin Board service and those traded in the general over-the-counter market, such as the ''pink sheets,'' cannot rely on this requirement.

The proposed requirement that the security have at least two bona fide independent market makers for listings on the Nasdaq Stock Market would replace the current requirement of at least three bona fide independent market makers. Given that a security is permitted to be listed on the Nasdaq Stock Market with two market makers, the NASD believes that two market makers are sufficient to demonstrate the presence of a bona fide independent market irrespective of any Rule 2720 affiliate that may also be making a market in the issuer's securities.

Trading Volume and Public Float Requirements

The current definition of bona fide independent market contains independent requirements for trading volume and public float. Under the current rule, a security is considered to have a bona fide independent market if, for the 12 months immediately preceding the filing of the registration statement, it has *both* an aggregate trading volume of at least 100,000 shares *and* a minimum of 250,000 publicly held shares. Under the proposed rule change, for a bona fide independent market to exist, a security must have for the 90 calendar day period immediately preceding the filing of the registration statement or offering circular *either* an aggregate trading volume of at least 500,000 shares *or* a minimum of 5,000,000 publicly held shares outstanding.

The NASD believes that raising the current aggregate 12-month trading volume requirement from 100,000 shares to 500,000 shares in the 90-calendar-day period before the filing of the registration statement or offering circular provides a criterion that better reflects an active, current and, presumably, efficient market. The increased volume requirement intimates a pricing efficiency which, in turn, establishes a better basis for justifying an exemption from the requirement that a qualified independent underwriter establish the price of the offering.

The NASD considers the alternative requirement of a five-million-share public float as the minimum necessary to ensure that the market for an issuer's securities will not suffer undue volatility from the dilution that occurs when a large number of shares is offered to the public. In this regard, the NASD notes that a typical ''follow-on'' offering[6] of a company's stock adds between one- and two-million shares to the public float, which is equal to a 40 percent dilution at the five-million-share level.

Bona Fide Independent Market Maker Definition

The Rule currently defines a bona fide independent market maker as one which meets certain net capital requirements, publishes bona fide bid and ask quotations in a recognized interdealer quotation system, furnishes such quotes to other brokers and dealers on request, and stands ready, willing and able to effect transactions at quoted prices with other brokers and dealers. The current standards of the definition were developed at the time the Rule was adopted in 1972 as Schedule E and were applied to all securities in the over-the-counter market.

The NASD believes that the current standards for the definition of bona fide independent market maker are no longer necessary in light of the proposed

[6] The term ''follow-on'' offering refers to a secondary offering of shares by the issuer.

requirement of the definition of bona fide independent market that the security be listed on The Nasdaq Stock Market. Market makers for securities listed on The Nasdaq Stock Market are required to meet certain net capital standards, publish bona fide bid and ask quotations in Nasdaq, which is a recognized interdealer quotation system, furnish quotes to other brokers and dealers on request, and stand ready, willing and able to effect transactions at quoted prices with other brokers and dealers. Therefore, the NASD is incorporating the current requirements into a single standard requiring that the market maker be registered as a Nasdaq market maker.

The NASD believes that the definition of bona fide independent market maker should also provide investors with greater assurance that the market maker's activities are independent of any influences that may arise when the issuer's ownership of securities or interest in the offering become material. Therefore, the NASD is proposing to adopt as part of the revised definition that a bona fide independent market maker (i) must not be a recipient of any of the net proceeds of the offering, (ii) must not be an affiliate of the entity issuing the securities, and (iii) does not in the aggregate itself beneficially own, nor together with its associated persons, at the time of the filing of the registration statement or offering circular, five percent or more of the outstanding voting securities of the entity issuing the securities, if a corporation, or five percent or more of a partnership interest in the distributable profits or losses of the entity, if a partnership.

III. Discussion

The Commission believes that the proposed rule change is consistent with the Act and the rules and regulations promulgated thereunder. Specifically, the Commission believes that approval of the proposed rule change is consistent with Sections 15A(b)(6)[7] and 15A(b)(9)[8] of the Act. Pursuant to Section 15A(b)(6), the proposed rule change clarifies and strengthens the criteria for determining a bona fide independent market and the related concept of a bona fide independent market maker. In so doing, the NASD has removed an impediment to the functioning of a free and open market by improving the criteria used for determining that a market of sufficient depth and liquidity exists to constitute an efficient pricing mechanism for the securities to be distributed. The new definitions also promote economic efficiency because in applicable situations, members will now be able to conduct secondary offerings without incurring the time and expense of engaging a qualified independent underwriter.

The Commission requested clarification from the NASD regarding the term ''traded'' in proposed paragraph (b)(3)(B) of Rule 2720.[9] NASDR has confirmed that ''traded'' encompasses any completed transaction of the day for the security during normal trading hours, up to and including the last reported trade for the day.[10]

Pursuant to Section 15A(b)(9), the proposed rule change does not impose any unnecessary or inappropriate burden on competition, but reflects an attempt to update definitions that contain provisions that no longer adequately represent current market practices or pricing. The revised definitions are stringent enough to properly regulate public distributions where a member issues its own securities or where a conflict or control relationship with a parent or affiliate exists, while still providing protection for investors in this type of offering.

IV. Conclusion

For the above reasons, the Commission believes that the proposed rule change is consistent with the provisions of the Act, and in particular with Sections 15A(b)(6) and 15A(b)(9).

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change (SR–NASD–96–17) be, and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–19469 Filed 7–30–96; 8:45 am]

BILLING CODE 8010–01–M

[7] Section 15A(b)(6) requires the Commission to determine that a registered national securities association's rules are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and national market system; and are not designed to permit unfair discrimination among customers, issuers, brokers, or dealers.

[8] Section 15A(b)(9) requires the Commission to determine that a registered national securities association's rules not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

[9] The relevant language of paragraph (b)(3)(B) to Rule 2720 is as follows: ''. . . and which has traded at a price of five dollars or more per share in at least 20 of the 30 trading days. . . .''

[10] Letter to Katherine A. England, Assistant Director, Division of Market Regulation, SEC, from Alden S. Adkins, General Counsel, NASD Regulation, Inc., dated July 3, 1996. *See also* letter to Katherine A. England, Assistant Director, Division of Market Regulation, SEC, from John Ramsay, Deputy General Counsel, NASD Regulation, Inc., dated July 15, 1996, confirming that the definition applies to trades completed during normal trading hours.

[11] 15 U.S.C. 78s(b)(2) (1988).

[12] 17 CFR 200.30–3(a)(12).

[Release No. 34–37476; File No. SR–NYSE–95–43]

Self-Regulatory Organizations; the New York Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Amendments to Exchange Rules 27, 476(a)(11), and 477

July 24, 1996.

On January 5, 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 Exchange Rules 27, 476(a)(11), and 477 to require persons under Exchange jurisdiction to comply with information requests from commodities markets and associations and foreign self-regulatory organizations and associations.

The proposed rule change was published for comment in the Federal Register on February 16, 1996.[3] No comments were received on the proposal.

Currently, Rule 27 authorizes the Exchange to enter into information sharing agreements with domestic and foreign self-regulatory organizations or associations,[4] but does not provide for such agreements with commodities regulatory organizations such as contract markets and registered futures associations.

Rule 476(a)(11) permits the Exchange to initiate a disciplinary proceeding against a member, member organization, allied member, approved person, registered or non-registered employee of a member organization or a person otherwise subject to the jurisdiction of the Exchange, for failure to furnish information to, or appear or testify before the Exchange or another domestic self-regulatory organization. The rule

[1] 15 U.S.C. § 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 36831 (Feb. 12, 1996), 61 FR 6279 (Feb. 16, 1996) (notice of File No. SR–NYSE–95–43).

[4] The Act defines the term ''self regulatory organization'' as any national securities exchange, registered securities association, or registered clearing agency, or (solely for purposes of sections 19(b), 19(c), and 23(b) of the Act) the Municipal Securities Rulemaking Board established by section 15B of the Act. 15 U.S.C. § 78c(a)(26). Although the Act does not define the term ''foreign self-regulatory organization,'' the NYSE interprets it to include non-U.S. commodities markets. Letter, *infra* note 5.

does not authorize the Exchange to initiate such a proceeding when someone under Exchange jurisdiction fails to cooperate with a commodities market or association or a foreign self-regulatory organization or association.

Rule 477 permits the Exchange to require a member, member organization, allied member, approved person or registered or non-registered employee of a member organization that is terminating his or her status as such to comply with a request to appear, testify, submit books, records, papers, or objects and to respond to written requests and attend hearings in the same manner and to the same extent as if such person had maintained his or her status, if, prior to such termination, or during the period of one year immediately following the receipt by the Exchange of written notice of the termination, the Exchange makes such a request in writing. The rule does not require the above parties to comply with such requests from commodities markets or associations or from foreign self-regulatory organizations or associations.

The Exchange is proposing to amend Rule 27 to add contract markets and registered futures associations, as referenced in Rule 476(a)(11), to the list of entities with which the Exchange is authorized to enter into information sharing agreements.[5] The extent to which those under the Exchange's jurisdiction would be required to cooperate would be predicated on the subject matter or scope of the relevant information sharing agreement. Rule 476(a)(11) would be amended to require that those under its jurisdiction cooperate with information requests from domestic commodities markets and associations and foreign self-regulatory organizations and associations as well as from domestic securities markets.[6] Rule 477 would be amended to require compliance with information requests submitted by the organizations specified in Rule 476(a)(11).[7]

The Exchange believes that it is appropriate to expand the scope of its disciplinary proceedings to include a failure to cooperate with contract markets and registered futures associations and foreign self-regulatory organizations and associations because of its continued commitment to the enhancement of its regulatory efforts and the regulatory efforts of other market centers with which the Exchange has agreed to share information.

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).[8] 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 promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest.[9]

The Commission believes that the amendment to Rule 27, adding contract markets and registered futures associations as referenced in Rule 476(a)(11) to the list of entities with which the NYSE may enter into information sharing agreements, is appropriate.[10] As previously in effect, Rule 27 limited the NYSE by not providing for such agreements with contract markets and registered futures associations. By adding these entities as referenced in Rule 476(a)(11), the amendment furthers the interest of the public and provides for the protection of investors by allowing the Exchange to assist other domestic markets to conduct prompt inquiries into possible trading violations and other possible misconduct. The Commission believes that the exercise of this authority will enhance the NYSE's surveillance program and provide the Exchange with sufficient information necessary for it to carry out its oversight responsibilities with respect to enforcement-related matters in an efficient and expeditious manner.

The Commission also believes that the amendment to Rule 476(a)(11), authorizing the Exchange to initiate a disciplinary proceeding when those under its jurisdiction fail to cooperate with information requests from contract markets as referenced in Section 6(a) of the Commodity Exchange Act,[11] any registered futures association as referenced in Section 17 of the Commodity Exchange Act,[12] or any foreign self-regulatory organization or association with which the Exchange has entered into an agreement, furthers the interest of the public and provides for the protection of investors by allowing the Exchange to appropriately discipline those members that are guilty of misconduct.

Finally, the Commission believes that the amendment to Rule 477, expanding the Exchange's authority to require a member, member organization, allied member, approved person, or registered or non-registered employee of a member or member organization to comply with any requests of an organization or association included in Rule 476(a)(11) to appear, testify, submit books, records, papers, or tangible objects, respond to written requests, and attend hearings subject to certain conditions, will further the interest of the public and provides for the protection of investors by allowing certain organizations and associations to acquire information necessary to ensure that Exchange members are conducting business in conformance with the Constitution and Rules of the Exchange.

The Commission believes that the proposed rule change achieves a reasonable balance between the need for regulatory cooperation and protection of

[5] NYSE Rule 476(a)(11) defines the terms ''contract market'' and ''registered futures association'' by reference to Sections 6(a) and 17 of the Commodity Exchange Act, respectively. *See* 7 U.S.C. §§ 7–8. Under Section 6(a), the term contract market refers to a board of trade that the Commodity Futures Trading Commission (''CFTC'') has designated as such. *Id.* Under Section 17, the term registered futures association refers to an association of persons registered as such with the CFTC. *Id.*

The Exchange has interpreted the term ''foreign self-regulatory organization or association'' to include entities which are non-U.S. commodities markets and has relied on this interpretation to enter into agreements with foreign self-regulators that are organized as commodities markets such as the London International Financial Futures and Options Exchange. *See* Letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Ivette López, Assistant Director, Division of Market Regulation, SEC dated July 19, 1996.

[6] In lieu of commencing disciplinary proceedings pursuant to NYSE Rule 476(a)(11), the Exchange could impose a fine not to exceed $5,000 pursuant to the terms of its minor rule violation plan as set forth in NYSE Rule 476A. *See* Securities Exchange Act Release No. 25862 (Jun. 28, 1988), 53 FR 25400 (Jul. 6, 1988) (order approving File No. SR–4–284).

[7] The NYSE has stated that, in connection with Rules 27, 476(a)(11), and 477, it is its policy to afford NYSE members the same rights and procedural protections that such person or entities would have if the Exchange had initiated the request for information or testimony. Telephone conversation on February 2, 1996 between Donald Siemer, Director, Market Surveillance, NYSE and George A. Villasana, Attorney, Division of Market Regulation, SEC. In furtherance of this policy, the Exchange will always act as an intermediary between another SRO, a contract market or a registered futures association and the exchange member, member organization, or other designated person under Rule 476(a)(11) from whom information or testimony is being sought for any inquiry made pursuant to an agreement under Rule 27. *Id.*

[8] 15 U.S.C. § 78f(b).

[9] 15 U.S.C. § 78f(b)(5).

[10] The Commission understands NYSE Rule 476(a)(11), as amended, to encompass contract markets only to the extent that they have been designated as such by the CFTC and futures associations only to the extent that they have been registered with the CFTC. *See* Release No. 34–36831, *supra* note 3 (stating that NYSE Rule 27, as in effect prior to this amendment, does not authorize the Exchange to enter into information sharing agreements with commodities regulatory organizations such as contract markets and registered futures associations).

[11] 7 U.S.C. § 8.

[12] 7 U.S.C. § 21.

the procedural rights of Exchange members and others from whom information or testimony is requested. The rule would provide the Exchange with the authority to seek cooperation by certain persons with respect to inquiries and investigations resulting from regulatory agreements between the Exchange and other self-regulatory organizations and associations while explicitly providing any person or entity required to furnish information or testimony pursuant to the rule with the same procedural rights that they would have if the request was pursuant to an Exchange initiated inquiry or investigation.[13]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change (SR–NYSE–95–43) is approved.

For the Commission, by the Division of Market Relation, pursuant to delegated authority.[15]

[FR Doc. 96–19466 Filed 7–30–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37472; File No. SR–Phlx–96–28]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to the Listing of Hybrid Securities

July 23, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on July 19, 1996, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') 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 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 is proposing to amend Phlx Rule 803(f) in order to conform the Exchange's listing criteria for hybrid securities to those of the New York Stock Exchange (''NYSE'') and the American Stock Exchange (''Amex'').

The text of the proposed rule change is available at the Exchange and the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In March 1992, the Commission approved the adoption of subsection (f) under Phlx Rule 803 containing guidelines for listing securities that have features common to both equity and debt securities, yet do not fit within the traditional definitions of such securities.[2] Sometimes referred to as ''hybrids,'' these securities can take a variety of forms. Although the Exchange has not listed any hybrid securities to date, it does trade certain ones pursuant to unlisted trading privileges (''UTP'');[3] for example, PERCS and trust convertible preferred securities.

In reviewing its hybrid security listing rules, the Exchange noticed that certain provisions which initially were also included in the NYSE and Amex rules have since been removed. Because the Exchange may in the future trade other hybrid securities listed on either the NYSE or the Amex pursuant to UTP, the Exchange believes it is unnecessary for its rules to be more onerous than those of the NYSE or the Amex. Accordingly, the Phlx seeks to conform its rules therewith.

Phlx Rule 803(f) currently specifies the minimum issuer qualifications, the minimum public distribution and aggregate market value of the security and other criteria to assist the Exchange in its case by case review and determination of the suitability of each security prior to its approval for listing. The Exchange now proposes to remove current provisions that prohibit the listing of (1) any cash settled product that is settled in any currency other than U.S. dollars, or (2) any product that has a mandatory redemption price of less than three dollars.[4] Additionally, the Exchange proposes to delete the provision requiring only 100 public holders if the security is traded in thousand dollar denominations, thereby requiring 400 holders regardless of the denomination.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b) in particular in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest in that it conforms the Exchange's listing standards for hybrid securities to those of the NYSE and the Amex.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2)does not impose any significant burden on competition; (3) does not become operative for 30 days from July 19, 1996, the date on which it was filed, and (4) the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date, it has become effective pursuant to Section 19(b)(3)(A)

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[13] Telephone conversation, *supra* note 7.

[14] 15 U.S.C. § 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] *See* Securities Exchange Act Release No. 30466 (March 11, 1992), 57 FR 9301 (March 17, 1992). At the time the rule was approved, it was denoted as Supplementary Material .02 to Rule 803 and was subsequently reapproved in the same form as renumbered subsection (f) when the Exchange's two tiered listing standards were approved. *See* Securities Exchange Act Release No. 34235 (June 17, 1994), 59 FR 32736 (June 24, 1994).

[3] Rule 12f–5 under the Act provides that an exchange must have in effect rules providing for transactions in the class of type of security to which it extends unlisted trading privileges.

[4] The Commission recently approved similar amendments to Amex's rules. *See* Securities Exchange Act Release No. 37165 (May 3, 1996), 61 FR 21215 (May 9, 1996).

of the Act [5] and Rule 19b–4(e)(6) thereunder.[6]

The Commission notes that although it is reasonable for the Exchange to remove the affected provisions as mandatory listing standards,[7] proposals that deviated from these standards might raise novel or significant regulatory issues that would require a proposed rule change to list the product.[8]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, 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 Exchange. All submissions should refer to File No. SR–Phlx–96–28 and should be submitted by August 21, 1996.

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b–4(e)(6).

[7] The affected provisions currently prevent the listing of (1) any cash settled product settled in any currency other than U.S. dollars or (2) any product that had a mandatory redemption price of less than three dollars.

[8] *See e.g.*, Securities Exchange Act Release No. 27753 (March 1, 1990), 55 FR 8626 (March 8, 1990) (order approving File-No. SR–Amex–89–29). For example, a stock index-linked note that was payable in a foreign currency would raise important regulatory issues among which might include the need to address appropriate product term and risk disclosure, customer suitability, and settlement procedures. Accordingly, the Commission expects the Phlx to consult with it on the need to file a Section 19(b) rule change to list a product with such terms under the Rule 803(f) listing standards.

[9] 17 CFR 220.30–3(a)(12).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–19470 Filed 7–30–96; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2876]

Minnesota; (And Contiguous Counties in North Dakota); Declaration of Disaster Loan Area

Marshall County and the contiguous counties of Beltrami, Kittson, Pennington, Polk, and Roseau in Minnesota, and Grand Forks, Pembina, and Walsh Counties in North Dakota constitute a disaster area as a result of damages caused by flooding which occurred May 17 and 18, 1996. Applications for loans for physical damage may be filed until the close of business on September 20, 1996 and for economic injury until the close of business on April 22, 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 287606 for Minnesota and 287706 for North Dakota. For economic injury the numbers are 897100 for Minnesota and 897200 for North Dakota.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 22, 1996.

Ginger Lew,

Acting Administrator.

[FR Doc. 96–19402 Filed 7–30–96; 8:45 am]

BILLING CODE 8025–01–U

[Declaration of Disaster Loan Area # 2875]

North Carolina; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on July 18, 1996, and an amendment thereto on July 22, I find that Beaufort, Brunswick, Carteret, Craven, Duplin, Hyde, Jones, Lenoir, New Hanover, Onslow, Pender, and Pitt Counties in the State of North Carolina constitute a disaster area due to damages caused by severe storms, high wind, flooding, and related effects of Hurricane Bertha which occurred July 10-13, 1996. Applications for loans for physical damages may be filed until the close of business on Setember 16, 1996, and for loans for economic injury until the close of business on April 18, 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: Bladen, Columbus, Dare, Edgecombe, Greene, Martin, Pamilco, Sampson, Tyrrell, Washington, Wayne, and Wilson Counties in North Carolina, and Horry County in South Carolina.

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 287508. For economic injury the numbers are 896900 for North Carolina, and 897000 for South Carolina.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 23, 1996.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 96–19403 Filed 7–30–96; 8:45 am]

BILLING CODE 8025–01–U

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Indonesia

July 25, 1996.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: July 30, 1996.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6704. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Uruguay Round Agreements Act.

The current limits for certain categories are being adjusted, variously, for swing, carryforward, carryover and recrediting of unused carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 60 FR 65299, published on December 19, 1995). Also see 60 FR 62410, published on December 6, 1995.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 25, 1996.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 30, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Indonesia and exported during the twelve-month period which began on January 1, 1996 and extends through December 31, 1996.

Effective on July 30, 1996, you are directed to amend the directive dated November 30, 1995 to adjust the limits for the following categories, as provided for under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Levels in Group I	
200	816,519 kilograms.
219	8,909,688 square meters.
300/301	3,881,478 kilograms.
313	14,666,535 square meters.
314	49,006,182 square meters.
315	24,149,599 square meters.
317/617/326	23,773,815 square meters.
334/335	217,865 dozen.
336/636	589,613 dozen.
338/339	1,231,193 dozen.
340/640	1,336,502 dozen.
341	877,091 dozen.
342/642	368,475 dozen.
345	392,243 dozen.
347/348	1,758,686 dozen.
350/650	113,609 dozen.
359–C/659–C [2]	1,259,114 kilograms.
359–S/659–S [3]	1,386,464 kilograms.
360	1,233,948 numbers.
361	1,233,948 numbers.
369–S [4]	766,732 kilograms.
443	88,751 numbers.
445/446	61,809 dozen.
447	16,621 dozen.
448	22,718 dozen.
604–A [5]	661,941 kilograms.
611	5,879,023 square meters.
613/614/615	21,500,578 square meters.
618	3,440,211 square meters.
619/620	8,750,966 square meters.
625/626/627/628/629	25,303,602 square meters.
634/635	279,792 dozen.
638/639	1,320,911 dozen.
641	2,137,493 dozen.
643	308,488 numbers.
644	431,882 numbers.
645/646	729,656 dozen.
847	381,931 dozen.
Subgroup in Group II 400, 410, 414, 431, 432, 434, 435, 436, 438, 439, 440, 442, 444, 459, 464, 465 and 469, as a group.	3,256,340 square meters equivalent.
In Group II subgroup 435	51,116 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1995.

[2] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[3] Category 359–S: only HTS numbers 6112.39.0010, 6112.49.0010, 6211.11.8010, 6211.11.8020, 6211.12.8010 and 6211.12.8020; Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[4] Category 369–S: only HTS number 6307.10.2005.

[5] Category 604–A: only HTS number 5509.32.0000.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.96–19437 Filed 7–30–96; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Office of the Secretary (OST), Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C.

3501 *et seq.*), this notice announces that the Information Collection Requests (ICRs) abstracted below have been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected burden. As required by the Paperwork Reduction Act of 1995, notices were published in the Federal Register stating DOT's intention to request extensions for currently approved information collections and reinstatements of an expired information collections. 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: (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.

DATES: Comments must be submitted on or before August 24, 1996.

Title: Crash Risk of Alcohol-Involved Driving Study; Proposed Information Collection.

Administration: National Highway Traffic Safety Administration, DOT.

OMB Control Number: 2127–New.

Type of Review: Regular submission.

Affected Entities: A total of approximately 10,000 drivers (1000 crash and 4000 non-crash (control) at each site).

Abstract: The National Highway Traffic Safety Administration (NHTSA) and the National Institute on Alcohol Abuse and Alcoholism (NIAAA) play key roles in national efforts to reduce alcohol involved crash injuries and fatalities. NHTSA and NIAAA have jointly funded a study to determine the relative risk of crash involvement associated with elevated blood alcohol concentrations (BACs) when compared with a zero blood alcohol concentration. One important part of the data collection for this effort is a questionnaire to measure crash and alcohol covariates in the population being studied. Current data of this kind do not exist and cannot be collected by any other method.

Need for Information: NHTSA and NIAAA are committed to the development of effective programs to reduce this morbidity and mortality due to driving under the influence (DUI). To aid in filling this commitment, a better understanding of driver characteristics and alcohol levels in alcohol-involved crashes is required.

Annual Burden: 1,417 hours.

Title: Customer Satisfaction Surveys.

Administration: United States Coast Guard, DOT.

OMB Control Number: 2115–0625.

Type of Request: New Collection.

Affected Entities: Maritime industry and recreational boating public.

Abstract: Customer satisfaction surveys are required by Executive Order 12862, Setting Customer Service Standards, to ensure that the USCG provides the highest quality service to our customers. Steps will be taken to assure anonymity of respondents in each activity covered under this request.

Need for Information: Executive Order 12862, Setting Customer Service Standards, directs USCG to conduct surveys to determine the kind and quality of services the marine industry and the recreational boating public wants and expect.

Annual Responses: 41,695.

Annual Burden: 16,005 hours.

Title: Application for Employment with the Federal Aviation Administration.

Administration: Federal Aviation Administration, DOT.

OMB Control Number: 2120–0597.

Type of Request: New Collection.

Affected Entities: The likely respondents will be the general public who are interested in employment with this agency.

Abstract: The collection of information is an application for employment with the Federal Aviation Administration. Applicants will have to complete a number of background questions to determine their basic eligibility for Federal employment and also answer specific occupation-related questions to determine their qualifications.

Need for Information: P.L. 104–50 authorized the Federal Aviation Administration to establish its own personnel system outside most of the requirements of Title 5. The only provisions related to hiring that will continue to apply are those dealing with veteran's preference. One of the recommendations of our personnel reform task forces, and in keeping with reengineered business processes under the National Performance Review, we are attempting to centralized and automate some of our application, evaluation and hiring processes. This application is a part of that effort. We propose to utilize the information collected to make determinations on applicant's eligibility for Federal employment as well as determining their qualifications for employment and certifying the name of qualified applicants to line managers who will make hiring decisions.

Annual Responses: 5,000.

Annual Burden: 5,000 hours.

Title: Advisory Committee Candidate Biographical Information Request, DOT F1120.1.

Administration: Office of the Secretary, DOT.

OMB Control Number: 2105–0009.

Type of Request: Extension for a currently approved information collection.

Affected Entities: Individuals who have contacted DOT to indicate an interest in appointment to an advisory committee and individuals who have been recommended for membership on an advisory committee. Only one collection is expected per individual.

Abstract: The collection of information obtained by the Advisory Committee Candidate Biographical Information Request form enables Departmental officials to review the qualifications of individuals who wish to serve on Department-sponsored advisory committees and the qualifications of persons who have been recommended to serve. The collection provides uniform data for each individual and enables DOT to comply with the Federal Advisory Committee Act (Pub. L. 92–463) (5 U.S.C. App.) which requires that advisory committee membership be balanced.

A number of DOT's advisory committees were created by statute, and have statutory requirements for education, experience, or expertise. The data collection enables DOT to comply with such statutory membership requirements, by providing information from which officials may determine which individuals meet specific qualification standards for particular advisory committees and for particular positions within a committee. In fact, some statutory committees require very narrow and specific expertise for each position on the committee, which can be ascertained by reviewing the Advisory Committee Candidate Biographical Information Request form.

Finally, the data collection allows officials to retain a file of interested applicants. As vacancies occur on specific advisory committees, the applications and qualifications can be reviewed for possible placement.

Need for Information: In the absence of the data collection, officials would have to contact by telephone or by letter each person who expressed an interest or who was recommended for an advisory committee position, to determine his/her interest, education, experience, or expertise. This would be

a more time-consuming and costly data collection effort which would have to be repeated if the individual were to be considered at a later time for vacancies on other advisory committees.

Annual Responses: 1.

Annual Burden: 25 hours.

Title: War Risk Insurance, Applications and Related Information.

Administration: Maritime Administration, DOT.

Type of Request: Reinstatement without change, of currently approved information collection.

OMB Control Number: 2133–0011.

Form Number: MA–355, MA–528, MA–828, MA–942.

Affected Entities: Vessel's owner or charterer interested in participation in MARAD's war risk insurance program.

Abstract: As authorized by Section 1202, Title XII, Merchant Marine Act, 1936, as amended, (46 U.S.C. App. 1282) (Act), the Secretary of U.S. Department of Transportation may provide war risk insurance for the needs of the waterborne commerce of the United States. This collection is required for participation in the program. It consists of forms MA–355, MA–528, MA–828, and MA–942 and related information.

Need and Use of the Information: To determine the eligibility of the applicant and the vessel for participation in the war risk insurance program.

Annual Responses: 1,730.

Annual Burden: 930 hours.

Title: Requirements for Establishing U.S. Citizenship under 46 CFR Part 355.

Administration: Maritime Administration, DOT.

Type of Request: Reinstatement without change, of currently approved information collection.

OMB Control Number: 2133–0012.

Form Number: Special Format.

Affected Entities: Participating financial institutions, ships owners, charterers, and equity owners within the United States.

Abstract: Applicants that receive benefits and continue to receive benefits under the Merchant Marine Act, 1936, as amended, must be citizens of the United States within the meaning of section 2 of the Shipping Act, 1916, as amended (46 App. U.S.C. 802). This collection gathers the information on citizenship of individuals, etc. covered by the requirements.

Need and Use of the Information: To determine compliance with the statutory requirements.

Annual Responses: 300.

Annual Burden: 1,500 hours.

Title: Subsidy Voucher—Operating—Differential Subsidy (Bulk & Liner Cargo Vessels).

Administration: Maritime Administration, DOT.

Type of Request: Extension of currently approved information collection.

OMB Control Number: 2133–0024.

Form Number: MA–790, SF–1034 and supporting schedules.

Affected Entities: Bulk and liner vessel operators of vessels covered by an ODS agreement under the Act.

Abstract: The information collected is the costs and manning complement of bulk and liner cargo vessels engaged in carrying commodities in worldwide services and covered by an Operating-Differential Subsidy Agreement (ODS) in accordance with Title VI of the Merchant Marine Act, 1936, as amended (Act).

Need and Use of the Information: The information is utilized by MARAD examiners to determine subsidy payable for voyages performed in accordance with ODS agreements.

Annual Responses: 320.

Annual Burden: 640 hours.

Title: Ships' Stores Certification for Hazardous Materials Aboard Ships.

Administration: United States Coast Guard, DOT.

OMB No: 2115–0139.

Affected Entities: Suppliers and manufacturers of hazardous products used on ships.

Type of Request: Extension of a currently approved information collection.

Abstract: Ships' Stores Certification—Title 46, CFR, Part 147 requires proper identification and labeling of dangers presented by hazardous ships' stores. The regulation provides manufacturers the opportunity to request waivers for products in special DOT hazard classes to be used aboard ships. Title 46 U.S.C. 3303 authorizes the Coast Guard to regulate the transportation, stowage and use of ships' stores and supplies of a dangerous nature.

Coast Guard will use this information to ensure personnel aboard vessels are made aware of the proper usage and stowage instructions to protect them from bodily injury.

Annual Responses: 2.

Annual Burden: 6 hours.

ADDRESS: Written comments concerning the proposed information collections should be sent within 30 days of this notice directly to the Office Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street N.W., Washington, D.C. 20503, ATTN: Desk Officer for the Department of Transportation.

Issued in Washington, D.C. on July 24, 1996.

Phillip A. Leach,

Clearance Officer, United States Department of Transportation.

[FR Doc. 96–19492 Filed 7–30–96; 8:45 am]

BILLING CODE 4910–62–P

Coast Guard

[Docket No. CGD 95–066]

National Environmental Policy Act Draft Environmental Impact Statement for the USCG Atlantic Protected Living Marine Resource Initiative

AGENCY: Coast Guard, DOT.

ACTION: Notice of availability; request for comments.

SUMMARY: The Coast Guard announces the availability of a Draft Environmental Impact Statement for the Protected Living Marine Resource Initiative for water off the Atlantic Coast of the United States. This Draft Environmental Impact Statement was prepared in consultation with the National Marine Fisheries Service under the Endangered Species Act.

DATES: Comments must be received on or before September 16, 1996.

ADDRESSES: Comments may be mailed to Commandant (G–O), U.S. Coast Guard Headquarters, 2100 Second St SW, Washington, DC 20593–0001, ATTN: CDR Rooth; or may be delivered to room 3111 at the same address between 8 a.m. and 3 p.m. Monday through Friday except Federal holidays. Comments will be available for inspection or copying at room 3216, U.S. Coast Guard Headquarters.

A copy of the Draft Environmental Impact Statement may be obtained by writing to CDR Rooth at the above address.

FOR FURTHER INFORMATION CONTACT: Commander R. Rooth at (202) 267–1456, or by fax at (202) 267–4427 or (202) 267–4222.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to submit written data, views, or arguments. Persons submitting comments should include their name and address and identify this notice (CGD 95–066. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches; suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addresssed postcard or envelope.

The Coast Guard invites comments and suggestions on the proposed and alternate actions in the Draft Environmental Impact Statement. The Coast Guard will consider all comments received during the comment period.

Pursuant to the court order in *Richard Strahan* v. *Rear Admiral John Linnon, et. al.,* the comment period shall end on September 16, 1996.

Background Information

On August 9, 1995, the Coast Guard published, in the Federal Register (60 FR 40631), a notice of availability and request for comments announcing the availability of an Environmental Assessment (EA) and a proposed Finding of No Significant Impact (FONSI) on Coast Guard activities along the U.S. Atlantic coast. On October 11, 1995, the Coast Guard published, in the Federal Register (60 FR 52949), a notice reopening and extending the comment period for the EA and FONSI.

The EA focused on the six whale, and five turtle species listed as threatened or endangered and found along the Atlantic coast. The Coast Guard received comments from Federal, State, and local agencies and the public.

As a result of new information concerning the October 1995 interaction between a Coast Guard vessel and a suspected Humpback whale, and recent Northern Right Whale mortalities; and as a result of comments received in response to the EA and FONSI, the Coast Guard announced in the Federal Register (61 FR 14590), of April 2, 1996, its intent to prepare an Environmental Impact Statement to assess the impacts of a revised proposed project under section 102(2)(C) of the National Environmental Policy Act.

Proposed Action

The DEIS contains an overview of the Coast Guard missions and describes how the proposed action, the Atlantic Protected Living Marine Resources Initiative, aids the Coast Guard in enhancing conservation of protected species in the Atlantic, rather than only six whale and five turtle species focused on in the EA.

The U.S. Coast Guard Atlantic Protected Living Marine Resource Initiative, includes:

1. The Internal Program which would include organizational directives and guidance governing the conduct of aircraft and vessel (boat and cutter) operations, the training of Coast Guard personnel, and the notification of the maritime community of threatened or endangered species sightings.

2. The Conservation Program which would include the training and education of non-Coast Guard personnel on endangered and threatened species, and the participation of the Coast Guard with other federal, state, and local agencies in the regional recovery implementation teams to develop initiatives to address non-Coast Guard vessels.

The Coast Guard evaluation includes the latest data on the habits of protected species, and the location of Coast Guard stations and vessels, the training of Coast Guard employees related to protected species, and possible modification to vessel and aircraft operations. The DEIS also analyzes the cumulative impacts of Coast Guard assets operating together and in conjunction with other vessels.

Dated: July 25, 1996.

T.J. Meyers,

Captain, U.S. Coast Guard, Chief, Office of Aids to Navigation.

[FR Doc. 96–19478 Filed 7–30–96; 8:45 am]

BILLING CODE 4910–14–M

Federal Aviation Administration

Lambert-St. Louis International Airport, St. Louis, Missouri, Noise Exposure Map Notice; Receipt of Noise Compatibility Program and Request for Review

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by St. Louis, Missouri, for Lambert-St. Louis International Airport (Lambert) under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR Part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for Lombert-St. Louis International Airport under Part 150 in conjunction with the noise exposure maps, and that this program will be approved or disapproved on or before January 10, 1997.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps and of the start of its review of the associated noise compatibility program is July 15, 1996. The public comment period ends September 12, 1996. Comments submitted by the public to the FAA prior to the start date of July 15, 1996 already have been included as a part of the record and do not need to resubmitted.

FOR FURTHER INFORMATION CONTACT: Ms. Moira D. Keane, Federal Aviation Administration, Airports Division, ACE–615B, 601 E. 12th Street, Kansas City, MO 64106 (816) 426–4731. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Lambert-St. Louis International Airport are in compliance with applicable requirements of Part 150, effective July 15, 1996. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before January 10, 1997. This notice also announces the availability of this program for public review and comment.

Under section 103 of Title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as ''the Act''), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

St. Louis, Missouri, submitted to the FAA on May 5, 1996, noise exposure maps, descriptions and other documentation which were produced during the Lambert-International Airport's FAR Part 150 Noise Computability Study. It was requested that the FAA review this material as the noise exposure maps, as described in section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by St. Louis, Missouri. The specific maps under consideration are the Existing (1994) and Future (1999) Baseline Noise Exposure Maps in the submission. The FAA has determined that these maps for Lambert-St. Louis International Airport are in compliance with applicable requirements. This determination is effective on July 15, 1996. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under section 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for Lambert-St. Louis International Airport, also effective on July 15, 1996. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before January 10, 1997.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR Part 150, section 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW, Room 617, Washington, D.C. 20591.

Federal Aviation Administration, Airports Division, 601 E. 12th Street, Kansas City, MO 64106.

Lambert-St. Louis International Airport, Airport Planning and Development Office, 4610 N. Lindberg Boulevard, Bridgeton, MO 63044.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Kansas City, Missouri on July 15, 1996.

James W. Brunskill,

Acting Manager, Airports Division.

[FR Doc. 96–19358 Filed 7–30–96; 8:45 am]

BILLING CODE 4910–13–M

[Summary Notice No. PE–96–37]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before August 20, 1996.

ADDRESSES: Send comments on any petition in triplicate to:

Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

Comments may also be sent electronically to the following internet address: nprmcmts@mail.hq.faa.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Mr. D. Michael Smith, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–7470.

This notice is published pursuant to paragraphs (c), (e), and (g), of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on July 26, 1996.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 28563.

Petitioner: Mercer County Community College.

Sections of the FAR Affected: 14 CFR 141.91.

Description of Relief Sought: To permit Mercer County Community College to provide ground school courses over interactive television simultaneously to three institutions while notifying only one Flight Standards District Office (FSDO), instead of notifying each FSDO having jurisdiction over the individual satellite bases.

Docket No.: 28606.

Petitioner: Petroleum Helicopters, Inc.

Sections of the FAR Affected: 14 CFR 135.167(b)(3) (xvi), (xvii), (xviii), and (xix).

Description of Relief Sought: To permit Petroleum Helicopters, Inc., to conduct extended overwater operations in the Gulf of Mexico without carrying certain emergency equipment in the life raft on board the aircraft.

Dispositions of Petitions

Docket No.: 27787.
Petitioner: Ameriflight, Inc.
Sections of the FAR Affected: 14 CFR 135.143(c)(2)
Description of Relief Sought/ Disposition: To extend Exemption No. 5949, which permits Ameriflight, Inc., to operate certain aircraft without TSO–C112 (Mode S) transponders installed.
Grant, June 27, 1996, Exemption No. 5949A.

Docket No.: 28487.
Petitioner: Custom Products, Inc.
Sections of the FAR Affected: 14 CFR 25.853(a).
Description of Relief Sought/ Disposition: To permit Custom Products, Inc., to be exempt from vertical burn test requirements for its seat cushions assembled with currently available, non-compliant water-based adhesives.
Partial Grant, July 9, 1996, Exemption No. 6477.

Docket No.: 28550.
Petitioner: United Parcel Service.
Sections of the FAR Affected: 14 CFR 25.1415(b).
Description of Relief Sought/ Disposition: To permit operation of four Boeing Model 767–200 freighter airplanes, with TSO C70A Type II liferafts.
Grant, April 22, 1996, Exemption No. 6427.

Good Cause

Docket No.: 15903.
Petitioner: Department of Treasury, Bureau of Alcohol, Tobacco, and Firearms.
Sections of the FAR Affected: 14 CFR 91.111(a), 91.159(a) (1) and (2), and 91.209 (a) and (d).
Description of Relief Sought: To extend and amend Exemption No. 2327, which permits the ATF to conduct surveillance operations to enforce Federal laws pertaining to firearms, liquor, explosives, and wagering. The amendment limits the need for relief from certain sections of the CFR in the original exemption.

Docket No.: 22872.
Petitioner: Air Transport Association of America.
Sections of the FAR Affected: 14 CFR 61.157(a); Item I(b) of appendix A to part 61; 121.424(a), (b), and (d)(1); Item I(a) of appendix E of part 121; and Item I(b) of appendix F to part 121.
Description of Relief Sought: To extend Exemption No. 4416, as amended, which allows ATA members airlines and other qualifying part 121 certificate holders to continue to conduct training and checking of pilots of airplanes requiring only tow flight crewmembers on the required preflight inspection, both interior and exterior, using approved pictorial means.

Docket No.: 28546.
Petitioner: The Ranch Parachute Club, Ltd.
Sections of the FAR Affected: 14 CFR 105.43(a).
Description of Relief Sought: To permit nonstudent parachutists who are foreign nationals (foreign parachutists) to participate in parachute-jumping events sponsored by The Ranch Parachute Club, Ltd., (The Ranch) at The Ranch's facilities, using parachutes that have not been approved by the FAA, but have been accepted and/or approved for use by the proper authorities in the foreign parachutist's own country.

Docket No.: 28580.
Petitioner: Department of the Air Force.
Sections of the FAR Affected: 14 CFR 65.71(a)(2).
Description of Relief Sought: To permit Mr. Alfred Flores, Mr. Ronald Miller, and Mr. Ronald Mora, who are hearing impaired, to be eligible for certification as airframe and powerplant mechanics.

Docket No.: 28590.
Petitioner: Human Flight, Inc.
Sections of the FAR Affected: 14 CFR 105.43(a).
Description of Relief Sought: To allow Human Flight, Inc., employees, representatives, and volunteer test jumpers to make tandem parachute jumps while wearing a dual-harness, dual-parachute pack, having at least one main parachute and one approved auxiliary parachute packed in accordance with § 105.43(a). This exemption, if granted, also would permit a pilot in command of an aircraft to allow such persons to make these parachute jumps.

[FR Doc. 96–19505 Filed 7–30–96; 8:45 am]
BILLING CODE 4910–13–M

RTCA, Inc.; Government/Industry Free Flight Steering Committee

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for an RTCA Government/ Industry Free Flight Steering Committee meeting to be held August 15, 1996, starting at 8:30 a.m. The meeting will be held at the Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, in Conference Room 9ABC (9th floor).

The agenda will be as follows: (1) Welcome/Opening Remarks; (2) Review Summary of the Previous Meeting; (3) Overview and Disposition of Steering Committee Comments on the Draft Government/Industry Free Flight Action Plan; (4) FAA Presentation on Budget Outlook and Priorities; (5) Steering Committee Action on the Free Flight Action Plan; (6) Other Business; (7) Date and Location of Next Meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC, 20036; (202) 833–9339 (phone) or (202) 833–9434 (fax). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on July 24, 1996.

Janice L. Peters,
Designated Official.

[FR Doc. 96–19502 Filed 7–30–96; 8:45 am]
BILLING CODE 4810–13–M

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Dallas/Fort Worth International Airport, DFW Airport, TX

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 Dallas/Fort Worth 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).

DATES: Comments must be received on or before August 30, 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 Mr. Jeffrey P. Fegan, Executive Director, Dallas/Fort Worth International Airport at the following address: Mr. Jeffrey P. Fegan, Executive Director, Dallas/Fort Worth International Airport, P.O. Drawer 619428, DFW Airport, Texas 75261–9428.

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 an use the revenue from a PFC at Dallas/Fort Worth 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 of the Federal Aviation Regulations (14 CFR Part 158).

On July 16, 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 November 7, 1996.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: February 1, 1997.

Proposed charge expiration date: April 30, 1998.

Total estimated PFC revenue: $96,830,051.00.

PFC application number: 96–02–C–00–DFW.

Brief description of proposed projects:

Projects To Impose and Use PFC's

(1) Reimburse cost of previously implemented eligible work;

(2) Airport development plan update;

(3) Environmental review for Runway 17C extension and associated development and Runway 18R and 18L extensions and associated work; and

(4) Southeast hold pad and associated development.

Projects To Impose PFC's

(5) Runway 17C extension and associated development; and

(6) Runway 18R and 18L extensions and associated development.

Proposed class or classes of air carriers to be exempted from collecting PFC's:

All Air Taxi/Commercial Operators operating under a certificate authorizing transport of passengers for hire under FAR Part 135 that file Federal Aviation Administration (FAA) Form 1800–31.

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 Boulevard, 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 Dallas/Fort Worth International Airport.

Issued in Fort Worth, Texas on July 16, 1996.

Edward N. Agnew,

Acting Manager, Airports Division.

[FR Doc. 96–19359 Filed 7–30–96; 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 the Huntsville International Airport, Huntsville, Alabama

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 the Huntsville 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).

DATES: Comments must be received by August 30, 1996.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: FAA/Airports District Office, 120 North Hangar Drive, Suite B, Jackson, Mississippi 39208–2306.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Luther H. Roberts, Jr., Director of Finance/Administration, Huntsville-Madison County Airport Authority, at the following address: 1000 Glenn Hearn Blvd, Box 20008, Huntsville, AL 35824.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Huntsville-Madison County Airport Authority under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Elton E. Jay, Principal Engineer, FAA Airports District Office, 120 North Hangar Drive, Suite B, Jackson, Mississippi 39208–2306, telephone number 601–965–4628. 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 the Huntsville 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 23, 1996, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Huntsville-Madison County Airport Authority 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 November 13, 1996.

The following is a brief overview of the application.

PFC Application Number: 96–06–C–00–HSV.

Level of the proposed PFC: $3.00.

Actual charge effective date: June 1, 1992.

Estimated charge expiration date: August 31, 2015.

Total estimated net PFC revenue: $27,481,797.

Estimated PFC revenues to be used on projects in this application: $7,396,130.

Brief description of proposed project(s): Acquire ARFF truck, 800 MHZ communication system, new police vehicle, and ARFF personnel equipment; SIDA reduction; air carrier apron rehab phase II; air cargo apron rehabilitation; land acquisition (433.44 acres).

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air taxi/commercial operators, certified air carriers, and certified route air carriers having fewer than 500 annual operations.

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 office of the Huntsville-Madison County Airport Authority.

Issued in Jackson, Mississippi on July 23, 1996.

Wayne Atkinson,

Manager, Airports District Office, Southern Region, Jackson, Mississippi.

[FR Doc. 96–19360 Filed 7–30–96; 8:45 am]

BILLING CODE 4910–13–M

Maritime Administration

[Docket S–939]

Lykes Bros. Steamship Co., Inc.; Notice of Application for a Waiver of Section 804(a) of the Merchant Marine Act, 1936, as Amended, to Participate in a Space Charter and Sailing Agreement With Foreign-Flag Operators

Lykes Bros. Steamship Co., Inc. (Lykes) by application dated July 11, 1996, requests a waiver of the provisions of Section 804 of the Merchant Marine Act, 1936, as amended (Act), through December 31, 1997, the expiration of its operating-differential subsidy (O.D.S.) contract MA/MSB–451, to permit it to participate in a space charter and sailing agreement with Transportacion Maritima Mexicana, S.A. de C.V. (TMM), and Contship Containerlines Ltd. (Contship) to serve primarily the foreign commerce of the United States.

The purpose of the Agreement is to improve the productivity and operating efficiency of the parties' vessels and equipment and to provide efficient, reliable and stable liner shipping services through space chartering and coordination of sailings. The Agreement does not authorize the parties to fix rates.

The Agreement covers the trade between ports on the Atlantic Coast of Florida and U.S. Gulf Coast, and ports in Spain, Italy, and France and between ports on the Atlantic Coast of Florida and the U.S. Gulf Coast and ports on the Gulf Coast of Mexico.

Assuming approval of the Agreement by the Maritime Administration and the Federal Maritime Commission, Lykes three subsidized Pacesetter Class vessels—HOWELL LYKES, THOMPSON LYKES, and JEAN LYKES—will serve the Mediterranean trade from U.S. Atlantic ports North of Florida. Lykes will initially charter space on TMM and Contship vessels providing service between Mexican, U.S. Gulf and Florida ports and Mediterranean ports in Spain, Italy and France. The vessels are scheduled to call at ports including but not limited to: Houston, Altamira, Veracruz, New Orleans, Mobile, Miami, Valencia, Barcelona, La Spezia, and Gioia Tauro.

According to Lykes, the Contship and TMM vessels that serve the above trades and any Lykes vessels that might ultimately serve those trades will not compete ''with any American-flag service determined by the secretary to be essential as provided in Section 211 of this Act'' as that term is used in Section 604(a) of the Act.

Lykes points out that Sea-Land does not provide an all U.S.-flag direct service to the Mediterranean from Mexican, U.S. Gulf or Florida ports. Farrell Lines, Inc.'s (Farrell) Mediterranean service does not include U.S. Gulf, Mexican or Florida ports. Waterman Steamship Co. (Waterman) only serves Mediterranean ports in Egypt from the U.S. Gulf. Because the parties to the proposed Space Charter and Sailing Agreement will provide direct service to the Western Mediterranean ports in Spain, Italy, and France, Lykes believes that the parties to this Agreement will not compete with any American-flag service determined to be essential by the Secretary.

In Lykes' view, there are ample good cause and special circumstances to support the granting of this application. The opportunity this proposed agreement offers to rationalize schedules will permit operational savings to be realized and lend considerable flexibility to Lykes' schedules through the use of space on Contship and TMM vessels. The agreement will enable Lykes to offer shippers broader, more responsive service without any additional capital outlays. Lykes contends that its presence on the proposed routes is essential to the preservation of its customer base which relies on Lykes to provide a sufficiently broad array of services to satisfy their multitrade transportation needs. It will also assist Lykes in maintaining its experienced management. The additional revenue that the agreement will permit Lykes to earn will also spread overhead costs currently being borne by a limited number of Lykes U.S.-flag vessels, over an additional number of vessels.

Lykes notes that the scrapping of its older U.S.-flag vessels has accelerated and there is no program in place for the construction of replacement tonnage in the United States. Moreover, satisfactory existing U.S.-flag vessels are also not available to serve the contemplated services. Consequently, Lykes maintains that the proposed Agreement will not affect U.S. seafaring jobs. Since Lykes' O.S. contract expires in approximately seventeen (17) months, Lykes concludes that approval of this Agreement is critical if it is to gradually position itself as a viable mixed U.S.-flag, foreign-flag operation capable of operating independent of subsidy.

This application may be inspected in the Office of the Secretary, Maritime Administration. Any person, firm, or corporation having any interest in such request within the meaning of section 804 of the Act and desiring to submit comments concerning the application must file written comments in triplicate with the Secretary, Maritime Administration, Room 7210, Nassif Building, 400 Seventh Street SW., Washington, DC 20590. Comments must be received no later than 5:00 p.m. on August 2, 1996. This notice is published as a matter of discretion and publication should in no way be considered a favorable or unfavorable decision on the application, as filed or as may be amended. The Maritime Administrator will consider any comments submitted and take such action with respect thereto as may be deemed appropriate

(Catalog of Federal Domestic Assistance Program No. 20.804 (Operating-Differential Subsidies)).

By Order of the Maritime Administrator.

Dated: July 24, 1996.

Edmund T. Sommer, Jr.,

Acting Secretary.

[FR Doc. 96–19363 Filed 7–30–96; 8:45 am]

BILLING CODE 4910–81–P

Corrected Notice of Change of Name of Approved Trustee

This corrects Notice appearing at 61 FR 29445 (June 10, 1996).

Notice is hereby given that effective December 1, 1995, approved Trustee, Shawmut Bank Connecticut N.A., with offices at 777 Main Street, Hartford, Connecticut 06115, changed its name to Fleet National Bank of Connecticut. Further, effective April 1, 1996, Fleet National Bank of Connecticut changed its name to Fleet National Bank.

Dated: July 24, 1996.

By Order of the Maritime Administrator.

Edmund T. Sommer, Jr.,

Acting Secretary.

[FR Doc. 96–19364 Filed 7–30–96; 8:45 am]

BILLING CODE 4910–81–P

National Highway Traffic Safety Administration

[Docket No. 96–081; Notice 1]

Notice of Receipt of Petition for Decision That Nonconforming 1990–1993 Mazda Miata (MX–5) Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1990–1993 Mazda Miata (MX–5) 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 1990–1993 Mazda Miata (MX–5) passenger cars 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 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 30, 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, Inc. of Kingsville, Maryland (J.K.) (Registered Importer 90–006) has petitioned NHTSA to decide whether 1990–1993 Mazda Miata (MX–5) passenger cars are eligible for importation into the United States. The vehicles which J.K. believes are substantially similar are the 1990–1993 Mazda Miata (MX–5) 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 the non-U.S. certified 1990–1993 Mazda Miata (MX–5) 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 the non-U.S. certified 1990–1993 Mazda Miata (MX–5) passenger cars, as originally manufactured, conform 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 1990–1993 Mazda Miata (MX–5) passenger cars are identical to their U.S. certified counterparts with respect to compliance with Standards No. 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,* 203 *Impact Protection for the Driver From the Steering Control System,* 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,* 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 1990–1993 Mazda Miata (MX–5) passenger cars comply with the Bumper Standard found in 49 CFR Part 581.

Petitioner also contends that the 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) recalibration of the speedometer/odometer from kilometers to 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.

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 a driver's side knee bolster. The petitioner states that the vehicles are equipped with driver's side air bags and manual lap and shoulder belts that have identical part numbers to those found on the vehicles' U.S. certified counterparts.

Standard No. 214 *Side Impact Protection:* installation of door bars.

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, 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 24, 1996.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 96–19355 Filed 7–30–96; 8:45 am]

BILLING CODE 4910–59–P

[Docket No. 96–078; Notice 1]

Notice of Receipt of Petition for Decision That Nonconforming 1995 BMW 520 Series Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1995 BMW 520 Series 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 1995 BMW 520 Series passenger cars 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 its manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATE: The closing date for comments on the petition is August 30, 1996.

ADDRESS: 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, Inc. of Kingsville, Maryland (''J.K.'') (Registered Importer 90–006) has petitioned NHTSA to decide whether 1995 BMW 520 Series passenger cars are eligible for importation into the United States. The vehicles which J.K. believes are substantially similar are 1995 BMW 520 Series passenger cars that were manufactured for importation into, and sale in, the United States and certified by their manufacturer, Bayerische Motoren Werke, A.G., as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 1995 BMW 520 Series passenger cars 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 1995 BMW 520 Series passenger cars, as originally manufactured, conform 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 1995 BMW 520 Series passenger cars 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,* 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 1995 BMW 520 Series passenger cars comply with the Bumper Standard found in 49 CFR Part 581.

Petitioner also contends that the 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 windows will not operate 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 lap belt in the center seating position.

Standard No. 214 *Side Impact Protection:* installation of door bars.

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 24, 1996.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 96–19356 Filed 7–30–96; 8:45 am]

BILLING CODE 4910–59–P

[Docket No. 96–89; Notice 1]

Notice of Receipt of Petition for Decision That Nonconforming 1990–1996 Ken-Mex T800 Trucks Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1990–1996 Ken-Mex T800 trucks are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1990–1996 Ken-Mex T800 trucks 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 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.

DATE: The closing date for comments on the petition is July 31, 1996.

ADDRESS: 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.

Baja Truck Center of San Diego, California (''Baja'') (Registered Importer 96–118) has petitioned NHTSA to decide whether 1990–1996 Ken-Mex T800 trucks are eligible for importation into the United States. The vehicles which Baja believes are substantially similar are 1990–1996 Kenworth T800 trucks that were manufactured for sale in the United States and certified by their manufacturer, PACCAR, Inc., as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared the non-U.S. certified 1990–1996 Ken-Mex T800 trucks 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.

Baja submitted information with its petition intended to demonstrate that non-U.S. certified 1990–1996 Ken-Mex T800 trucks, as originally manufactured, conform 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 1990–1996 Ken-Mex T800 trucks 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,* 107 *Reflecting Surfaces,* 108 *Lamps, Reflective Devices and Associated Equipment,* 111 *Rearview Mirrors,* 113 *Hood Latch Systems,* 115 *Vehicle Identification Number,* 119 *New Pneumatic Tires for Vehicles other than Passenger Cars,* 121 *Air Brake Systems,* 124 *Accelerator Control Systems,* 205 *Glazing Materials,* 206 *Door Locks and Door Retention Components,* 208 *Occupant Crash Protection,* 209 *Seat Belt Assemblies,* 210 *Seat Belt Assembly Anchorages,* and 302 *Flammability of Interior Materials.*

Petitioner also contends that the vehicle is capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) Placement of a label with the words ''Brake Air'' on the brake air pressure position telltale; (b) inscription of the word ''Brake'' on the brake system warning light.

Standard No. 106 *Brake Hoses:* replacement of brake line hoses and connections lacking DOT markings with U.S. model components.

Standard No. 120 *Tire Selection and Rims for Vehicles other than Passenger Cars:* (a) Installation of a tire

information placard; (b) replacement of tire rims lacking required markings with appropriately marked components.

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 25, 1996.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 96–19362 Filed 7–30–96; 8:45 am]

BILLING CODE 4910–59–P

[Docket No. 96–90; Notice 1]

Notice of Receipt of Petition for Decision That Nonconforming 1991–1996 Freightliner FTLD112064SD Trucks Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1991–1996 Freightliner FTLD112064SD trucks are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1991–1996 Freightliner FTLD112064SD trucks 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 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.

DATE: The closing date for comments on the petition is August 30, 1996.

ADDRESS: 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.

Baja Truck Center of San Diego, California (''Baja'') (Registered Importer 96–118) has petitioned NHTSA to decide whether 1991–1996 Freightliner FTLD112064SD trucks are eligible for importation into the United States. The vehicles which Baja believes are substantially similar are 1991–1996 Freightliner FTLD112064SD trucks that were manufactured for sale in the United States and certified by their manufacturer, Freightliner Corporation, as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared the non-U.S. certified 1991–1996 Freightliner FTLD112064SD trucks 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.

Baja submitted information with its petition intended to demonstrate that non-U.S. certified 1991–1996 Freightliner FTLD112064SD trucks, as originally manufactured, conform 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 1991–1996 Freightliner FTLD112064SD trucks 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*, 107 *Reflecting Surfaces*, 108 *Lamps, Reflective Devices and Associated Equipment*, 111 *Rearview Mirrors*, 113 *Hood Latch Systems*, 115 *Vehicle Identification Number*, 121 *Air Brake Systems*, 124 *Accelerator Control Systems*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 208 *Occupant Crash Protection*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages, and* 302 *Flammability of Interior Materials.*

Petitioner also contends that the vehicle is capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) placement of a label with the words ''Brake Air'' on the brake air pressure position telltale; (b) inscription of the word ''Brake'' on the brake system warning light.

Standard No. 106 *Brake Hoses:* replacement of brake line hoses and connections lacking DOT markings with U.S. model components.

Standard No. 119 *New Pneumatic Tires for Vehicles other than Passenger Cars:* replacement of tires lacking DOT markings with appropriately marked tires.

Standard No. 120 *Tire Selection and Rims for Vehicles other than Passenger Cars:* (a) installation of a tire information placard; (b) replacement of tire rims lacking required markings with appropriately marked components.

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, 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 25, 1996.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 96–19365 Filed 7–30–96; 8:45 am]

BILLING CODE 4910–59–P

[Docket No. 96–080; Notice 1]

Notice of Receipt of Petition for Decision That Nonconforming 1996 Kia Sportage Multi-Purpose Passenger Vehicles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1996 Kia Sportage multi-purpose passenger vehicles (MPVs) 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 1996 Kia Sportage MPV 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 30, 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.

LPC of New York, Inc., of Ronkonkoma, New York (''LPC'') (Registered Importer 96–100) has petitioned NHTSA to decide whether 1996 Kia Sportage MPVs are eligible for importation into the United States. The vehicle which LPC believes is substantially similar is the 1996 Kia Sportage MPV that was manufactured for importation into, and sale in, the United States and certified by its manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared the non-U.S. certified 1996 Kia Sportage MPV 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.

LPC submitted information with its petition intended to demonstrate that the non-U.S. certified 1996 Kia Sportage MPV, 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 1996 Kia Sportage MPV is identical to its U.S. certified counterpart with respect to compliance with Standards Nos. 102 *Transmission Shift Lever Sequence* * * *, 103 *Defrosting and Defogging Systems,* 104 *Windshield Wiping and Washing Systems,* 105 *Hydraulic Brake Systems,* 106 *Brake Hoses,* 111 *Rearview Mirrors,* 113 *Hood Latch Systems,* 116 *Brake Fluid,* 118 *Power Window Systems,* 119 *New Pneumatic Tires for Vehicles other than Passenger Cars,* 120 *Tire Selection and Rims for Vehicles other than Passenger Cars,* 124 *Accelerator Control Systems,* 201 *Occupant Protection in Interior Impact,* 202 *Head Restraints,* 203 *Impact Protection for the Driver From the Steering Control System,* 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 206 *Door Locks and Door Retention Components,* 207 *Seating Systems,* 208 *Occupant Crash Protection,* 209 *Seat Belt Assemblies,* 210 *Seat Belt Assembly Anchorages,* 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.*

Petitioner also contends that the vehicle is capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) placement of the appropriate symbols on the brake failure, parking brake, and seat belt warning lamps; (b) placement of the letters ''KM'' on the speedometer/odometer display, to indicate that this component is calibrated in kilometers per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) installation of U.S.-model headlamp assemblies; (b) installation of U.S.-model taillamps; (c) installation of a high mounted stop lamp.

Standard No. 114 *Theft Protection:* installation of a warning buzzer in the steering lock electrical circuit.

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.

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, 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 25, 1996.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 96–19366 Filed 7–30–96; 8:45 am]

BILLING CODE 4910–59–P

[Docket No. 96–083; Notice 1]

Notice of Receipt of Petition for Decision That Nonconforming 1991–1996 Freightliner FLD12064ST Trucks Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1991–1996 Freightliner FLD12064ST trucks are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1991–1996 Freightliner FLD12064ST trucks 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 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 30, 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.

Baja Truck Center of San Diego, California (''Baja'') (Registered Importer 96–118) has petitioned NHTSA to decide whether 1991–1996 Freightliner FLD12064ST trucks are eligible for importation into the United States. The vehicles which Baja believes are substantially similar are 1991–1996 Freightliner FLD12064ST trucks that were manufactured for sale in the United States and certified by their manufacturer, Freightliner Corporation, as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared the non-U.S. certified 1991–1996 Freightliner FLD12064ST trucks 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.

Baja submitted information with its petition intended to demonstrate that non-U.S. certified 1991–1996 Freightliner FLD12064ST trucks, as originally manufactured, conform 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 1991–1996 Freightliner FLD12064ST trucks 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*, 107 Reflecting Surfaces, 108 *Lamps, Reflective Devices and Associated Equipment*, 111 *Rearview Mirrors*, 113 *Hood Latch Systems*, 115 *Vehicle Identification Number*, 121 *Air Brake Systems*, 124 *Accelerator Control Systems*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 208 *Occupant Crash Protection*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, and 302 *Flammability of Interior Materials.*

Petitioner also contends that the vehicle is capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays*: (a) Placement of a label with the words ''Brake Air'' on the brake air pressure position telltale; (b) inscription of the word ''Brake'' on the brake system warning light.

Standard No. 106 *Brake Hoses*: replacement of brake line hoses and connections lacking DOT markings with U.S. model components.

Standard No. 119 *New Pneumatic Tires for Vehicles other than Passenger Cars*: replacement of tires lacking DOT markings with tires that are so marked.

Standard No. 120 *Tire Selection and Rims for Vehicles other than Passenger Cars*: (a) Installation of a tire information placard; (b) replacement of noncomplying rims with appropriately marked components.

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 25, 1996.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 96–19367 Filed 7–30–96; 8:45 am]

BILLING CODE 4910–59–P

[Docket No. 96–084; Notice 1]

Notice of Receipt of Petition for Decision That Nonconforming 1995 Jeep Cherokee Multi-Purpose Passenger Vehicles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1995 Jeep Cherokee multi-purpose passenger vehicles (MPVs) 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 1995 Jeep Cherokee 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 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.

DATE: The closing date for comments on the petition is August 30, 1996.

ADDRESS: 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 1995 Jeep Cherokee MPVs are eligible for importation into the United States. The vehicle which Champagne believes is substantially similar is the 1995 Jeep Cherokee that was manufactured for sale in the United States and certified by its manufacturer, Chrysler Corporation, as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared the non- U.S. certified 1995 Jeep Cherokee 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 1995 Jeep Cherokee, 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 1995 Jeep Cherokee is identical to its U.S. certified counterpart 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*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 119 *New Pneumatic Tires for Vehicles other than Passenger Cars*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 203 *Impact Protection for the Driver From the Steering Control System*, 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*, 212 *Windshield Retention*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, and *302 Flammability of Interior Materials.*

Additionally, the petitioner states that the non-U.S. certified 1995 Jeep Cherokee complies with the Bumper Standard found in 49 CFR Part 581.

Petitioner also contends that the vehicle is capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays*: (a) Placement of the word ''Brake'' on the brake failure indicator lamp lens; (b) installation of a seat belt warning lamp that displays the appropriate symbol; (c) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment*: (a) Installation of U.S.- model headlamp assemblies; (b) installation of U.S.-model front and rear sidemarker/reflector assemblies; (c) installation of U.S.-model taillamp assemblies.

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:* rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 120 *Tire Selection and Rims for Motor Vehicles other than Passenger Cars:* installation of a tire information placard.

Standard No. 208 *Occupant Crash Protection:* (a) installation of a U.S.-model seat belt in the driver's position, or a belt webbing actuated microswitch inside the driver's seat belt retractor; (b) installation of an ignition switch actuated seat belt warning lamp and buzzer. The petitioner states that the

vehicle is equipped at each front designated seating position with a combination lap and shoulder restraint that adjusts by means of an automatic retractor and releases by means of a single push button. The petitioner further states that the vehicle is equipped with combination lap and shoulder restraints that release by means of a single push button at both rear outboard seating positions, and with a lap belt at the rear center seating position.

Standard No. 301 *Fuel System Integrity:* installation of a rollover valve in the fuel tank vent line between the fuel tank and the evaporative emissions collection canister.

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 25, 1996.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 96–19368 Filed 7–30–96; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 96–59]

Dissemination of Information Product and Elimination of Microfiche

AGENCY: U. S. Customs Service, Department of the Treasury.

ACTION: Final notice of new information dissemination.

SUMMARY: On February 22, 1996, the U.S. Customs Service published a document in the Federal Register soliciting comments on providing its rulings, future publications and additional information in two new formats (CD–ROM and the Internet) with built-in search capabilities and ''hypertext'' links. In addition, the Customs Service solicited public comments on the elimination of one existing format used to supply rulings to the public by subscription (microfiche). After analysis of the comments received and further consideration, Customs in this document announces a decision not to issue CD–ROMS with a search engine at this time, advises the public that Customs information will be available on the Internet's World Wide Web, effective August 1, 1996, and sets October 1, 1996 as the date for elimination of the microfiche.

FOR FURTHER INFORMATION CONTACT:

For the Internet: Karen Hjelmervik, 202–927–0826.
For the microfiche: Thomas Budnik, 202–482–6909.
For the Public CD–ROM: Stuart P. Seidel, 202–482–6900.

SUPPLEMENTARY INFORMATION:

Background

In accordance with OMB Circular A–130 and Section 2 of the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3506(d)), Customs published a document in the Federal Register on February 22, 1996 (61 FR 6892), soliciting comments from the public on (1) the dissemination of Customs information by CD–ROM (Compact Disc-read only memory); (2) dissemination of information on the Internet; and (3) the elimination of microfiche rulings by subscription. A total of 41 comments were received. Comments were received from importers, law firms, accounting firms, Customs brokers, consultants, commercial publishers, several trade organizations and a bar association. Some comments addressed all three issues, while others only commented on one or two of the issues presented. This document summarizes the comments received and the decisions reached as a result of those comments.

CD–ROM

A majority of the comments favored making the information listed in the notice available with a search engine in CD–ROM by subscription. Some of the comments expressed concern over use of a proprietary search engine and suggested that the material be issued in ASCII, WordPerfect or DOS text format as well as, or in lieu of, Folio Views®. This alternative would have made the information available in plain text, which could then be converted into other formats by the users. These alternative formats could not, however, be linked to other documents. One comment suggested issuance of the CD–ROM in the Apple Macintosh Folio format. Those who favored issuing a CD–ROM believed that it would provide timely information in an easily searchable format, thereby meeting the Customs Modernization Act's authorization for the Secretary to make available in an efficient, comprehensive and timely manner, all information necessary for importers and exporters to comply with the Customs laws and regulations. Several comments were received which opposed making a CD–ROM with a search engine available to the public, because the product would directly compete with commercial CD–ROM publishers who had made considerable financial investments, and because the CD–ROM proposed by Customs would utilize a proprietary format, thereby preventing, or making more difficult, its use by commercial publishers of competing products. In addition to the written comments, representatives of Customs met with representatives of some of the commercial electronic publishers. At this meeting, concerns were expressed over Customs direct competition with commercial products, subscription costs, proprietary formats and publication frequency. Several publishers indicated that Customs proposed CD–ROM could put them out of business.

Internet

Customs also proposed placing its rulings, publications and other information of interest to the public on the Internet with hypertext links and search capability. Over 20 comments were received in favor of this proposal, although two suggested plain text or no search capabilities. Only one comment, based on security concerns was received in opposition to this proposal. Some commenters suggested that the Internet offered a better dissemination capability than the CD–ROM, because it was available to more users and could be updated more frequently.

Microfiche

Of the 16 comments received concerning elimination of the microfiche rulings, eight favored immediate elimination. Several other commenters believed that the microfiche could be eliminated if comparable material were made available in electronic media. Several commenters suggested that Customs prepare a cumulative index of the microfiche ruling numbers and make it available on a closeout microfiche and

electronically, if possible. Some commenters also suggested converting the microfiche rulings to electronic format (CD–ROM or Internet) or at least making older rulings which are cited in new rulings available electronically.

Decisions

The Customs Service agrees that in accordance with the ''informed compliance'' mandate contained in the legislative history of the Customs Modernization Act (Title VI, Pub. L. 103–182) the broadest dissemination possible should be made of Customs information. However, the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and OMB Circular A–130, while encouraging electronic dissemination of public information, require agencies to encourage a diversity of public and private sources for information; not establish restrictive distribution arrangements which interfere with timely and equitable availability of public information; and consider the effect of competition with commercial sources. It appears that there are at least five commercial CD–ROM and printed media publishers who provide Customs rulings, regulations and other material to the importing public. As a result of the comments received, Customs has decided not to make a CD–ROM containing its rulings and other information available to the public at this time. Customs reserves the right to periodically review this decision and monitor the services provided by third party publishers to see if the need for public information is being met by their products.

The Customs Service has decided to go forward with its proposal to make information available on the Internet. Accordingly, on or about August 1, 1996, members of the public may seek access to Customs information by contacting its World Wide Web site at http://www.customs.ustreas.gov. It is anticipated that the web site offerings will include all the rulings available in electronic format (including all Headquarters Rulings and New York Rulings previously available on diskette), as well as the Customs Regulations, title 19 of the U.S. Code, the Harmonized Tariff Schedules, Informed Compliance publications and the Valuation Encyclopedia. In addition, the web site would include information on Customs organization, importing and exporting, enforcement activities, travel information, career opportunities, and news releases. Finally, the web site will include an index to all rulings previously published on microfiche. All features and capabilities may not be immediately available, but will be added over the next few months. Customs also invites the public to identify the types of materials it would like to see on the web site in the future. Suggestions may be submitted to Karen Hjelmervik, Room 2146, U.S. Customs Service, 1301 Constitution Ave. NW., Washington, DC 20229.

Finally, the Customs Service has decided to eliminate the microfiche rulings program effective October 1, 1996. However, in order to insure that the public has access to older rulings, Customs will provide a cumulative index to the microfiche rulings on microfiche itself and on the Internet web-site. Customs agrees that when an older ruling is cited in a new ruling, the older ruling should be available to the public and Customs will try whenever possible to scan or otherwise convert such cited rulings to an electronic format, both in the diskette rulings and the Internet. In addition, although no new rulings microfiches will be made, the previously issued microfiches will remain available for purchase for the foreseeable future from the Legal Reference Staff, Office of Regulations and Rulings, 1301 Constitution Avenue, NW. (Franklin Court), Washington, DC 20229.

Dated: July 25, 1996.

Stuart P. Seidel,

Assistant Commissioner, Office of Regulations and Rulings.

[FR Doc. 96–19423 Filed 7–30–96; 8:45 am]

BILLING CODE 4820–02–P

[T.D. 96–58]

Determination of Origin of Textile Goods Processed in Israel

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General statement of policy.

SUMMARY: This document gives notice of Customs interpretation and application of section 334(b)(5), Uruguay Round Agreements Act (Pub. L. 103–465), which became effective July 1, 1996. That section excepts from the rules of origin governing textiles and textile products established in sections 334(b)(1) through 334(b)(4) goods which, under rulings and administrative practices in effect immediately before the enactment of section 334 (December 8, 1994), would have originated in, or been the growth, product, or manufacture of Israel.

Section 334, and its legislative history, require maintaining the status quo ante for goods processed in Israel. Accordingly, if, under the rulings and administrative practices in effect prior to December 8, 1994, a good would have been the growth, product, or manufacture of Israel, without regard to the applicability of the United States—Israel Free Trade Agreement, it will continue to be the growth, product, or manufacture of Israel. If a good would not have been determined to be the growth, product, or manufacture of Israel under the rulings and administrative practices in effect prior to December 8, 1994, that determination would still apply to goods processed in Israel and entered, or withdrawn from warehouse, for consumption on and after July 1, 1996.

EFFECTIVE DATE: July 1, 1996. This statement of policy shall apply to goods entered, or withdrawn from warehouse, for consumption, on and after July 1, 1996.

FOR FURTHER INFORMATION CONTACT: Phil Robins, Office of Regulations and Rulings, U.S. Customs Service, (202) 482–7029.

SUPPLEMENTARY INFORMATION:

Background

On December 8, 1994, the President signed into law the Uruguay Round Agreements Act (Pub. L. 103–465). Section 334 of the Act establishes rules of origin for textiles and textile products. In order to implement section 334, Customs published a notice of proposed rule making (60 FR 27378, dated May 23, 1995), and, after receiving comments thereon, promulgated § 102.21, Customs Regulations (19 CFR 102.21) (60 FR 46188, dated September 5, 1995).

Section 102.21(a) specifically states that the rules in § 102.21 shall not apply ''for purposes of determining whether goods originate in Israel or are the growth, product, or manufacture of Israel.'' The basis for the Israeli exception is section 334(b)(5) of the Uruguay Round Agreements Act which states:

> This section shall not affect, for purposes of the customs laws and administration of quantitative restrictions, the status of goods that, under rulings and administrative practices in effect immediately before the enactment of this Act, would have originated in, or been the growth, product, or manufacture of, [sic] a country that is a party to an agreement with the United States establishing a free trade area, which entered into force before January 1, 1987. For such purposes, *such rulings and administrative practices that were applied, immediately before the enactment of this Act, to determine the origin of textile and apparel products covered by such agreement shall continue to apply after the enactment of this Act, and on and after the effective date described in subsection (c), unless such*

rulings and practices are modified by the mutual consent of the parties to the agreement. (emphasis added)

Israel is the only country which qualifies under the terms of section 334(b)(5).

The rulings and administrative practices in effect prior to December 8, 1994, were derived from the provisions of § 12.130, Customs Regulations (19 CFR 12.130). Section 12.130 states that the country of origin of a good processed in more than one country is the country in which the last substantial transformation occurs.

Section 334(b)(5) is comprised of two sentences. The first sentence clearly states that the *status* of goods shall not be affected if, prior to December 8, 1994, those goods were considered to originate in Israel, or were the growth, product, or manufacture of Israel. While there is reference in that sentence to a free trade agreement, the language appears to have been carefully structured and contains no requirement that the goods *which are the subject of that* exception must themselves be eligible for duty preference under the terms of the agreement.

The second sentence elaborates on, and clarifies the wording of the first sentence. It makes clear that in determining the origin of goods covered by the agreement, Customs shall continue to apply ''such rulings and administrative practices that were applied immediately before the enactment of this Act to determine the origin of textile and apparel products covered by such agreement.''

Reading the two sentences together, it appears to Customs that Congress, in enacting section 334(b)(5), intended that Israel maintain its *status quo ante* in regard to country of origin determinations for goods processed in that country.

Section 102.21(a), Customs Regulations, is clear on its face that the textile origin rules contained in that section will not be applied to determine whether goods originate in, or are the growth, product, or manufacture of Israel. Thus, if a good is determined not to be a product of Israel under the rulings and administrative practices in effect prior to December 8, 1994, applying the rules in § 102.21 cannot result in Israel being the country of origin of the good.

Example

The following example is set forth to illustrate how this position will be implemented in the application of the rules contained in § 102.21:

Fabric produced in country A is cut in country B into components for a simple shirt. Those components are assembled into the completed shirt in Israel by sewing. Under the rulings and administrative practices in effect prior to December 8, 1994, Israel would not be the country of origin because Customs has a long line of administrative rulings holding that the cutting of garment components constitutes a substantial transformation, while the assembly of those components into a simple garment does not. Since Israel cannot be the country of origin under the rulings and administrative practices in effect prior to December 8, 1994, Customs must apply § 102.21 to determine the proper country of origin. However, § 102.21(a) precludes a finding that Israel is the country of origin.

(a) Section 102.21 requires that the General Rules, found in § 102.21(c), be applied in sequential order. Section 102.21(c)(1) states that the country of origin of a good is the single country, territory, or insular possession in which the good was wholly obtained or produced. Since the shirt in the above example was not wholly obtained or produced in a single country, that section is not applicable.

(b) Section 102.21(c)(2) requires that the good comply with the applicable tariff shift rule in § 102.21(e). The applicable tariff shift rule for the shirt in the above example is a change to the heading in which that garment is classified from any other heading, provided that the change is the result of the garment being wholly assembled in a single country, territory, or insular possession. The shirt in the above example meets this requirement because it was wholly assembled in Israel. However, as noted above, § 102.21(a) provides that the rules in § 102.21 cannot be used to determine if goods originate in, or are the growth, product, or manufacture of Israel. Accordingly, if the application of a rule in § 102.21 results in Israel being the country of origin of a good, that result is invalid and Customs will by-pass that rule and proceed to the next rule in order.

(c) The next two rules were inserted into the general rules as a precautionary measure in case the tariff shift rules in § 102.21(e) inadvertently failed to carry out the express statutory requirements of section 334. Section 102.21(c)(3)(i) is concerned with knit to shape goods. Since the subject shirt is not knit to shape, § 102.21(c)(3)(i) is not applicable. Section 102.21(c)(3)(ii) provides that, except for certain goods classifiable under specifically enumerated tariff provisions, and except for knit to shape goods, a good is the product of the single country, territory, or insular possession in which it was assembled. As in the preceding paragraph, since the application of § 102.21(c)(3)(ii) would result in Israel being the country of origin of the shirt, that rule cannot be used to determine the origin of the good and Customs must proceed to the next rule.

(d) The next two rules, §§ 102.21(c)(4) and 102.21(c)(5), are commonly referred to as ''multicountry'' rules. They are designed to insure that a single country of origin is determinable for each good imported into the United States. Section 102.21(c)(4) provides that if a single country of origin cannot be determined by the application of the preceding rules, then the country of origin of a good will be the single country, territory, or insular possession in which the most important assembly or manufacturing process occurred. In the example, this occurs in Israel, where the garment was wholly assembled. However, since the application of the rules in § 102.21 cannot result in Israel being the country of origin, Customs will determine the origin of the shirt in the example by use of § 102.21(c)(5), the second (and last) multicountry rule.

(e) Section 102.21(c)(5) provides that if a single country of origin cannot be determined by any of the preceding rules, the country of origin will be the last country, territory, or insular possession in which an important assembly or manufacturing process occurred. Since (1) every good imported into the United States must have a country of origin, (2) § 102.21(c)(5) is the last rule which can be used to determine origin, and (3) the rules in § 102.21 cannot result in Israel being the country of origin, Customs believes that, when using § 102.21 to determine the proper country of origin of goods subjected to an assembly or manufacturing process in Israel, the process or, processes, performed in Israel should not be considered. Under the given facts, Country B is the country of origin because, when excluding the final assembly operation in Israel, the cutting of the fabric in Country B is the last important manufacturing process in the production of the shirt.

Conclusion

After a careful analysis of the clear wording of section 334(c)(5) of the Uruguay Round Agreements Act and what Customs believes to have been the intent of Congress in enacting that section, *i.e.*, to maintain Israel's *status quo*, and considering the wording of § 102.21(a), Customs Regulations, which was promulgated pursuant to the authority of section 334, Customs has concluded that in determining whether goods originate in, or are the growth, product, or manufacture of Israel, Customs will first apply the rulings and administrative practices in effect prior to December 8, 1994. If that determination results in Israel not being the country of origin of the goods, then Customs will apply the rules in § 102.21 to determine the country of origin, with no consideration being given to assembly or manufacturing processes performed in Israel.

Dated: July 25, 1996.

Stuart P. Seidel,

Assistant Commissioner, Office of Regulations and Rulings.

[FR Doc. 96–19424 Filed 7–30–96; 8:45 am]

BILLING CODE 4820–02–P

Internal Revenue Service

Proposed Collection; Comment Request for Form 8845

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 Form 8845, Indian Employment Credit.

DATES: Written comments should be received on or before September 30, 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 form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Indian Employment Credit.

OMB Number: 1545–1417.

Abstract: Under Internal Revenue Code section 45A, employers can claim an income tax credit for hiring American Indians or their spouses to work in a trade or business on an Indian reservation. Form 8845 is used by employers to claim the credit and by IRS to ensure that the credit is computed correctly.

Current Actions: Part II of Form 8845, Tax Liability Limit, has been revised extensively. All of the computations are now made on the form and in logical order following the provisions of Code section 38(c). The revisions include: Deleting line 8f, Orphan drug credit, because it has expired; adding new line 10, Alternative minimum tax, and new line 14, Enter the greater of line 12 or line 13.

Type of Review: Revision of a currently approved collection.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Respondents: 500.

Estimated Time Per Respondent: 10 hr., 1 min.

Estimated Total Annual Burden Hours: 5,005.

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 23, 1996.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 96–19495 Filed 7–30–96; 8:45 am]

BILLING CODE 4830–01–P

Proposed Collection; Comment Request for Form 1028

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 Form 1028, Application for Recognition of Exemption Under Section 521 of the Internal Revenue Code.

DATES: Written comments should be received on or before September 30, 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 form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Application for Recognition of Exemption Under Section 521 of the Internal Revenue Code.

OMB Number: 1545–0058.

Form Number: 1028.

Abstract: Farmers' cooperatives must file Form 1028 to apply for exemption from Federal income tax as being organizations described in Internal Revenue Code section 521. The information on Form 1028 provides the basis for determining whether the applicants are exempt.

Current Actions: There are no changes being made to this form.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Respondents: 50.

Estimated Time Per Respondent: 50 hr., 29 min.

Estimated Total Annual Burden Hours: 2,525.

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 3 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 22, 1996.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 96–19496 Filed 7–30–96; 8:45 am]

BILLING CODE 4830–01–U

Proposed Collection; Comment Request for Form 843

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 Form 843, Claim for Refund and Request for Abatement.

DATES: Written comments should be received on or before September 30, 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 form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Claim for Refund and Request for Abatement.

OMB Number: 1545–0024.

Form Number: 843.

Abstract: Internal Revenue Code sections 6402, 6404, and sections 301.6402–2, 301.6404–1, and 301.6404–3 of the regulations allow for refunds of taxes (except income taxes) or refund, abatement, or credit of interest, penalties, and additions to tax in the event of errors or certain actions by the IRS. Form 843 is used by taxpayers to claim these refunds, credits, or abatements.

Current Actions: In 1994 a modified Form 843 was developed specifically to assist household employers or household employees affected the Domestic Employment Reform Act of 1994. The new law increased the base amount of wages subject to social security and Medicare taxes to $1,000 and was retroactive to January 1, 1994. The modified Form 843 allowed taxpayers to figure and file for any refunds of social security or Medicare taxes for 1994 paid under the prior law. The modified Form 843 was for one-time use only and is being eliminated.

Type of Review: Revision of a currently approved collection.

Affected Public: Businesses or other for-profit organizations, individuals or households, not-for-profit institutions, farms, and state, local or tribal governments.

Estimated Number of Respondents: 545,500.

Estimated Time Per Respondent: 1 hr., 21 min.

Estimated Total Annual Burden Hours: 720,060.

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 22, 1996.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 96–19497 Filed 7–30–96; 8:45 am]

BILLING CODE 4830–01–U

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 F.R. 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 F.R. 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, ''Adolph Menzel (1815–1905): Between Romanticism and Impressionism'' (See list [1]), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lenders. I also determine that the exhibition or display of the listed exhibit objects at the National Gallery of Art from on or about September 15, 1996 to January 5, 1997, is in the national interest. Public Notice of this determination is ordered to be published in the Federal Register.

Dated: July 26, 1996.

Les Jin,

General Counsel.

[FR Doc. 96–19462 Filed 7–30–96; 8:45 am]

BILLING CODE 8230–01–M

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; Report of Matching Programs

AGENCY: Department of Veterans (VA).

ACTION: VA/SSA/IRS Match Program.

SUMMARY: Notice is hereby given that the Department of Veterans Affairs (VA), Veterans Health Administration (VHA),

[1] A copy of this list may be obtained by contacting Jacqueline H. Caldwell, Esq., Assistant General Counsel, at 202–619–6982, and the address is Room 700, U.S. Information Agency, 301 4th Street, SW., Washington, DC 20547–0001.

intends to renew the computer program comparing Internal Revenue Service (IRS) and Social Security Administration (SSA) income records with VA patient income data which is contained in the patient medical records.

The goal of these matches is to compare income, social security number, and employment status as reported to VHA with income records maintained by IRS and SSA. For the information of all concerned, a summary report of the VHA matching program describing the computer matches follows. In accordance with 5 U.S.C. 552a(o)(2), copies of the computer matching report are being sent to both houses of Congress. These matches are expected to commence on or about July 28, 1996, but start no sooner than 30 days after publication of this notice in the Federal Register, or 40 days after copies of this notice and the agreement are submitted to Congress and the Office of Management and Budget whichever is later. These matches may be extended by the involved Data Integrity Boards for a twelve month period provided all agencies involved certify to the Data Integrity Boards, within three months of the termination date of the original match, that the matching program will be conducted without change and the matching programs have been conducted in compliance with the original matching agreements. The matches will not continue past the legislative authorized date to obtain this information. However, expiration of this agreement is January 27, 1998.

ADDRESSES: Interested individuals may comment on the matches by writing to the Chief Administrative Officer (161D), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420.

FOR FURTHER INFORMATION CONTACT: Janice E. Wheeler (202) 273–6276, Program Analyst, Income Verification Match Policy Service.

SUPPLEMENTARY INFORMATION: Further information regarding the matching program is provided below. This information is required by Title 5 U.S.C. 552a(e)(12), the Privacy Act of 1974, as amended. A copy of this notice has been provided to both houses of Congress and the Office of Management and Budget.

Approved: July 25, 1996.

Jesse Brown,

Secretary of Veterans Affairs.

Report of Matching Program

Department of Veterans Affairs Patient Medical Records With Income Records Maintained by the Internal Revenue Service and the Social Security Administration

a. Authority: Title 38 U.S.C. 5106 and 5317; Pub. L. 101–508 as amended by Pub. L. 102–568.

b. Program description: (1) Purpose: (a) the Department of Veterans Affairs (VA), Veterans Health Administration (VHA) plans to match the household income information contained in the medical records of certain nonservice-connected veterans, with the income records for those persons maintained by the Internal Revenue Service (IRS) and the Social Security Administration (SSA). Those nonservice-connected veterans subject to income verification matching are those veterans who are receiving VA medical care in a mandatory eligibility category due to a finding of low income subsequent to means testing.

(b) currently, information about a veterans household income (i.e., veterans and spouses receipt of wage, self-employment and other income as well as employment status, health insurance coverage and number of dependents) is obtained when the veteran makes application for medical care at a VA medical care facility. The household income and dependent data is evaluated in a ''means test'' which takes into account deductions of certain income not counted as such for Veterans Health Administration eligibility purposes. Once a net income for the veteran is established, it is applied against means test thresholds, or levels of income establishing mandatory or discretionary eligibility for medical care. If the veterans net income falls below the applicable means test threshold, he or she is eligible for mandatory care (i.e., no-cost care); however, if the net income falls over the applicable threshold, the veteran is given a discretionary eligibility. Veterans who are eligible for discretionary care are provided care if the VA medical facility has the resources to treat discretionary veterans, and if the veteran agrees to make a co-payment for such care. The proposed matching programs will enable VA to verify the accuracy of reported income and employment status and therefore more accurately determine eligibility for medical care.

(2) Procedures: VA's Veterans Health Administration has established an Income Verification Match (IVM) Center. The IVM Center will electronically extract demographic and income data from each VA medical care facility's database on nonservice-connected veterans found eligible for mandatory care based solely on low income. The VHA IVM extract file will be matched against IRS and SSA income records. If a VHA record and SSA or IRS record match on social security number and name, the IVM Center will begin an extensive case development and verification process. This process will assure the validity of the matched cases by verifying the IRS/SSA reported income amount with the payer(s) and recipients of the income. Each veteran and/or spouse identified by the match will be contacted in order to notify the veteran and/or spouse of any income discrepancy identified by the match, to verify the discrepancy, and to advise him or her of potential changes to the veterans' medical care eligibility at the VA medical center, and the potential billing action for co-payments. Before any adverse action is taken, the individual(s) identified by the match will be given the opportunity to contest the findings. Where there are reasonable grounds to believe that there has been a violation of criminal laws, the matter will be referred for prosecution consideration in accordance with existing VA policies.

c. Records to be matched: The VA records involved in the match are patient medical records maintained in the ''Patient Medical Record—VA (24VA136)'' published at 40 FR 38095 (8/26/75) and amended at 40 FR 52125 (11/7/75), 41 FR 2881 (1/20/76), 41 FR 11631 (3/19/76), 42 FR 30557 (6/15/72), 44 FR 31058 (5/30/79), 45 FR 77220 (11/21/80), 46 FR 2766 (1/12/81), 47 FR 28522 (6/30/82), 47 FR 51841 (11/17/82), 50 FR 11610 (3/22/85), 51 FR 25968 (7/17/86), 51 FR 44406 (12/9/86), 52 FR 381 (1/5/87), 53 FR 49818 (12/13/90), 55 FR 5112 (2/13/90), 55 FR 37604 (9/12/90), 55 FR 42534 (10/19/90), 56 FR 1054 (1/10/91), 57 FR 28003 (6/23/92), 57 FR 4519 (10/1/92), 58 FR 29853 (5/24/93), 58 FR 40852 (7/30/93) and 58 FR 57674 (10/26/93). The IRS records are from the Wage and Information Returns (IRP) Master File, Privacy Act system Treas/IRS 22.061. The SSA records are from the Earnings Recording and Self-Employment Income system, HHS/SSA/OSR 09–60–0059.

d. Period of match: The initial data exchanges are expected to begin 40 days after the matching agreements are signed by the Data Integrity Boards (DIB's) and Congressional Offices and

OMB have been notified, and 30 days from the date of publication of notice in the Federal Register or 40 days from the date this notice is approved, whichever is later. These matches may be extended by the involved DIB's for a twelve month period provided the agencies participating in the match certify to the DIB's, within three months of the termination date of the original match, that the matching program will be conducted without change and the matching programs have been conducted in compliance with the original matching agreements. The matches will not continue past the date legislative authority to obtain this information expires.

[FR Doc. 96–19441 Filed 7–30–96; 8:45 am]

BILLING CODE 8320–01–M

federal register

Wednesday
July 31, 1996

Part II

Department of Housing and Urban Development

Office of the Secretary

24 CFR Part 953

Community Development Block Grants for Indian Tribes and Alaska Native Villages; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 953

[Docket No. FR–2880–F–11]

RIN 2577–AB31

Community Development Block Grants for Indian Tribes and Alaska Native Villages

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This rule makes final the requirements for the Community Development Block Grant Program for Indian tribes and Alaska native villages. Several revisions have been made to the previously published interim rule by this final rule. These revisions have been made in response to public comments, to correct errors and unintentional omissions in the interim rule, and to include in this part those applicable sections of subparts C, J, and K of part 570 which were included by reference in the interim rule.

EFFECTIVE DATE: August 30, 1996.

FOR FURTHER INFORMATION CONTACT: Robert Barth, Office of Native American Programs, Room 6728, Department of Housing and Urban Development, 450 Golden Gate Avenue, San Francisco, CA 94102. (415) 436–8121. TTY (415) 436–6594. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), and assigned OMB control number 2577–0191. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

Background

This final rule represents the culmination of a process which commenced with the publication of a proposed rule on June 21, 1991 (56 FR 28666). This was followed by the first interim rule on April 7, 1992 and the second and last interim rule which was published in the Federal Register of July 27, 1994 (59 FR 38326). The last interim rule became effective on October 1, 1994, and invited public comments for a five month period ending December 27, 1994. The principal impetus for this rule making process was the need to implement various statutory mandates included in Section 105 of the Department of Housing and Urban Development Reform Act (Pub. L. 101–235) as amended by the National Affordable Housing Act of 1990. In addition, the transfer of the authority for the Community Development Block Grant Program for Indian Tribes and Alaska Native Villages to the Office of Public and Indian Housing, and specifically the Office of Native American Programs within that office, occasioned a re-evaluation of various policy determinations reflected or embodied in previously issued program regulations.

Public Comments

The Department of Housing and Urban Development (HUD) received 18 individual comments from 5 sources on the interim rule published on July 27, 1994. HUD received 3 letters from tribes and 2 from representative associations. General comments are discussed below and are followed by specific comments. The specific comments and the Department's responses are discussed under ''Specific Comments,'' according to the section where they appear in the interim rule.

General Comments

Comment: One comment was received which stated that the 1994 revision of the 1992 rule is a ''long step in the wrong direction'' in that the entire thrust of this rule is the centralization of decision making in the HUD Central Office to the ultimate detriment of the Indian tribes. This perception is apparently based upon the removal of specific application procedures and detailed selection criteria from the rule. As stated in the rule, this information would be included in the Notices of Funding Availability (NOFAs) published for specific funding cycles. The commenter is of the opinion that this change would significantly, if not completely, remove the opportunity for public comment on these items. The commenter also states that the application kits provided by HUD for the last two funding rounds (presumably FY 1993 and FY 1994) contained requirements which went beyond NOFA requirements. This statement is apparently provided as additional support for the commenter's opinion that the centralization of decision making with little or no opportunity for public comment is the intent of this rule.

Response: It is the position of the Department that centralizing decision making and restricting opportunity for public comment on this process certainly is not the intent nor the result of this rule. The inclusion of the specifics of application procedures and the detailed selection criteria in the NOFA rather than in the rule does not increase the centralization of decision making; application review and funding decisions will continue to be made at the Area ONAPs. With respect to the effect of these changes on the opportunity for public comment, at best such opportunity would be increased by moving in this direction and in no conceivable circumstance would such opportunity be diminished as compared to that afforded under the previous interim rule. The implementing regulations (24 CFR part 4) for section 103 of the HUD Reform Act provide a significant window of opportunity for public comment on the content of a NOFA. The Department encourages tribes and other interested parties to take advantage of the opportunity to impact the process during this period. It is considerably easier to change the content of a NOFA from one funding cycle to the next as compared with the process required to amend program regulations.

Regarding the relationship between the NOFA and the application kit issued by the Department, the purpose of the kit is to assist the applicant in understanding NOFA and regulatory requirements and, if necessary, to supplement NOFA instructions regarding form use and completion. The purpose of the kit is not to impose additional requirements on the applicant. The application kit issued for the FY 1995 ICDBG funding cycle was very closely reviewed to ensure that none of the information provided established requirements beyond the NOFA or Program Regulations.

Comment: One comment was received which stated that renaming the Phoenix Office of Native American Programs as the Southwest Office of Native American Programs works to the detriment of the tribes in the jurisdiction of that office. The commenter also questions the source of the funds necessary to raise the base allocation to each Area ONAP from § 500,000 to § 1,000,000.

Response: The Department does not believe that changing the name of the Area ONAP located in Phoenix will work to the detriment of any tribes; the name change does not signify anything other than a change in the name so that it better reflects the jurisdiction of this office; the names of all other Area ONAPs have also been changed for the same reason. With respect to the source of funds necessary to increase the base

allocation to each Area ONAP, it is to be noted that the change from $500,000 to $1,000,000 in the base allocation represents the second such change since the inception of the ICDBG program in 1978; the original base allocation was $250,000. In making these changes it has been the intent of the Department to increase the nation-wide equitable availability of ICDBG funds.

Comment: One commenter raised an objection to moving the imminent threat program from the Area ONAPs to Headquarters. It is the observation of the commenter that Headquarters staff could not be as knowledgeable about imminent threats in a specific area of the country as the Area ONAP staff would be for that area.

Response: The Department agrees with the observation of the commenter. However, the objection appears to be based on a misreading of the changes made to subpart E—Imminent Threat Grants. These changes were not intended to move the decision making process for such grants from the Area ONAP to the Headquarters level nor is there such a resultant effect. A clarifying memorandum was issued by ONAP on February 9, 1995, to all Area ONAPs to make certain that this is understood by all ONAP staff involved in this program. The changes were to ensure that any eligible applicant would have potential access to imminent threat funds. Before these changes, the establishment of an Imminent Threat Set Aside was left to the determination of each Area ONAP; some offices established such set asides and others did not. Under this rule, all eligible applicants have the same potential access to funds.

Comment: One commenter raised a strong objection to the elimination of the provisions for correcting procedural errors. This commenter is also of the opinion that HUD should have a uniform appeal procedure for all competitive programs which would allow the redress of errors by the raters in mathematical calculations or in the interpretation of program requirements.

Response: Although the provisions for correcting procedural errors have been removed from the rule, it was not the intent of the Department to eliminate such a process; language identical to that in the previous rule was published as part of the FY 1995 ICDBG NOFA. Unless changed through a subsequent process of consultation, it will be published as part of all subsequent NOFAs.

The argument made by the commenter for a uniform appeals process is not related to the need to change the subject rule; it will, however, be taken under advisement. It should however be noted that the interpretation of program requirements is within the purview and responsibility of the Department and, therefore, any appeals process would be limited, as it always has been limited, to perceived errors of compliance with procedural requirements.

Comment: One commenter (representing an association of housing authorities) supports the resolution passed at the National American Indian Housing Council's 1994 annual meeting that 1.5 percent of the national appropriation for CDBG be reserved for the ICDBG.

Response: Increasing the percentage of the national CDBG appropriation that is provided for the ICDBG program to 1.5 percent from the current 1 percent would require a statutory change and it is, therefore, outside the scope of rule making.

Comment: One commenter (representing an association of housing authorities) strongly urges the allowance of comprehensive planning as an eligible activity under the ICDBG program.

Response: Comprehensive planning is an eligible activity under the ICDBG program (§ 953.205(a)). Funding for such activities could however be affected by the statutory limitation (reiterated at §§ 953.205(c) and 953.206) which provides that no more than 20 percent of the funds of any ICDBG program may be used for planning and administrative activities.

Specific Comments

Section 953.6—Technical Assistance

Comment: One commenter recommends that expanded technical assistance should be made available to tribes/villages and that the Department should provide in-depth regulations regarding the technical assistance role of the field staff.

Response: On January 5, 1994, HUD's General Counsel issued a memorandum to all HUD staff in which he clearly describes the type and form of technical assistance which may be provided by HUD staff to potential applicants for assistance under the restrictions imposed by Section 102 of the HUD Reform Act. As it is described in this memorandum, permissible technical assistance activities include explaining and responding to questions concerning program regulations, defining terms in an application package, and providing other forms of technical guidance that may be described in the NOFA. In addition, before the deadline for the submission of applications, HUD employees may assist applicants by reviewing draft applications and identifying those parts of the applications that need substantive improvement. HUD employees may not, however, advise applicants on how to make the improvements. The provision of technical assistance of a type and in a manner inconsistent with that described by the General Counsel would not be allowed by the Reform Act and, therefore, would require a statutory change to be possible.

The Department encourages potential applicants to take advantage of the extensive technical assistance available from the staff of the various Area ONAPs. One of the principal reasons behind the recent reorganization of the Area ONAPs was to improve the ability of the organization to meet the technical assistance needs of its customers within the parameters established by the HUD Reform Act.

Section 953.100(b)(1)—Ceilings

Comment: Two comments were made regarding the establishment of grant ceilings. One commenter stated that the method of setting grant ceilings is inequitable because in certain Area ONAP jurisdictions, smaller tribes are allowed to compete for the same amount as larger tribes. The other commenter stated that there should not be a policy of allowing Area ONAPs to establish different ceilings for different size tribes/villages as is done by certain of these offices.

Response: Each Area ONAP has the ability to recommend the ceiling or ceilings for its jurisdiction. The Assistant Secretary for Public and Indian Housing has the final authority to determine these ceilings. The Department has determined that the present procedure for establishing ceilings is the most appropriate method and, therefore, has made no change to this section other than to eliminate a sentence which was merely descriptive of one option available to Area ONAPs.

Section 953.101—Allocation of Funds

Comment: One commenter supports the increase in the base amount allocation to each Area ONAP but strongly disagrees with the formula for allocating the remaining funds and contends that it is unfair and detrimental to the Alaska native villages. It is the position of the commenter that using the total eligible Native American population in an Area ONAP's jurisdiction as a factor in this allocation process is not equitable. The commenter provides three suggestions for changing the formula, all of which are based upon using the number of eligible applicants in an Area ONAP's

jurisdiction rather than the eligible Native American population in each jurisdiction.

Response: It is the position of the Department that the present procedure used to allocate funds to each Area ONAP after the base amount is allocated is the most appropriate method to use to ensure that the allocations reflect the relative community development needs of eligible applicants in each area. The number of eligible applicants in each area is not an accurate measure of the relative community development needs of the eligible applicants in that area compared to another area.

Comment: One commenter states that the U.S. Census population data is not a true and accurate count of Native populations and that HUD should therefore allow each Area ONAP to request and use more accurate data from the tribes/villages in its area.

Response: The Department recognizes that census data on Indian and Alaska Native populations may be incomplete or inaccurate. Census data is, however, the only such information which is consistently available and which is reasonably accurate when aggregated by Area ONAP jurisdiction. It has been the experience of the Department that census data inaccuracies tend to affect each area equally and, therefore, do not impact the relative distribution of Native American population characteristics such as poverty and substandard housing conditions. Based on these considerations, the Department will continue to use U.S. census data in the formula for allocating funds to the Area ONAPs.

In order to eliminate any possible confusion or misunderstanding regarding the source of data used to allocate funds to the Area ONAPs, paragraph (a)(2) of this section has been revised to include explicit reference to the U.S. Bureau of the Census. A corresponding clarifying revision has been made to the definition of eligible Indian population in § 953.4.

These revisions are not substantial changes to the rule since data provided by the U. S. Bureau of the Census has been used to allocate funds to field offices since the inception of the ICDBG program in 1978.

Please be advised, however, that the Department intends to schedule a series of consultation sessions throughout the country. During these sessions, the type and source of data used by the Department for funds allocation and other purposes will be agenda items. The hope is that an identification and discussion of the availability and applicability of other sources of data which could more accurately reflect the relative and absolute community development needs in Native American communities will occur.

Section 953.300—Application Requirements

Comment: One commenter states that this section is agreeable in that it does not allow multiple project applications.

Response: The commenter has misread this section since it does not address the issue of multiple project applications. However, it is to be noted that an applicant could include as many projects as it wishes in an application as long as the total ICDBG cost for all projects does not exceed the applicable grant ceiling. Given the apparent misunderstanding of this policy, it will be clearly stated in the NOFA published for this program.

Comment: One comment was received which indicates that paragraphs (b) and (c) of this section (953.300) are in direct contradiction.

Response: These two paragraphs do not contradict each other. Paragraph (b) addresses the recognition and reimbursement of costs incurred by an applicant *before* the submission of an application. Paragraph (c) addresses the recognition and reimbursement of costs incurred by an applicant *after* the submission of an application but before HUD approval. To eliminate any possible misunderstanding, these two paragraphs have been rewritten.

Section 953.302—Selection Process

Comment: One commenter expresses concerns over the meaning of the language in § 953.302(b) (Application rating system) and § 953.302(c) (Periodic NOFAs) and asks for clarification of the phrases ''rated competitively within each field office's jurisdiction'' and ''will rate applications on the basis of their responsiveness.'' The commenter supports allowing each Area ONAP to establish its own rating system for the NOFAs based upon the responses of the tribes in its jurisdiction, but does not support the establishment of a generic rating system for all tribes.

Response: The first phrase for which clarification is requested should be construed to mean that all applications submitted for funding consideration by applicants in the jurisdiction of a specific Area ONAP are in competition for the ICDBG funds allocated to that Area ONAP. The second phrase means that the Area ONAPs will rate applications on the basis of their responsiveness to the criteria identified in the Program Regulations and further detailed in the NOFA. In all of the ICDBG funding cycles that have taken place since the implementation of the HUD Reform Act, a NOFA has been published which contains the detailed rating criteria and the specifics of the application procedures to be used; the interim rule does not change this process. Each of these NOFAs has contained items which vary from one Area ONAP jurisdiction to another, e.g., rehabilitation grant limits, tie breaking considerations, etc. These variations were included to reflect real differences between the circumstances found in the various jurisdictions. It is important that eligible applicants provide specific feedback to their Area ONAPs so that the need for additional jurisdictional variations can be analyzed and, if supported, incorporated into the NOFA.

Comment: Another commenter believes that § 953.302(b) is too wide open in that each Area ONAP is afforded too much judgmental discretion, i.e., one office could determine a project to have unreasonable costs and be inappropriate for the intended use and reject it from further consideration. Another office could determine that a similar project does not fail these threshold requirements and proceed to rate and rank the project. The commenter recommends that the selection process be made consistent nationally so that each applicant has an equal chance of funding.

Response: It is expected and required of each Area ONAP that reasonable and responsible judgement be exercised in implementing all aspects of the selection system. The specific aspects of the selection process referenced by commenter are two of the community development appropriateness thresholds which have been in the Program Regulations since the March 18, 1983 interim rule was published for effect. Guidance has been provided and will continue to be provided to the Area ONAPs by the Headquarters ONAP to ensure equitable and consistent implementation of these threshold requirements. It is the position of the Department that no change is necessary in this section.

Section 953.303—Housing Rating Category

Comment: It is the position of one commenter that the threshold requirement that an applicant shall assure that it will use project funds to rehabilitate units only when the homeowner's payments are current may raise issues of confidentiality.

Response: It is necessary to note that this specific threshold applies to homeownership and not rental situations. As such, this specific requirement for a homeowner who

wishes to participate in an ICDBG funded rehabilitation project should be viewed as a reasonable condition for participation. It is also to be noted that in all single family housing rehabilitation funded with ICDBG funds, the households to be assisted must be of low or moderate income status. The requirement that the household document this status could also be viewed by some as raising issues of confidentiality, but it is the position of the Department that it is also a reasonable prerequisite for assistance.

Section 953.304—Community Facilities Rating Category

Comment: One commenter notes that the definition of the ''neediest segment of the population'' has been removed from the interim rule and asks what replaces it.

Response: Included among the details of the rating criterion of project need which are now found in the NOFA is the definition of ''neediest segment of the population''.

Section 953.400—Criteria for Funding (Imminent Threat Grants)

Comment: One commenter states that the requirement that these funds may only be used for imminent threats which impact an entire service area is too restrictive.

Response: The ICDBG program was enacted by Congress to address community development needs and was not enacted to provide assistance grants to individuals. Therefore, it is the position of the Department that the requirement that a threat to health or safety must impact an entire service area and not just an individual or household is consistent with congressional mandate and intent. The rule has not been changed. It is to be noted, however, that the specific language of the comment indicates that the commenter may be defining ''service area'' in a manner which is more restrictive than the definition provided in § 953.4 and the commenter is urged to review that definition.

Subpart F—Grant Administration

Comment: One commenter requests that income generated by economic development activities funded with ICDBG funds should be able to be retained and used at the grantee's discretion. It is the opinion of the commenter that the requirements in the previous interim rule at § 571.505 (c) were more flexible in this regard.

Response: When the current interim rule was developed, the language of § 953.505 was written to incorporate the language of 24 CFR 570.504 which had previously only been referenced in the previous interim rule in § 571.504. However, the current and previous interim rules were both in error. Section 913 of the National Affordable Housing Act of 1990 included a number of technical corrections and clarifications regarding the applicability of various sections of Title I of the Act of 1974, as amended, to the CDBG program for Indian tribes. Among the clarifications listed in this section was a statement regarding the applicability of the various subsections of Section 104 of Title I of the 1974 Act. It is stated that only subsections (f), (g), and (k) of that section apply to the ICDBG program. The significance of this statement is that the statutory basis in the 1974 Act for the regulatory program income requirements and restrictions specified in § 570.504 is subsection (j) of Section 104. Given the inapplicability of this subsection to the ICDBG program, the Department has determined that 24 CFR 85.25—*Program income* (with the modifications stated in a revised § 953.503), will apply to the ICDBG program. Specifically with respect to the commenter's concerns, it is to be noted that as defined in § 85.25 (b), program income does not include income generated by the grant supported activity after grant close-out. Given the nature of economic development activities funded with ICDBG funds, it is most likely that any income generated by these types of projects would occur after the grant period and therefore its use would not be subject to regulatory restrictions.

Other Changes Made by This Rule

Subpart A—General Provisions

Section 953.1—Applicability and scope. The term ''Indian tribes and Alaska native villages'' has been changed to ''applicants'' since, as defined in § 953.5, eligible applicants include entities, i.e., certain tribal organizations, other than Indian tribes and Alaska native villages.

Section 953.4—Definitions. Six new definitions have been added—a definition of Area ONAP, Assistant Secretary, Buildings for the General Conduct of Government, Imminent treat, Microenterprise, and Small Business. Please note that the definition of Area ONAP replaces that of Field office.

The definition of Tribal government, Tribal governing body or Tribal council has been modified to clarify that the Federal entity providing recognition is the Bureau of Indian Affairs.

The definition of Subrecipient has been included in this section rather than in subpart F—*Grant Administration*. In the interim rule this definition was included in that subpart by virtue of the inclusion (by reference) of subpart J of 24 CFR part 570 in that subpart.

Section 953.6—Technical assistance. This section has been deleted since it did not address a matter or issue of program regulation; it was a statement of Departmental policy. The deletion of this section in no way diminishes the commitment of the Department to the provision of technical assistance to eligible applicants. The response to the comment submitted on this section reflects Departmental policy on this matter.

Section 953.6—Waivers. This section (formerly § 953.7) has been revised to better state the policy of the Department regarding a waiver of a regulatory requirement. The revised language also describes procedural requirements for such waivers.

Subpart B—Allocation of Funds

Section 953.101—Field Office allocation of funds. This section has been re-titled *Area ONAP allocation of funds* and has been changed to clearly state that any amount retained by Headquarters to fund imminent threat grants pursuant to § 953.402 of this part will not be available for allocation to the Area ONAPs.

Section 953.102—Use of recaptured and unawarded funds. The title of this section has been changed so that it more accurately reflects its content. The language of the section has also been revised so that it more clearly states the requirements for the use of funds recaptured or those which may remain unawarded after the completion of a funding competition by an Area ONAP. The term ''unawarded'' replaces the term ''undistributed'' which was used in the interim rule; the term ''undistributed'' is not a term which satisfactorily describes allocated funds which may remain with an Area ONAP after the completion of a funding competition.

Subpart C—Eligible Activities

To improve the ease of use of the ICDBG rule for program applicants and grantees, subpart C of part 570 has been incorporated in this subpart with the exception of those provisions which apply only to the Entitlement Cities or HUD-administered Small Cities programs and with the additional exceptions or modifications discussed below. In the interim rule, subpart C of part 570 was incorporated by reference.

Those sections of subpart C in the interim rule which were listed as modifications to subpart C of part 570 (§ 953.201 through § 953.203) have been

incorporated in the appropriate sections of the revised subpart C.

In the process of reviewing the various sections of subpart C of part 570 prior to their incorporation into subpart C of part 953, it was determined that certain of these sections either included language which was duplicative of language contained in other sections of the rule or which was excessively descriptive or, that certain sections included paragraphs which should be relocated to other sections or subparts to facilitate ease of use and understanding of the rule.

Based on these determinations, the following modifications or revisions have been made:

Section 570.200—General policies. 1. The language contained in paragraph (a)(3)—*Compliance with the primary objective* (as modified to meet the requirements of the ICDBG program) has been incorporated in § 953.208.

2. Paragraph (a)(4) *Compliance with environmental review procedures* has not been incorporated since it duplicated the requirements included in § 953.605—*Environment*.

3. The language of paragraph (a)(5)—*Cost principles* was made part of § 953.501 which has been titled *Applicability of uniform administrative requirements and cost principles*.

4. The language of paragraphs (b)—*Special policies governing facilities* and paragraph (c)—*Special assessments under the CDBG program* has been incorporated in § 953.201(c)—*Public facilities*.

5. The introductory language of paragraph (d)—*Consultant activities* has been eliminated since it was determined to be superfluous.

6. The language of paragraph (d)(1) regarding the limitation on the rate of compensation in employer-employee relationships has been incorporated in the revised § 953.501 as paragraph (c)(2) of that section.

7. Both paragraph (e)—*Recipient determinations required as a condition of eligibility* and (f)—*Means of carrying out eligible activities* have not been included in the rule since it was determined that the language in these paragraphs was either duplicated in other sections of the rule or it was exemplary and not expository and did not address a matter or issue of program regulation.

8. The language of paragraph (g)—*Limitation on planning and administrative costs* has been incorporated in § 953.206—*Program administration costs*.

9. The language in paragraph (h)—*Constitutional prohibition* was incorporated into subpart G—*Other Program Requirements* as § 953.600—*Constitutional prohibition*.

Section 570.205—Eligible planning, urban environmental design and policy-planning-management capacity building activities. The review of subpart C of part 570 discussed above revealed that much of the language included in this section was more exemplary or descriptive of the types of activities possibly eligible under this section and did not address a matter or issue of program regulation. The resultant § 953.205 is, therefore, more concise than § 570.205, but it affords the same degree of flexibility in the use of ICDBG funds for planning and management capacity improvement types of activities authorized by section 105(a)(12) of the 1974 Act, as amended.

Subpart D—Single Purpose Grant Application and Selection Process

Section 953.301—Screening and review of applications. This section has been removed from the rule since it was determined to be superfluous. All subsequent sections in this subpart have been re-numbered.

Section 953.301—Selection process.

This section (formerly numbered 953.302) has been re-formatted to clarify threshold requirements and the role of the NOFA with respect to this process. No substantive changes have been made in the requirements.

Section 953.303—Housing rating category, section 953.304—Community. facilities rating category, and section 953.305—Economic development rating category. These three sections have been consolidated into two new sections § 953.303— *Project specific threshold requirements* and § 953.304—*Project rating categories*. This consolidation process did not involve or include any substantial changes in requirements. It however is to be noted that independent of this consolidation, changes were made which affect project specific threshold requirements for economic development projects. The threshold requirement that ''an applicant shall demonstrate the need for grant assistance by providing documentation to support a determination that the assistance is appropriate to implement an economic development project'' has been deleted. This requirement has proven to be an unnecessary complication for potential applicants for assistance.

One of the two remaining threshold requirements for economic development projects, i.e., that an analysis demonstrates that public benefit commensurate with the assistance requested can reasonably be expected, has been expanded in scope and revised. The expansion/revision of this threshold was done to state this requirement in a manner consistent with the objectives for the evaluation and selection of economic development projects which were set forth in Section 806 of the Housing and Community Development Act of 1992. As was indicated in the Supplementary Information section of the January 5, 1995 Final Rule and guidelines (24 CFR part 570), that rule would not apply to the ICDBG Program; necessary compliance with the requirements of the 1992 Act would be established as part of a future rule. The Department has reviewed the need to establish such compliance as part of a future rule and has determined that the rating criteria for economic development projects set forth in this rule, as explained and reified in all future NOFAs, will be adequate to achieve general compliance with the guidelines set forth in the 1992 Act.

The rating requirements for economic development projects have also been changed to include a rating criterion ''additional considerations'' which was inadvertently left out of the interim rule.

Section 953.304—Funding process. The language of § 953.304(b)(2) [formerly § 953.307(b)(2)] has been changed to delete an incorrect reference to 24 CFR part 58 made in the interim rule and to more concisely state the applicable requirements of part 58.

Section 953.305—Program amendments. The language of this section (formerly § 953.308) has been changed since paragraph (b) of this section in the interim rule referenced application component requirements which were no longer specified anywhere in the rule. This paragraph now references application component requirements now specified in the NOFA. In addition, this paragraph has been revised to raise the dollar amount of a program amendment request which must be rated from $25,000 to $100,000. This change is consistent with the Departmental policy of increasing program flexibility for clients and customers while ensuring compliance with statutory requirements and congressional intent.

Section 953.306—Public services. This section has been deleted since it duplicates the language in § 953.201(e) —*Public services*.

Subpart E—Imminent Threat Grants

Section 953.401—Application process. Paragraph (b) of this section has been changed since the interim rule referenced application requirements which were no longer specified anywhere in the rule. This paragraph

now indicates that the form and content requirements for imminent threat grant applications will be specified in the NOFA.

Section 953.402—Environmental review. This section has been eliminated and the language of the section has been relocated to § 953.605 (b).

Section 953.402—Availability of Funds. This section (formerly § 953.403) has been changed to indicate that the amount which may be retained by HUD for imminent threat grants will be determined by the Assistant Secretary. It is the determination of the Department that this discretion will provide for necessary flexibility. The amount to be retained will be published in the NOFA and will be based upon an anticipated level of demand which will take into consideration historic funding levels and other relevant factors.

Subpart F—Grant Administration

To improve the ease of use of the ICDBG rule by program applicants and grantees, those applicable sections of subpart J of part 570—*Program Administration*—have been incorporated into subpart F of the ICDBG rule; the interim rule incorporated these sections by reference. Section 570.508—*Public access to program records* and Section 570.509—*Grant closeout procedures* have been incorporated without substantial modification as § 953.507 and § 953.508, respectively.

The following sections or provisions were either not incorporated or they were incorporated but modified as discussed below.

Section 570.500—Definitions. This section has not been incorporated. The definition of program income applicable to the ICDBG program is set forth in § 953.503. As discussed above, the definition of subrecipient is set forth in § 953.4.

Section 570.501—Responsibility for grant administration. This section, with appropriate modifications to meet the requirements of the ICDBG program, has been incorporated as § 953.500.

Section 570.502—Applicability of uniform administrative requirements. This section, with the following modifications, has been incorporated into § 953.501.

1. Reference to the program income requirements of 24 CFR 85.25 (as modified by § 953.503) is included in § 953.501 as paragraph (7). Reference to this section of part 85 is not included in § 570.501 since there are different statutory program income requirements for the CDBG program, as discussed above in the response to the comment submitted regarding these requirements. Given the inclusion of a paragraph referencing § 85.25, the number of paragraphs in § 953.501 is 21 as compared to 20 in § 570.502.

2. The language of paragraph (a)(12) has been incorporated in § 953.501(a)(13) and additional language has been added so that the alternatives to the payment and performance bonding requirements of § 85.36(b) which are acceptable to HUD for the ICDBG program are stated. These acceptable alternatives will allow grantees increased flexibility to adequately ensure performance and payment by a contractor while at the same time allowing the grantee to more easily meet its other obligations and responsibilities under the rule.

3. The language of paragraph (a)(16) has been incorporated in § 953.501(a)(17) and has been added to by stating the starting date for record retention requirements.

Section 570.504—Program income. This section has not been incorporated in § 953.501.

Section 570.505—Records to be maintained. This section has been incorporated, in a highly modified form, in § 953.505. Section 953.505 merely states that each grantee shall establish and maintain sufficient records to enable HUD to determine whether or not it has met the requirements of this part. A grantee guidance document which will recommend specific records to be maintained will be issued by HUD in the near future.

Section 570.507—Reports. This section has been incorporated, in a modified form, as § 953.506. The modifications include the deletion of inapplicable performance reporting requirements and the relocation to this section of the requirements of § 953.700—*Reports to be submitted* of the interim rule. In addition to this relocation, specific timing requirements for the submission of the status and evaluation reports has been added.

Section 570.510—Transferring projects from urban counties to metropolitan cities. Section 570.513—Lump sum drawdown for financing of property rehabilitation. These two sections have not been incorporated. It is to be noted that lump sum drawdowns are authorized under subsection (h) of section 104 of Title I of the 1974 Act. This subsection was not stated in section 913 of the National Affordable Housing Act of 1990 as being applicable to the CDBG Program for Indian tribes.

The provisions of the following sections of subpart F of the interim rule (with modifications discussed below) have been incorporated into the final rule as follows.

Interim rule	Final rule
§ 953.502—*Force account construction*	§ 953.509
§ 953.503—*Indian preference*	§ 953.510
§ 953.505—*Program income*	§ 953.503

The following modifications have been made to these sections.

Force account construction—The last sentence in paragraph (e) regarding the approval of alternative requirements in lieu of bonding has been deleted. As discussed above, acceptable alternatives to performance and payment bonding are set forth in § 953.501(a)(13).

Indian preference—This section has been revised in the following ways.

1. Inaccuracies in certain referenced definitions in the interim rule have been corrected.

2. A definition of ''Indian'' as this word is defined in the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 b) has been included.

3. Paragraph (e), *Additional Indian preference requirements* is being deleted since its provisions have never been used and, upon analysis, it did not appear to be meaningful or necessary.

4. A new paragraph (e) *Complaint procedures* in which the specific process to be followed is clarified and in which the grantee is identified as the final arbiter has been added.

Program income—The basis for the changes to this section and the changes themselves are addressed above in the section *Specific Comments.*

Subpart G—Other Program Requirements

In § 953.600 of the interim rule it is stated that the following requirements of 24 CFR Part 570, subpart K apply to grants under the ICDBG Program:

§ 570.605—*National Flood Insurance Program*
§ 570.608—*Lead-based paint*
§ 570.609—*Use of debarred, suspended or ineligible contractors or subrecipients*
§ 570.610—*Uniform administrative cost principles*

A review of these requirements with the intent of incorporating them in their entirety into the ICDBG rule resulted in the following determinations.

Section 570.605—National flood insurance program. This section was not incorporated into the final rule since it duplicates the requirements of 24 CFR 58.6(a) in which grantee responsibilities under the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001—4128) are set forth.

Section 570.608—Lead-based paint. The language of this section was modified prior to incorporation to reflect the current policies of the Department. The modifications were based on recommendations from HUD's Office of Lead-Based Paint Abatement and Poisoning Prevention. These requirements are set forth in § 953.607. The Department, however, has published a proposed regulation to implement the Residential Lead-Based Paint Hazard Reduction Act of 1992, Title X of the Housing and Community Development Act of 1992 (Pub. L. 102–550). The June 7, 1996 regulation will substantially alter the lead-based paint requirements for all HUD programs including the CDBG Program for Indian Tribes and Alaska Native Villages.

Section 570.609—Use of debarred, suspended or ineligible contractors or subrecipients. It was determined that the incorporation of this section would not be completely appropriate without significant modifications. Instead of modifying this section so that its provisions better fit the ICDBG Program, the provisions and requirements from the Indian HOME Program regulations which address these responsibilities will be incorporated into the final rule since the requirements for both programs are the same. Therefore, the requirements which govern the use of debarred, suspended or ineligible contractors or subrecipients in the final rule (now § 953.608) are the same as those for the Indian HOME Program.

Section 570.610—Uniform administrative cost principles. This section was not incorporated into the final rule. It was determined that it duplicated the requirements set forth in § 953.501—*Applicability of uniform administrative requirements and cost principles.*

Section 953.602—Relocation and real property acquisition. The language of this section was revised to reflect current policies and terminology used by the Department with respect to relocation and real property acquisition activities related to or funded by programs under the Act.

Section 953.605—Environment. This section was revised to explicitly reference the flood insurance, coastal barrier resource and airport clear zone requirements found at 24 CFR 58.6 and to correctly identify the title of 24 CFR part 58.

Section 953.606—Conflict of interest. The references in subsection (a) to the applicability of OMB Circular A–110 have been deleted and replaced with a reference to 24 CFR 84.42; part 84 has superseded OMB Circular A–110.

Subpart H—Program Performance

Section 953.700—Reports to be submitted by grantee. As stated above, reporting requirements for ICDBG grantees have been consolidated under § 953.507. With the deletion of this section, all subsequent sections in this subpart have been re-numbered.

Section 953.701—Corrective and remedial actions. Paragraph (b)(3) of this section (formerly § 953.702) has been deleted since certifications of compliance are no longer used in the ICDBG program.

Other Matters

Executive Order 12866

This final rule was reviewed by the Office of Management and Budget (OMB) under Executive Order 12866 on Regulatory Planning and Review, issued by the President on September 30, 1993. Any changes made in this final rule as a result of that review are clearly identified in the docket file, which is available for public inspection in the office of the Department's Rules Docket Clerk, Room 10276, 451 Seventh Street SW., Washington, DC.

National Environmental Policy Act

A Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations at 24 CFR Part 50, which implement Section 102(2)(C) of the National Environmental Policy Act of 1969, when the July 27, 1994 interim rule was issued. Because no significant changes have been made that would pertain to the environment, that finding applies to this final rule. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk at the above address.

Regulatory Flexibility

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule establishes criteria for funding eligible grantees among Indian Tribes/Villages and has no impact on small entities.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under Section 6(a) of Executive Order 12612, *Federalism,* has determined that the policies contained in this rule would not have substantial direct effects on States or their political subdivisions, or the relationship between the federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the rule is not subject to review under the Order. While the rule has some direct effects on States and political subdivisions, those effects are limited to direct implementation of instructions contained in statutes governing the grant program. Given the lack of discretion in the Department to refrain from implementing these statutory instructions, further analysis of federalism concerns would serve no useful purpose.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family,* has determined that this rule would not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program number is 14.862.

List of Subjects in 24 CFR Part 953

Alaska, Community development block grants, Grant programs—housing and community development, Indians, Reporting and recordkeeping requirements.

Accordingly, 24 CFR Part 953 is revised to read as follows:

PART 953—COMMUNITY DEVELOPMENT BLOCK GRANTS FOR INDIAN TRIBES AND ALASKA NATIVE VILLAGES

Subpart A—General Provisions

Sec.
953.1 Applicability and scope.
953.2 Program objective.
953.3 Nature of program.
953.4 Definitions.
953.5 Eligible applicants.
953.6 Waivers.

Subpart B—Allocation of Funds

953.100 General.
953.101 Area ONAP allocation of funds.
953.102 Use of recaptured and unawarded funds.

Subpart C—Eligible Activities

953.200 General policies.
953.201 Basic eligible activities.
953.202 Eligible rehabilitation and preservation activities.
953.203 Special economic development activities.
953.204 Special activities by Community-Based Development Organizations (CBDOs).

953.205 Eligible planning, urban environmental design and policy-planning-management-capacity building activities.
953.206 Program administration costs.
953.207 Ineligible activities.
953.208 Criteria for compliance with the primary objective.

Subpart D—Single Purpose Grant Application and Selection Process

953.300 Application requirements.
953.301 Selection process.
953.302 Project specific threshold requirements.
953.303 Project rating categories.
953.304 Funding process.
953.305 Program amendments.

Subpart E—Imminent Threat Grants

953.400 Criteria for funding.
953.401 Application process.
953.402 Availability of funds.

Subpart F—Grant Administration

953.500 Responsibility for grant administration.
953.501 Applicability of uniform administrative requirements and cost principles.
953.502 Agreements with subrecipients.
953.503 Program income.
953.504 Use of real property.
953.505 Records to be maintained.
953.506 Reports.
953.507 Public access to program records.
953.508 Grant closeout procedures.
953.509 Force account construction.
953.510 Indian preference requirements.
953.511 Use of escrow accounts for rehabilitation of privately owned residential property.

Subpart G—Other Program Requirements

953.600 Constitutional prohibition.
953.601 Nondiscrimination.
953.602 Relocation and real property acquisition.
953.603 Labor standards.
953.604 Citizen participation.
953.605 Environment.
953.606 Conflict of interest.
953.607 Lead-based paint.
953.608 Debarment and suspension.

Subpart H—Program Performance

953.700 Review of grantee's performance.
953.701 Corrective and remedial actions.
953.702 Reduction or withdrawal of grant.
953.703 Other remedies for noncompliance.

Authority: 42 U.S.C. 3535(d) and 5301 *et seq.*

Subpart A—General Provisions

§ 953.1 Applicability and scope.

The policies and procedures described in this part apply to grants to eligible applicants under the Community Development Block Grant (CDBG) program for Indian tribes and Alaska native villages.

§ 953.2 Program objective.

The primary objective of the Indian CDBG (ICDBG) Program and of the community development program of each grantee covered under the Act is the development of viable Indian and Alaska native communities, including decent housing, a suitable living environment, and economic opportunities, principally for persons of low and moderate income. The Federal assistance provided in this part is not to be used to reduce substantially the amount of tribal financial support for community development activities below the level of such support before the availability of this assistance.

§ 953.3 Nature of program.

The selection of single purpose grantees under subpart B of this part is competitive in nature. Therefore, selection of grantees for funds will reflect consideration of the relative adequacy of applications in addressing tribally determined need. The selection of grantees of imminent threat grants under the provisions of subpart B of this part is not competitive in nature. However, applicants for funding under either subpart must have the administrative capacity to undertake the community development activities proposed, including the systems of internal control necessary to administer these activities effectively without fraud, waste, or mismanagement.

§ 953.4 Definitions.

Act means Title I of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301 *et seq.*)

Area ONAPs mean the HUD Offices of Native American Programs having field office responsibility for the ICDBG Program.

Assistant Secretary means the Assistant Secretary for Public and Indian Housing.

Buildings for the general conduct of government mean office buildings and other facilities in which the legislative, judicial or general administrative affairs of the government are conducted. This term does not include such facilities as neighborhood service centers or special purpose buildings located in low and moderate income areas that house various non-legislative functions or services provided by the government at decentralized locations.

Chief executive officer means the elected official or legally designated official who has the prime responsibility for the conduct of the affairs of an Indian tribe or Alaska native village.

Eligible Indian population means the most accurate and uniform population data available from data compiled and published by the United States Bureau of the Census available from the latest census referable to the same point or period of time for Indian tribes and Alaska native villages eligible under this part.

Extent of overcrowded housing means the number of housing units with 1.01 or more persons per room, based on data compiled and published by the United States Bureau of the Census available from the latest census referable to the same point or period of time.

Extent of poverty means the number of persons whose incomes are below the poverty level, based on data compiled and published by the United States Bureau of the Census referable to the same point or period in time and the latest reports from the Office of Management and Budget.

HUD means the Department of Housing and Urban Development.

ICDBG Program means the Indian Community Development Block Grant Program.

Identified service area means:

(1) A geographic location within the jurisdiction of a tribe (but not the entire jurisdiction) designated in comprehensive plans, ordinances, or other tribal documents as a service area;

(2) The Bureau of Indian Affairs (BIA) service area, including residents of areas outside the geographic jurisdiction of the tribe; or

(3) The entire area under the jurisdiction of a tribe which has a population of members of under 10,000.

Imminent threat means a problem which if unresolved or not addressed will have an immediate negative impact on public health or safety.

Low and moderate income beneficiary means a family, household, or individual whose income does not exceed 80 percent of the median income for the area, as determined by HUD, with adjustments for smaller and larger households or families. However, HUD may establish income ceilings higher or lower than 80 percent of the median for the area on the basis of HUD's findings that such variations are necessary because of unusually high or low household or family incomes. In reporting income levels to HUD, the applicant must include and identify the distributions of tribal or village income to families, households, or individuals.

Microenterprise means a business that has five or fewer employees, one or more of whom owns the enterprise.

Secretary means the Secretary of HUD.

Small business means a business that meets the criteria set forth in section 3(a) of the Small Business Act (15 U.S.C. 631, 636, and 637).

Subrecipient means a public or private nonprofit agency, authority or organization, or a for-profit entity

described in § 953.201(o), receiving ICDBG funds from the grantee or another subrecipient to undertake activities eligible for assistance under subpart C of this part. The term excludes a CBDO receiving ICDBG funds from the grantee under the authority of § 953.204, unless the grantee explicitly designates it as a subrecipient. The term does not include contractors providing supplies, equipment, construction or services subject to the procurement requirements in 24 CFR 85.36 or in 24 CFR Part 84, as applicable.

Tribal government, Tribal governing body or *Tribal council* means the governing body of an Indian tribe or Alaska native village as recognized by the Bureau of Indian Affairs.

Tribal resolution means the formal manner in which the tribal government expresses its legislative will in accordance with its organic documents. In the absence of such organic documents, a written expression adopted pursuant to tribal practices will be acceptable.

URA means the Uniform Relocation and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. 4601 *et. seq.*).

§ 953.5 Eligible applicants.

(a) Eligible applicants are any Indian tribe, band, group, or nation, including Alaska Indians, Aleuts, and Eskimos, and any Alaska native village of the United States which is considered an eligible recipient under Title I of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450) or which had been an eligible recipient under the State and Local Fiscal Assistance Act of 1972 (31 U.S.C. 1221). Eligible recipients under the Indian Self-Determination and Education Assistance Act will be determined by the Bureau of Indian Affairs and eligible recipients under the State and Local Fiscal Assistance Act of 1972 are those that have been determined eligible by the Department of Treasury, Office of Revenue Sharing.

(b) Tribal organizations which are eligible under Title I of the Indian Self-Determination and Education Assistance Act may apply on behalf of any Indian tribe, band, group, nation, or Alaska native village eligible under that act for funds under this part when one or more of these entities have authorized the tribal organization to do so through concurring resolutions. Such resolutions must accompany the application for funding. Eligible tribal organizations under Title I of the Indian Self-Determination and Education Assistance Act will be determined by the Bureau of Indian Affairs or the Indian Health Service, as appropriate.

(c) To apply for funding in a given fiscal year, an applicant must be eligible as an Indian tribe or Alaska native village, as provided in paragraph (a) of this section, or as a Tribal organization, as provided in paragraph (b) of this section, by the application submission date.

(Approved by the Office of Management and Budget under control number 2577–0191)

§ 953.6 Waivers.

Upon determination of good cause, HUD may waive any provision of this part not required by statute. Each waiver must be in writing and must be supported by documentation of the pertinent facts and grounds.

Subpart B—Allocation of Funds

§ 953.100 General.

(a) *Types of grants.* Two types of grants are available under the Indian CDBG Program.

(1) *Single purpose grants* provide funds for one or more single purpose projects consisting of an activity or set of activities designed to meet a specific community development need. This type of grant is awarded through competition with other single purpose projects.

(2) *Imminent threat grants* alleviate an imminent threat to public health or safety that requires immediate resolution. This type of grant is awarded only after an Area ONAP determines that such conditions exist and if funds are available for such grants.

(b) *Size of grants.*—(1) *Ceilings.* Each Area ONAP may recommend grant ceilings for single purpose grant applications. Single purpose grant ceilings for each Area ONAP shall be established in the NOFA (Notice of Funding Availability).

(2) *Individual grant amounts.* An Area ONAP may approve a grant amount less than the amount requested. In doing so, the Area ONAP may take into account the size of the applicant, the level of demand, the scale of the activity proposed relative to need and operational capacity, the number of persons to be served, the amount of funds required to achieve project objectives and the administrative capacity of the applicant to complete the activities in a timely manner.

§ 953.101 Area ONAP allocation of funds.

(a) Except as provided in paragraph (b) of this section, funds will be allocated to the Area ONAPs responsible for the program on the following basis:

(1) Each Area ONAP will be allocated $1,000,000 as a base amount, to which will be added a formula share of the balance of the ICDBG Program funds, as provided in paragraph (a)(2) of this section.

(2) The amount remaining after the base amount is allocated and any amount retained by the Headquarters ONAP to fund imminent threat grants pursuant to the provisions of § 953.402 is subtracted, will be allocated to each Area ONAP based on the most recent data complied and published by the United States Bureau of the Census referable to the same point or period in time, as follows:

(i) Forty percent (40%) of the funds will be allocated based upon each Area ONAP's share of the total eligible Indian population;

(ii) Forty percent (40%) of the funds will be allocated based upon each Area ONAP's share of the total extent of poverty among the eligible Indian population; and

(iii) Twenty percent (20%) of the funds will be allocated based upon each Area ONAP's share of the total extent of overcrowded housing among the eligible Indian population.

(b) HUD will use other criteria to determine an allocation formula for distributing funds to the Area ONAPs if funds are set aside by statute for a specific purpose in any fiscal year if it is determined that the formula in paragraph (a) of this section is inappropriate to accomplish the purpose. HUD will use other criteria if it is determined that, based on a limited appropriation of funds, the use of the formula in paragraph (a) of this section is inappropriate to obtain an equitable allocation of funds.

(c) Data used for the allocation of funds will be based upon the Indian population of those tribes and villages that are determined to be eligible ninety (90) days before the beginning of each fiscal year.

§ 953.102 Use of recaptured and unawarded funds.

(a) The Assistant Secretary will determine on a case-by-case basis the use of grant funds which are:

(1) Recaptured by HUD under the provisions of § 953.703 or § 953.704;

(2) Recaptured by HUD at the time of the closeout of a program; or

(3) Unawarded after the completion by an Area ONAP of a funding competition.

(b) The recaptured or unawarded funds will remain with the Area ONAP to which they were originally allocated unless the Assistant Secretary determines that there is an overriding

reason to redistribute these funds outside of the Area ONAP's jurisdiction. The recaptured funds may be used to fund the highest ranking unfunded project from the most recent funding competition, an imminent threat, or other uses. Unawarded funds may be used to fund an imminent threat or other uses.

Subpart C—Eligible Activities

§ 953.200 General policies.

An activity may be assisted in whole or in part with ICDBG funds only if the activity meets the eligibility requirements of section 105 of the Act as further defined in this subpart and if the criteria for compliance with the primary objective of the Act set forth under § 953.208 have been met. The requirements for compliance with the primary objective of the Act do not apply to imminent threat grants funded under subpart E of this part.

§ 953.201 Basic eligible activities.

ICDBG funds may be used for the following activities:

(a) *Acquisition.* Acquisition in whole or in part by the grantee, or other public or private nonprofit entity, by purchase, long-term lease, donation, or otherwise, of real property (including air rights, water rights, rights-of-way, easements, and other interests therein) for any public purpose, subject to the limitations of § 953.207.

(b) *Disposition.* Disposition, through sale, lease, donation, or otherwise, of any real property acquired with ICDBG funds or its retention for public purposes, including reasonable costs of temporarily managing such property or property acquired under urban renewal, provided that the proceeds from any such disposition shall be program income subject to the requirements set forth in § 953.503.

(c) *Public facilities and improvements.* Acquisition, construction, reconstruction, rehabilitation or installation of public facilities and improvements, except as provided in § 953.207(a), carried out by the grantee or other public or private nonprofit entities. In undertaking such activities, design features and improvements which promote energy efficiency may be included. [However, activities under this paragraph may be directed to the removal of material and architectural barriers that restrict the mobility and accessibility of elderly or severely disabled persons to publicly owned and privately owned buildings, facilities, and improvements including those provided for in § 953.207(a)(1).] Such activities may also include the execution of architectural design features, and similar treatments intended to enhance the aesthetic quality of facilities and improvements receiving ICDBG assistance. Facilities designed for use in providing shelter for persons having special needs are considered public facilities and not subject to the prohibition of new housing construction described in § 953.207(b)(3). Such facilities include shelters for the homeless; convalescent homes; hospitals, nursing homes; battered spouse shelters; halfway houses for run-away children, drug offenders or parolees; group homes for mentally retarded persons and temporary housing for disaster victims. In certain cases, nonprofit entities and subrecipients including those specified in § 953.204 may acquire title to public facilities. When such facilities are owned by nonprofit entities or subrecipients, they shall be operated so as to be open for use by the general public during all normal hours of operation. Public facilities and improvements eligible for assistance under this paragraph (c) are subject to the following policies in paragraphs (c)(1) through (c)(3) of this section:

(1) *Special policies governing facilities.* The following special policies apply to:

(i) *Facilities containing both eligible and ineligible uses.* A public facility otherwise eligible for assistance under the ICDBG program may be provided with ICDBG funds even if it is part of a multiple use building containing ineligible uses, if:

(A) The facility which is otherwise eligible and proposed for assistance will occupy a designated and discrete area within the larger facility; and

(B) The grantee can determine the costs attributable to the facility proposed for assistance as separate and distinct from the overall costs of the multiple-use building and/or facility. Allowable costs are limited to those attributable to the eligible portion of the building or facility.

(ii) *Equipment purchase.* As stated in § 953.207(b)(1), the purchase of equipment with ICDBG funds is generally ineligible. However, the purchase of construction equipment for use as part of a solid waste facility is eligible. In addition, the purchase of fire protection equipment is considered to be an integral part of a public facility, and, therefore, the purchase of such equipment is also eligible.

(2) *Fees for use of facilities.* Reasonable fees may be charged for the use of the facilities assisted with ICDBG funds, but charges such as excessive membership fees, which will have the effect of precluding low and moderate income persons from using the facilities, are not permitted.

(3) *Special assessments under the ICDBG program.* The following policies relate to special assessments under the ICDBG program:

(i) *Definition of special assessment.* The term *special assessment* means the recovery of the capital costs of a public improvement, such as streets, water or sewer lines, curbs, and gutters, through a fee or charge levied or filed as a lien against a parcel of real estate as a direct result of benefit derived from the installation of a public improvement, or a one-time charge made as a condition of access to a public improvement. This term does not relate to taxes, or the establishment of the value of real estate for the purpose of levying real estate, property, or ad valorem taxes, and does not include periodic charges based on the use of a public improvement, such as water or sewer user charges, even if such charges include the recovery of all or some portion of the capital costs of the public improvement.

(ii) *Special assessments to recover capital costs.* Where ICDBG funds are used to pay all or part of the cost of a public improvement, special assessments may be imposed as follows:

(A) Special assessments to recover the ICDBG funds may be made only against properties owned and occupied by persons not of low and moderate income. Such assessments constitute program income.

(B) Special assessments to recover the non-ICDBG portion may be made provided that ICDBG funds are used to pay the special assessment on behalf of all properties owned and occupied by low and moderate income persons; except that ICDBG funds need not be used to pay the special assessments on behalf of properties owned and occupied by moderate income persons if the grantee certifies that it does not have sufficient ICDBG funds to pay the assessments in behalf of all of the low and moderate income owner-occupant persons. Funds collected through such special assessments are not program income.

(iii) *Public improvements not initially assisted with ICDBG funds.* The payment of special assessments with ICDBG funds constitutes ICDBG assistance to the public improvement. Therefore, ICDBG funds may be used to pay special assessments provided:

(A) The installation of the public improvements was carried out in compliance with requirements applicable to activities assisted under this part including environmental and citizen participation requirements; and

(B) The installation of the public improvement meets a criterion for the primary objective in § 953.208; and,

(C) The requirements of § 953.201(c)(3)(ii))(B) are met.

(d) *Clearance activities.* Clearance, demolition, and removal of buildings and improvements, including movement of structures to other sites. Demolition of HUD-assisted housing units may be undertaken only with the prior approval of HUD.

(e) *Public services.* Provision of public services (including labor, supplies, materials, and the purchase of personal property and furnishings) which are directed toward improving the community's public services and facilities, including but not limited to those concerned with employment, crime prevention, child care, health, drug abuse, education, fair housing counseling, energy conservation, welfare (but excluding the provision of income payments identified under § 953.207(b)(4)), homebuyer downpayment assistance or recreational needs. To be eligible for ICDBG assistance, a public service must be either a new service, or a quantifiable increase in the level of an existing service above that which has been provided by or on behalf of the grantee through funds raised by the grantee, or received by the grantee from the Federal government in the twelve calendar months before the submission of the application for ICDBG assistance. (An exception to this requirement may be made if HUD determines that any decrease in the level of a service was the result of events not within the control of the grantee.) The amount of ICDBG funds used for public services shall not exceed 15 percent of the grant. Such projects must therefore be submitted with one or more other projects, which must comprise at least 85 percent of the total requested ICDBG grant amount.

(f) *Interim assistance.* (1) The following activities may be undertaken on an interim basis in areas exhibiting objectively determinable signs of physical deterioration where the grantee has determined that immediate action is necessary to arrest the deterioration and that permanent improvements will be carried out as soon as practicable:

(i) The repairing of streets, sidewalks, parks, playgrounds, publicly owned utilities, and public buildings; and

(ii) The execution of special garbage, trash, and debris removal, including neighborhood cleanup campaigns, but not the regular curbside collection of garbage or trash in an area.

(2) In order to alleviate emergency conditions threatening the public health and safety in areas where the chief executive officer of the grantee determines that such an emergency condition exists and requires immediate resolution, ICDBG funds may be used for:

(i) The activities specified in paragraph (f)(1) of this section, except for the repair of parks and playgrounds;

(ii) The clearance of streets, including snow removal and similar activities; and

(iii) The improvement of private properties.

(3) All activities authorized under paragraph (f)(2) of this section are limited to the extent necessary to alleviate emergency conditions.

(g) *Payment of non-Federal share.* Payment of the non-Federal share required in connection with a Federal grant-in-aid program undertaken as part of ICDBG activities, provided, that such payment shall be limited to activities otherwise eligible and in compliance with applicable requirements under this subpart.

(h) *Relocation.* Relocation payments and other assistance for permanently and temporarily relocated individuals families, businesses, nonprofit organizations, and farm operations where the assistance is:

(1) Required under the provisions of § 953.602 (b) or (c); or

(2) Determined by the grantee to be appropriate under the provisions of § 953.602(d).

(i) *Loss of rental income.* Payments to housing owners for losses of rental income incurred in holding, for temporary periods, housing units to be used for the relocation of individuals and families displaced by program activities assisted under this part.

(j) *Housing services.* Housing services, as provided in section 105(a)(21) of the Housing and Community Development Act of 1974 [42 U.S.C. 5305(a)(21)].

(k) *Privately owned utilities.* ICDBG funds may be used to acquire, construct, reconstruct, rehabilitate, or install the distribution lines and facilities of privately owned utilities, including the placing underground of new or existing distribution facilities and lines.

(l) *The provision of assistance to facilitate economic development.* (1) The provision of assistance either through the grantee directly or through public and private organizations, agencies, and other subrecipients (including nonprofit and for-profit subrecipients) to facilitate economic development by:

(i) Providing credit, including, but not limited to, grants, loans, loan guarantees, and other forms of financial support, for the establishment, stabilization, and expansion of microenterprises;

(ii) Providing technical assistance, advice, and business support services to owners of microenterprises and persons developing microenterprises; and

(iii) Providing general support, including, but not limited to, peer support programs, counseling, child care, transportation, and other similar services, to owners of microenterprises and persons developing microenterprises.

(2) Services provided under paragraph (l)(1) of this section shall not be subject to the restrictions on public services contained in § 953.201(e).

(3) For purposes of this paragraph (l), *persons developing microenterprises* means such persons who have expressed interest and who are, or after an initial screening process are expected to be, actively working toward developing businesses, each of which is expected to be a microenterprise at the time it is formed.

(m) *Technical assistance.* Provision of technical assistance to public or nonprofit entities to increase the capacity of such entities to carry out eligible neighborhood revitalization or economic development activities. Capacity building for private or public entities (including grantees) for other purposes may be eligible as a planning cost under § 953.205.

(n) *Assistance to institutions of higher education.* Provision of assistance by the grantee to institutions of higher education where the grantee determines that such an institution has demonstrated a capacity to carry out eligible activities under this subpart.

(o) *Homeownership assistance.* ICDBG funds may be used to provide direct homeownership assistance to low- and moderate-income households to:

(1) Subsidize interest rates and mortgage principal amounts for low-and moderate-income homebuyers;

(2) Finance the acquisition by low- and moderate-income homebuyers of housing that is occupied by the homebuyers;

(3) Acquire guarantees for mortgage financing obtained by low-and moderate-income homebuyers form private lenders (except that ICDBG funds may not be used to guarantee such mortgage financing directly, and grantees may not provide such guarantees directly);

(4) Provide up to 50 percent of any downpayment required from a low-and moderate-income homebuyer; or

(5) Pay reasonable closing costs (normally associated with the purchase of a home) incurred by a low-or moderate-income homebuyer.

§ 953.202 Eligible rehabilitation and preservation activities.

(a) Types of buildings and improvements eligible for rehabilitation or reconstruction assistance. ICDBG funds may be used to finance the rehabilitation of:

(1) Privately owned buildings and improvements for residential purposes; improvements to a single-family residential property which is also used as a place of business, which are required in order to operate the business, need not be considered to be rehabilitation of a commercial or industrial building, if the improvements also provide general benefit to the residential occupants of the building;

(2) Low-income public housing and other publicly owned residential buildings and improvements;

(3) Publicly or privately owned commercial or industrial buildings, except that the rehabilitation of such buildings owned by a private for-profit business is limited to improvements to the exterior of the building and the correction of code violations (further improvements to such buildings may be undertaken pursuant to § 953.203(b)); and

(4) Nonprofit-owned nonresidential buildings and improvements not eligible under § 953.201(c);

(5) Manufactured housing when such housing constitutes part of the community's permanent housing stock.

(b) *Types of assistance.* ICDBG funds may be used to finance the following types of rehabilitation or reconstruction activities, and related costs, either singly, or in combination, through the use of grants, loans, loan guarantees, interest supplements, or other means for buildings and improvements described in paragraph (a) of this section, except that rehabilitation of commercial or industrial buildings is limited as described in paragraph (a)(3) of this section.

(1) Assistance to private individuals and entities, including profit making and nonprofit organizations, to acquire for the purpose of rehabilitation, and to rehabilitate properties, for use or resale for residential purposes;

(2) Labor, materials, and other costs of rehabilitation of properties, including repair directed toward an accumulation of deferred maintenance, replacement of principal fixtures and components of existing structures, installation of security devices, including smoke detectors and dead bolt locks, and renovation through alterations, additions to, or enhancement of existing structures, which may be undertaken singly, or in combination;

(3) Loans for refinancing existing indebtedness secured by a property being rehabilitated with ICDBG funds if such financing is determined by the grantee to be necessary or appropriate to achieve the grantee's community development objectives;

(4) Improvements to increase the efficient use of energy in structures through such means as installation of storm windows and doors, siding, wall and attic insulation, and conversion, modification, or replacement of heating and cooling equipment, including the use of solar energy equipment;

(5) Improvements to increase the efficient use of water through such means as water saving faucets and shower heads and repair of water leaks;

(6) Connection of residential structures to water distribution lines or local sewer collection lines;

(7) For rehabilitation carried out with ICDBG funds, costs of:

(i) Initial homeowner warranty premiums;

(ii) Hazard insurance premiums, except where assistance is provided in the form of a grant; and

(iii) Flood insurance premiums for properties covered by the Flood Disaster Protection Act of 1973, pursuant to 24 CFR 58.6(a).

(iv) Procedures concerning inspection and testing for and treatment and abatement of defective paint surfaces and lead-based paint, pursuant to § 953.607.

(8) Costs of acquiring tools to be lent to owners, tenants, and others who will use such tools to carry out rehabilitation;

(9) Rehabilitation services, such as rehabilitation counseling, energy auditing, preparation of work specifications, loan processing, inspections, and other services related to assisting owners, tenants, contractors, and other entities, participating or seeking to participate in rehabilitation activities authorized under this section;

(10) Improvements designed to remove material and architectural barriers that restrict the mobility and accessibility of elderly or severely disabled persons to buildings and improvements eligible for assistance under paragraph (a) of this section.

(c) *Code enforcement.* Code enforcement in deteriorating or deteriorated areas where such enforcement together with public or private improvements, rehabilitation, or services to be provided, may be expected to arrest the decline of the area.

(d) *Historic preservation.* ICDBG funds may be used for the rehabilitation, preservation or restoration of historic properties, whether publicly or privately owned. Historic properties are those sites or structures that are either listed in or eligible to be listed in the National Register of Historic Places, listed in a State or local inventory of historic places, or designated as a State or local landmark or historic district by appropriate law or ordinance. Historic preservation, however, is not authorized for buildings for the general conduct of government.

(e) *Renovation of closed buildings.* ICDBG funds may be used to renovate closed buildings, such as closed school buildings, for use as an eligible public facility or to rehabilitate such buildings for housing.

§ 953.203 Special economic development activities.

A grantee may use ICDBG funds for special economic development activities in addition to other activities authorized in this subpart which may be carried out as part of an economic development project. Special activities authorized under this section do not include assistance for the construction of new housing. Special economic development activities include:

(a) The acquisition, construction, reconstruction, rehabilitation or installation of commercial or industrial buildings, structures, and other real property equipment and improvements, including railroad spurs or similar extensions. Such activities may be carried out by the grantee or public or private nonprofit subrecipients.

(b) The provision of assistance to a private for-profit business, including, but not limited to, grants, loans, loan guarantees, interest supplements, technical assistance, and other forms of support, for any activity where the assistance is necessary or appropriate to carry out an economic development project, excluding those described as ineligible in § 953.207(a). In order to ensure that any such assistance does not unduly enrich the for-profit business, the grantee shall conduct an analysis to determine that the amount of any financial assistance to be provided is not excessive, taking into account the actual needs of the business in making the project financially feasible and the extent of public benefit expected to be derived from the economic development project. The grantee shall document the analysis as well as any factors it considered in making its determination that the assistance is necessary or appropriate to carry out the project. The requirement for making such a determination applies whether the business is to receive assistance from the grantee or through a subrecipient.

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§ 953.204 Special activities by Community-Based Development Organizations (CBDOs).

(a) *Eligible activities.* The grantee may provide ICDBG funds as grants or loans to any CBDO qualified under this section to carry out a neighborhood revitalization, community economic development, or energy conservation project. The funded project activities may include those listed as eligible under this subpart, and, except as described in paragraph (b) of this section, activities not otherwise listed as eligible under this subpart. For purposes of qualifying as a project under paragraphs (a)(1), (a)(2), and (a)(3) of this section, the funded activity or activities may be considered either alone or in concert with other project activities either being carried out or for which funding has been committed. For purposes of this section:

(1) Neighborhood revitalization project includes activities of sufficient size and scope to have an impact on the decline of a geographic location within the jurisdiction of a grantee (but not the entire jurisdiction) designated in comprehensive plans, ordinances, or other local documents as a neighborhood, village, or similar geographical designation; or the entire jurisdiction of a grantee which is under 25,000 population;

(2) Community economic development project includes activities that increase economic opportunity, principally for persons of low- and moderate-income, or that stimulate or retain businesses or permanent jobs, including projects that include one or more such activities that are clearly needed to address a lack of affordable housing accessible to existing or planned jobs;

(3) Energy conservation project includes activities that address energy conservation, principally for the benefit of the residents of the grantee's jurisdiction; and

(4) To carry out a project means that the CBDO undertakes the funded activities directly or through contract with an entity other than the grantee, or through the provision of financial assistance for activities in which it retains a direct and controlling involvement and responsibilities.

(b) *Ineligible activities.* Notwithstanding that CBDOs may carry out activities that are not otherwise eligible under this subpart, this section does not authorize:

(1) Carrying out an activity described as ineligible in § 953.207(a);

(2) Carrying out public services that do not meet the requirements of § 953.201(e), except services carried out under this section that are specifically designed to increase economic opportunities through job training and placement and other employment support services, including, but not limited to, peer support programs, counseling, child care, transportation, and other similar services;

(3) Carrying out an activity that would otherwise be eligible under § 953.205 or § 953.206, but that would result in the grantee's exceeding the spending limitation in § 953.206.

(c) *Eligible CBDOs.* (1) A CBDO qualifying under this section is an organization which has the following characteristics:

(i) Is an association or corporation organized under State or local law to engage in community development activities (which may include housing and economic development activities) primarily within an identified geographic area of operation within the jurisdiction of the grantee; and

(ii) Has as its primary purpose the improvement of the physical, economic or social environment of its geographic area of operation by addressing one or more critical problems of the area, with particular attention to the needs of persons of low and moderate income; and

(iii) May be either non-profit or for-profit, provided any monetary profits to its shareholders or members must be only incidental to its operations; and

(iv) Maintains at least 51 percent of its governing body's membership for low- and moderate-income residents of its geographic area of operation, owners or senior officers of private establishments and other institutions located in and serving its geographic area of operation, or representatives of low- and moderate-income neighborhood organizations located in its geographic area of operation; and

(v) Is not an agency or instrumentality of the grantee and does not permit more than one-third of the membership of its governing body to be appointed by, or to consist of, elected or other public officials or employees or officials of an ineligible entity (even though such persons may be otherwise qualified under paragraph (c)(1)(iv) of this section); and

(vi) Except as otherwise authorized in paragraph (c)(1)(v) of this section, requires the members of its governing body to be nominated and approved by the general membership of the organization, or by its permanent governing body; and

(vii) Is not subject to requirements under which its assets revert to the grantee upon dissolution; and

(viii) Is free to contract for goods and services from vendors of its own choosing.

(2) A CBDO that does not meet the criteria in paragraph (c)(1) of this section may also qualify as an eligible entity under this section if it meets one of the following requirements:

(i) Is an entity organized pursuant to section 301(d) of the Small Business Investment Act of 1958 (15 U.S.C. 681(d)), including those which are profit making; or

(ii) Is an SBA-approved Section 501 State Development Company or Section 502 Local Development Company, or an SBA Certified Section 503 Company under the Small Business Investment Act of 1958, as amended; or

(iii) Is a Community Housing Development Organization (CHDO) under 24 CFR 92.2, designated as a CHDO by the HOME Investment Partnerships program participating jurisdiction, with a geographic area of operation of no more than one neighborhood, and has received HOME funds under 24 CFR 92.300 or is expected to receive HOME funds as described in and documented in accordance with 24 CFR 92.300(e); or

(iv) Is a tribal-based nonprofit organization. Such organizations are associations or corporations duly organized to promote and undertake community development activities on a not-for-profit basis within an identified service area.

(3) A CBDO that does not qualify under paragraphs (c)(1) or (2) of this section may also be determined to qualify as an eligible entity under this section if the grantee demonstrates to the satisfaction of HUD, through the provision of information regarding the organization's charter and by-laws, that the organization is sufficiently similar in purpose, function, and scope to those entities qualifying under paragraphs (c)(1) or (2) of this section.

§ 953.205 Eligible planning, urban environmental design and policy-planning-management capacity building activities.

(a) Planning activities which consist of all costs of data gathering, studies, analysis, and preparation of plans and the identification of actions that will implement such plans, including, but not limited to comprehensive plans, community development plans and functional plans in areas such as housing and economic development. In addition, other plans and studies such as capital improvements programs, individual project plans, general

environmental studies, and strategies and action programs to implement plans, including the development of codes and ordinances are also eligible activities. With respect to the costs of individual project plans, engineering and design costs related to a specific activity are eligible as part of the cost of such activity under §§ 953.201 through 953.204 and are not considered planning costs. Also, costs necessary to comply with the requirements of 24 CFR part 58, including project specific environmental assessments and clearances for activities eligible under this part are eligible as part of the cost of such activities under §§ 953.201 through 953.204.

(b) Policy—planning—management—capacity building activities including those which will enable the grantee to determine its needs, set long term goals and short term objectives, devise programs to meet these goals and objectives, evaluate the progress being made in accomplishing the goals and objectives. In addition, actions necessary to carry out management, coordination and monitoring of activities necessary for effective planning implementation are eligible planning activities, however the costs necessary to implement the plans are not.

§ 953.206 Program administration costs.

ICDBG funds may be used for the payment of reasonable administrative costs and carrying charges related to the planning and execution of community development activities assisted in whole or in part with funds provided under this part. No more than 20 percent of the sum of any grant plus program income received shall be expended for activities described in this section and in § 953.205—Eligible planning, urban environmental design and policy-planning-management capacity building activities. This does not include staff and overhead costs directly related to carrying out activities eligible under §§ 953.201 through 953.204, since those costs are eligible as part of such activities. In addition, technical assistance costs associated with developing the capacity to undertake a specific funded activity are also not considered program administration costs. These costs must not, however, exceed 10% of the total grant award.

(a) *General management, oversight and coordination.* Reasonable costs of overall program management, coordination, monitoring, and evaluation. Such costs include, but are not necessarily limited to, necessary expenditures for the following:

(1) Salaries, wages, and related costs of the grantee's staff, the staff of local public agencies, or other staff engaged in program administration. In charging costs to this category the grantee may either include the entire salary, wages, and related costs allocable to the program of each person whose primary responsibilities with regard to the program involve program administration assignments, or the pro rata share of the salary, wages, and related costs of each person whose job includes any program administration assignments. The grantee may use only one of these methods during the grant period. Program administration includes the following types of assignments:

(i) Providing tribal officials and citizens with information about the program;

(ii) Preparing program budgets and schedules, and amendments thereto;

(iii) Developing systems for assuring compliance with program requirements;

(iv) Developing interagency agreements and agreements with subrecipients and contractors to carry out program activities;

(v) Monitoring program activities for progress and compliance with program requirements;

(vi) Preparing reports and other documents related to the program for submission to HUD;

(vii) Coordinating the resolution of audit and monitoring findings;

(viii) Evaluating program results against stated objectives; and

(ix) Managing or supervising persons whose primary responsibilities with regard to the program include such assignments as those described in paragraph (a)(1) (i) through (viii) of this section.

(2) Travel costs incurred for official business in carrying out the program;

(3) Administrative services performed under third party contracts or agreements, including such services as general legal services, accounting services, and audit services; and

(4) Other costs for goods and services required for administration of the program, including such goods and services as rental or purchase of equipment, furnishings, or other personal property (or the payment of depreciation or use allowances for such items in accordance with OMB Circulars A–21, A–87 or A–122, as applicable), insurance, utilities, office supplies, and rental and maintenance (but not purchase) of office space. (OMB Circulars are available from the Executive Office of the President, Publication Service, 725 17th Street, N.W., Suite G–2200, Washington, DC 20503, Telephone, 202–395–7332.)

(b) *Public information.* The provisions of information and other resources to residents and citizen organizations participating in the planning, implementation, or assessment of activities being assisted with ICDBG funds.

(c) *Indirect costs.* Indirect costs may be charged to the ICDBG program under a cost allocation plan prepared in accordance with OMB Circular A–21, A–87, or A–122 as applicable.

(d) *Submission of applications for Federal programs.* Preparation of documents required for submission to HUD to receive funds under the ICDBG program. In addition, ICDBG funds may be used to prepare applications for other Federal programs where the grantee determines that such activities are necessary or appropriate to achieve its community development objectives.

§ 953.207 Ineligible activities.

The general rule is that any activity that is not authorized under the provisions of §§ 953.201 through 953.206 is ineligible to be assisted with ICDBG funds. This section identifies specific activities that are ineligible and provides guidance in determining the eligibility of other activities frequently associated with housing and community development.

(a) The following activities may not be assisted with ICDBG funds:

(1) Buildings or portions thereof used for the general conduct of government as defined at § 953.4 cannot be assisted with ICDBG funds. This does not include, however, the removal of architectural barriers under § 953.201(c) involving any such building. Also, where acquisition of real property includes an existing improvement which is to be used in the provision of a building for the general conduct of government, the portion of the acquisition cost attributable to the land is eligible, provided such acquisition meets the primary objective described in § 953.208.

(2) *General government expenses.* Except as otherwise specifically authorized in this subpart or under OMB Circular A–87, expenses required to carry out the regular responsibilities of the grantee are not eligible for assistance under this part.

(3) *Political activities.* ICDBG funds shall not be used to finance the use of facilities or equipment for political purposes or to engage in other partisan political activities, such as candidate forums, voter transportation, or voter registration. However, a facility originally assisted with ICDBG funds may be used on an incidental basis to hold political meetings, candidate

forums, or voter registration campaigns, provided that all parties and organizations have access to the facility on an equal basis, and are assessed equal rent or use charges, if any.

(b) The following activities may not be assisted with ICDBG funds unless authorized under provisions of § 953.203 or as otherwise specifically noted herein, or when carried out by a CBDO under the provisions of § 953.204.

(1) *Purchase of equipment.* The purchase of equipment with ICDBG funds is generally ineligible.

(i) *Construction equipment.* The purchase of construction equipment is ineligible, but compensation for the use of such equipment through leasing, depreciation, or use allowances pursuant to OMB Circular A–21, A–87 or A–122 as applicable for an otherwise eligible activity is an eligible use of ICDBG funds.

(ii) *Furnishings and personal property.* The purchase of equipment, fixtures, motor vehicles, furnishings, or other personal property not an integral structural fixture is generally ineligible. Exceptions to this general prohibition are set forth in § 953.201(o).

(2) *Operating and maintenance expenses.* The general rule is that any expense associated with repairing, operating or maintaining public facilities, improvements and services is ineligible. Specific exceptions to this general rule are operating and maintenance expenses associated with public service activities, interim assistance, and office space for program staff employed in carrying out the ICDBG program. For example, the use of ICDBG funds to pay the allocable costs of operating and maintaining a facility used in providing a public service would be eligible under § 953.201(e), even if no other costs of providing such a service are assisted with such funds. Examples of ineligible operating and maintenance expenses are:

(i) Maintenance and repair of streets, parks, playgrounds, water and sewer facilities, neighborhood facilities, senior centers, centers for persons with a disability, parking and similar public facilities; and

(ii) Payment of salaries for staff, utility costs and similar expenses necessary for the operation of public works and facilities.

(3) *New housing construction.* ICDBG funds may not be used for the construction of new permanent residential structures or for any program to subsidize or assist such new construction, except:

(i) As provided under the last resort housing provisions set forth in 24 CFR part 42; or

(ii) When carried out by a CBDO pursuant to § 953.204(a);

(4) *Income payments.* The general rule is that ICDBG funds may not be used for income payments. For purposes of the ICDBG program, income payments means a series of subsistence-type grant payments made to an individual or family for items such as food, clothing, housing (rent or mortgage) or utilities, but excludes emergency payments made over a period of up to three months to the provider of such items or services on behalf of an individual or family.

§ 953.208 Criteria for compliance with the primary objective.

The Act establishes as its primary objective the development of viable communities by providing decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low and moderate income. Consistent with this objective, not less than 70 percent of the expenditures of each single purpose grant shall be for activities which meet the criteria set forth in paragraphs (a), (b), (c) and (d) of this section. Activities meeting these criteria as applicable will be considered to benefit low and moderate income persons unless there is substantial evidence to the contrary. In assessing any such evidence, the full range of direct effects of the assisted activity will be considered. (The grantee shall appropriately ensure that activities that meet these criteria do not benefit moderate income persons to the exclusion of low income persons.)

(a) *Area benefit activities.* (1) An activity, the benefits of which are available to all the residents in a particular area, where at least 51 percent of the residents are low and moderate income persons. Such an area need not be coterminous with census tracts or other officially recognized boundaries but must be the entire area served by the activity. An activity that serves an area that is not primarily residential in character shall not qualify under this criterion.

(2) For purposes of determining qualification under this criterion, activities of the same type that serve different areas will be considered separately on the basis of their individual service area.

(3) In determining whether there is a sufficiently large percentage of low and moderate income persons residing in the area served by an activity to qualify under paragraph (a) (1) or (2) of this section, the most recently available decennial census information shall be used to the fullest extent feasible, together with the Section 8 income limits that would have applied at the time the income information was collected by the Census Bureau. Grantees that believe that the census data does not reflect current relative income levels in an area, or where census boundaries do not coincide sufficiently well with the service area of an activity, may conduct (or have conducted) a current survey of the residents of the area to determine the percent of such persons that are low and moderate income. HUD will accept information obtained through such surveys, to be used in lieu of the decennial census data, where it determines that the survey was conducted in such a manner that the results meet standards of statistical reliability that are comparable to that of the decennial census data for areas of similar size. Where there is substantial evidence that provides a clear basis to believe that the use of the decennial census data would substantially overstate the proportion of persons residing there that are low and moderate income, HUD may require that the grantee rebut such evidence in order to demonstrate compliance with section 105(c)(2) of the Act.

(b) *Limited clientele activities.* (1) An activity which benefits a limited clientele, at least 51 percent of whom are low or moderate income persons. (The following kinds of activities may not qualify under paragraph (b) of this section: Activities, the benefits of which are available to all the residents of an area; activities involving the acquisition, construction or rehabilitation of property for housing; or activities where the benefit to low and moderate income persons to be considered is the creation or retention of jobs except as provided in paragraph (b)(4) of this section.) To qualify under paragraph (b) of this section, the activity must meet one of the following tests:

(i) Benefit a clientele who are generally presumed to be principally low and moderate income persons. Activities that exclusively serve a group of persons in any one of the following categories may be presumed to benefit persons, 51 percent of whom are low- and moderate-income: abused children, battered spouses, elderly persons, adults meeting the Bureau of the Census' current Population Reports definition of ''severely disabled'', homeless persons, illiterate adults, persons living with AIDS, and migrant workers; or

(ii) Require information on family size and income so that it is evident that at least 51 percent of the clientele are

persons whose family income does not exceed the low and moderate income limit; or

(iii) Have income eligibility requirements which limit the activity exclusively to low and moderate income persons; or

(iv) Be of such nature and be in such location that it may be concluded that the activity's clientele will primarily be low and moderate income persons.

(2) An activity that serves to remove material or architectural barriers to the mobility or accessibility of elderly persons or adults meeting the Bureau of the Census' Current Population Reports definition of ''severely disabled'' will be presumed to qualify under this criterion if it is restricted, to the extent practicable, to the removal of such barriers by assisting:

(i) The reconstruction of a public facility or improvement, or portion thereof, that does not qualify under § 953.208(a); or

(ii) The rehabilitation of a privately-owned nonresidential building or improvement that does not qualify under § 953.208 (a) or (d); or

(iii) The rehabilitation of the common areas of a residential structure that contains more than one dwelling unit.

(3) A microenterprise assistance activity carried out in accordance with the provisions of § 953.201(l) with respect to those owners of microenterprises and persons developing microenterprises assisted under the activity during the grant period who are low and moderate income persons. For purposes of this paragraph, persons determined to be low and moderate income may be presumed to continue to qualify for up to a three year period.

(4) An activity designed to provide job training and placement and/or other employment support services, including but not limited to, peer support programs, counseling, child care, transportation, and other similar services, in which the percentage of low and moderate income persons assisted is less than 51 percent may qualify under this paragraph in the following limited circumstance:

(i) In such cases where such training or provision of supportive services assists business(es), the only use of ICDBG assistance for the project is to provide the job training and/or supportive services; and

(ii) The proportion of the total cost of the project borne by ICDBG funds is no greater than the proportion of the total number of persons assisted who are low or moderate income.

(c) *Housing activities.* An eligible activity carried out for the purpose of providing or improving permanent residential structures which, upon completion, will be occupied by low and moderate income households. This would include, but not necessarily be limited to, the acquisition or rehabilitation of property, conversion of non-residential structures, and new housing construction. Funds expended for activities which qualify under the provisions of this paragraph shall be counted as benefiting low and moderate income persons but shall be limited to an amount determined by multiplying the total cost (including ICDBG and non-ICDBG costs) of the acquisition, construction or rehabilitation by the percent of units in such housing to be occupied by low and moderate income persons. If the structure assisted contains two dwelling units, at least one must be occupied by low and moderate income households, and if the structure contains more than two dwelling units, at least 51 percent of the units must be so occupied. Where two or more rental buildings being assisted are or will be located on the same or contiguous properties, and the buildings will be under common ownership and management, the grouped buildings may be considered for this purpose as a single structure. For rental housing, occupancy by low and moderate income households must be at affordable rents to qualify under this criterion. The grantee shall adopt and make public its standards for determining ''affordable rents'' for this purpose. The following shall also qualify under this criterion:

(1) When less than 51 percent of the units in a structure will be occupied by low and moderate income households, ICDBG assistance may be provided in the following limited circumstances:

(i) The assistance is for an eligible activity to reduce the development cost of the new construction of a multifamily, non-elderly rental housing project;

(ii) Not less than 20 percent of the units will be occupied by low and moderate income households at affordable rents; and

(iii) The proportion of the total cost of developing the project to be borne by ICDBG funds is no greater than the proportion of units in the project that will be occupied by low and moderate income households.

(2) When ICDBG funds are used for housing services eligible under § 953.201(j), such funds shall be considered to benefit low-and moderate-income persons if the housing for which the services are provided is to be occupied by low-and moderate-income households.

(d) *Job creation or retention activities.* An activity designed to create or retain permanent jobs where at least 51 percent of the jobs, computed on a full time equivalent basis, involve the employment of low and moderate persons. For purposes of determining whether a job is held by or made available to a low or moderate income person, the person may be presumed to be a low or moderate income person if: he/she resides within a census tract (or block numbering area) where not less than 70 percent of the residents have incomes at or below 80 percent of the area median; or, if he/she resides in a census tract (or block numbering area) which meets the Federal Empowerment Zone or Enterprise Community eligibility criteria; or, if the assisted business is located in and the job under consideration is to be located in such a tract or area. As a general rule, each assisted business shall be considered to be a separate activity for purposes of determining whether the activity qualifies under this paragraph. However, in certain cases such as where ICDBG funds are used to acquire, develop or improve a real property (e.g., a business incubator or an industrial park) the requirement may be met by measuring jobs in the aggregate for all the businesses which locate on the property, provided such businesses are not otherwise assisted by ICDBG funds. Where ICDBG funds are used to pay for the staff and overhead costs of a CBDO under the provisions of § 953.204 making loans to businesses from non-ICDBG funds, this requirement may be met by aggregating the jobs created by all of the businesses receiving loans during any one year period. For an activity that creates jobs, the grantee must document that at least 51 percent of the jobs will be held by, or will be available to, low and moderate income persons. For an activity that retains jobs, the grantee must document that the jobs would actually be lost without the ICDBG assistance and that either or both of the following conditions apply with respect to at least 51 percent of the jobs at the time the ICDBG assistance is provided: The job is known to be held by a low or moderate income person; or the job can reasonably be expected to turn over within the following two years and that steps will be taken to ensure that it will be filled by, or made available to, a low or moderate income person upon turnover. Jobs will be considered to be available to low and moderate income persons for these purposes only if:

(1) Special skills that can only be acquired with substantial training or

work experience or education beyond high school are not a prerequisite to fill such jobs, or the business agrees to hire unqualified persons and provide training; and

(2) The grantee and the assisted business take actions to ensure that low and moderate income persons receive first consideration for filling such jobs.

(e) *Additional criteria.* (1) Where the assisted activity is acquisition of real property, a preliminary determination of whether the activity addresses the primary objective may be based on the planned use of the property after acquisition. A final determination shall be based on the actual use of the property, excluding any short-term, temporary use.

(2) Where the assisted activity is relocation assistance that the grantee is required to provide, such relocation assistance shall be considered to address the primary objective as addressed by the displacing activity.

(3) In any case where the activity undertaken for the purpose of creating or retaining jobs is a public improvement and the area served is primarily residential, the activity must meet the requirements of paragraph (a) of this section as well as those of paragraph (d) of this section in order to qualify as benefiting low and moderate income persons.

(4) Expenditures for activities meeting the criteria for benefiting low and moderate income persons shall be used in determining the extent to which the grantee's overall program benefits such persons. In determining the percentage of funds expended for such activities:

(i) Costs of administration and planning, eligible under § 953.205 and § 953.206 respectively, will be assumed to benefit low and moderate income persons in the same proportion as the remainder of the ICDBG funds and, accordingly, shall be excluded from the calculation.

(ii) Funds expended for the acquisition, new construction or rehabilitation of property for housing those qualified under § 953.208(c) shall be counted for this purpose, but shall be limited to an amount determined by multiplying the total cost (including ICDBG and non-ICDBG costs) of the acquisition, construction, or rehabilitation by the percent of units in such housing occupied by low and moderate income persons.

(iii) Funds expended for any other activity which qualifies under § 953.208 shall be counted for this purpose in their entirety.

Subpart D—Single Purpose Grant Application and Selection Process

§ 953.300 Application requirements.

(a) *Application information.* A Notice of Funding Availability (NOFA) shall be published in the Federal Register not less than 30 days before the deadline for application submission. The NOFA will provide information relating to the date and time for application submission, the form and content requirements of the application, specific information regarding the rating and ranking criteria to be used, and any other information pertinent to the application process.

(b) *Costs incurred by applicant.* Costs incurred by an applicant prior to the submission of the single purpose grant application to HUD will not be recognized by HUD as eligible ICDBG expenses.

(c) HUD will not normally reimburse or recognize costs incurred before HUD approval of the application for funding. However, under unusual circumstances, the Area ONAP may consider and approve written requests to recognize and reimburse costs incurred after submission of the application where failure to do so would impose undue hardship on the applicant. Such written authorization will be made only before the costs are incurred and where the requirements for reimbursement have been met in accordance with 24 CFR 58.22 and with the understanding that HUD has no obligation whatsoever to approve the application or to reimburse the applicant should the application be disapproved.

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§ 953.301 Selection process.

(a) *Threshold requirements.* In order for applications that have passed the initial screening tests listed in the NOFA to be rated and ranked, Area ONAPs must determine that the following requirements have been met:

(1) *Community development appropriateness.* (i) The project costs are reasonable;

(ii) The project is appropriate for the intended use; and

(iii) The project is usable or achievable (generally within a two-year period).

If in the judgment of the Area ONAP, available data indicate that the proposed project does not meet these requirements, the Area ONAP shall reject the project from further consideration.

(2) *Capacity.* The applicant possesses, or will acquire, the managerial, technical, or administrative staff necessary to carry out the proposed program. If the Area ONAP determines that the applicant does not have or cannot obtain the capacity to undertake the proposed program, the application will be rejected from further consideration.

(3) *Performance.*—(i) *Community development.* Performance determinations are made through the Area ONAP's assessment process. Applicants that have been advised in writing of negative findings on previous grants, for which a schedule of corrective actions has been established, will not be considered for funding if they are behind schedule as of the deadline date for filing applications.

(ii) *Housing assistance.* The applicant must not have been found taking actions to impede the provision or operation of assisted housing for the low- and moderate-income members of the tribe or village. If inadequate performance is found, and the applicant has been notified in writing, they may be rejected from further consideration. Performance determinations are made through the Area ONAP's assessment process.

(iii) *Audits.* An applicant that has an outstanding ICDBG obligation to HUD that is in arrears, or one that has not agreed to a repayment schedule, will be disqualified from the current and subsequent competitions until the obligations are current. An applicant whose response to an audit finding is overdue or unsatisfactory will be disqualified from the current and subsequent competitions until the applicant has taken final action necessary to close the audit finding(s). The Area ONAP administrator may provide exceptions to this disqualification requirement in cases where the applicant has made a good faith effort to clear non-monetary audit findings. In no instance, however, shall an exception be provided when funds are due HUD, unless a satisfactory arrangement for repayment of the debt has been made, and payments are current.

(b) *Application rating system.* Applications that meet the threshold requirements established in paragraph (a) of this section will be rated competitively within each Area ONAP's jurisdiction.

(c) *NOFAs* will define and establish weights for the selection criteria for each rating category contained in this subpart, will specify the maximum points available, and will describe how point awards will be made. Each Area ONAP will rate applications on the basis of their responsiveness to the criteria contained in this subpart as defined in the periodic NOFAs.

(d) *Set-aside selection of projects.* If funds have been set aside by statute for a specific purpose in any fiscal year, other criteria pertinent to the set-aside may be used to select projects for funding from the set-aside.

§ 953.302 Project specific threshold requirements.

(a) *Housing rehabilitation projects.* All applicants for housing rehabilitation projects shall adopt rehabilitation standards and rehabilitation policies before submitting an application. The applicant shall assure that it will use project funds to rehabilitate units only when the homeowner's payments are current or the homeowner is current in a repayment agreement that is subject to approval by the Area ONAP. The Area ONAP administrator may grant exceptions to this requirement on a case-by-case basis.

(b) *New housing construction projects.* New housing construction can only be implemented through a nonprofit organization that is eligible under § 953.204 or is otherwise eligible under § 953.207(b)(3). All applicants for new housing construction projects shall adopt, by current tribal resolution, construction standards before submitting an application. All applications which include new housing construction projects must document that:

(1) No other housing is available in the immediate reservation area that is suitable for the household(s) to be assisted; and

(2) No other sources can meet the needs of the household(s) to be assisted; and

(3) Rehabilitation of the unit occupied by the household(s) to be assisted is not economically feasible; or

(4) The household(s) to be housed currently is in an overcrowded housing unit (sharing with another household); or

(5) The household(s) to be assisted has no current residence.

(c) *Economic development projects.* All applicants for economic development projects must provide an analysis which shows public benefit commensurate with the ICDBG assistance requested will result from the assisted project. This analysis should also establish that to the extent practicable: reasonable financial support will be committed from non-Federal sources prior to disbursement of Federal funds; any grant amount provided will not substantially reduce the amount of non-Federal financial support for the activity; not more than a reasonable rate of return on investment is provided to the owner; and, that grant funds used for the project will be disbursed on a pro rata basis with amounts from other sources. In addition, it must be established that the project is financially feasible and that it has a reasonable chance of success.

§ 953.303 Project rating categories.

(a) There are three project rating categories: housing, community facilities, and economic development. The housing rating category consists of three components: Housing rehabilitation, land to support new housing, and new housing construction. The community facility category consists of two components: Infrastructure and buildings. The economic development category has only one component. With the exceptions indicated in paragraph (b) of this section, the following criteria will be used to rate projects.

(1) Project need and design.

(2) Planning and implementation.

(3) Leverage.

(b) *Exceptions.* (1) Projects for the acquisition of land to support new housing will not be rated under the leverage criterion.

(2) Economic development projects will be not be rated under the project need and design and planning and implementation criteria. These projects will be rated under the leverage criterion and the following additional criteria.

(i) Organization.

(ii) Project success.

(iii) Jobs.

(iv) Additional considerations consisting of the following:

(A) Use, improvement, or expansion of tribal members' special skills.

(B) Provision of spin-off benefits.

(C) Provision of special opportunities for residents of Indian housing.

(D) Provision of benefits to other businesses owned by Indians or Alaska natives.

(E) Commitment to loan repayment or reuse of ICDBG funds.

§ 953.304 Funding process.

(a) *Notification.* Area ONAPs will notify applicants of the approval or disapproval of their applications. Grant amounts offered may reflect adjustments made by the Area ONAPs in accordance with § 953.100(b)(2).

(b) *Grant award.* (1) As soon as the Area ONAP determines that the applicant has complied with any pre-award requirements and absent information which would alter the threshold determinations under § 953.302, the grant will be awarded. The regulations become part of the grant agreement.

(2) All grants shall be conditioned upon the completion of all environmental obligations and approval of release of funds by HUD in accordance with the requirements of part 58 of this title and, in particular, subpart J of part 58 of this title, except as otherwise provided in part 58 of this title.

(3) HUD may impose other grant conditions where additional actions or approvals are required before the use of funds.

(Approved by the Office of Management and Budget under OMB Control No. 2577–0191.)

§ 953.305 Program amendments.

(a) Grantees shall request prior HUD approval for program amendments which will significantly change the scope, location, objective, or class of beneficiaries of the approved activities, as originally described in the application.

(b) Amendment requests of $100,000 or more shall include all application components required by the NOFA published for the last application cycle; those requests of less than $100,000 do not have to include the components which address the selection criteria.

(c) Approval of an amendment request is subject to the following:

(1) A rating equal to or greater than the lowest rating received by a funded project during the most recent funding competition must be attained by the amended project if the request is for $100,000 or more;

(2) Demonstration by the grantee of the capacity to promptly complete the modified or new activities;

(3) Demonstration by the grantee of compliance with the requirements of § 953.604 for citizen participation; and

(4) The preparation of an amended or new environmental review in accordance with part 58 of this title, if there is a significant change in the scope or location of approved activities.

(d) Amendments which address imminent threats to health and safety shall be reviewed and approved in accordance with the requirements of subpart E of this part.

(e) If a program amendment fails to be approved and the original project is no longer feasible, the grant funds proposed for amendment shall be recaptured by HUD.

Subpart E—Imminent Threat Grants

§ 953.400 Criteria for funding.

The following criteria apply to requests for assistance under this subpart:

(a) In response to requests for assistance, HUD may make funds

available under this subpart to applicants to alleviate or remove imminent threats to health or safety. The urgency and immediacy of the threat shall be independently verified before the approval of an application. Funds may only be used to deal with imminent threats that are not of a recurring nature and which represent a unique and unusual circumstance, and which impact on an entire service area.

(b) Funds to alleviate imminent threats may be granted only if the applicant can demonstrate to the satisfaction of HUD that other tribal or Federal funding sources cannot be made available to alleviate the threat.

(c) HUD will establish grant ceilings for imminent threat applications.

§ 953.401 Application process.

(a) *Letter to proceed.* The Area ONAP may issue the applicant a letter to proceed to incur costs to alleviate imminent threats to health and safety only if the assisted activities do not alter environmental conditions and are for temporary or permanent improvements limited to protection, repair, or restoration actions necessary only to control or arrest the effects of imminent threats or physical deterioration. Reimbursement of such costs is dependent upon HUD approval of the application.

(b) *Applications.* Applications shall include the information specified in the Notice of Funding Availability (NOFA).

(c) *Application approval.* Applications which meet the requirement of this section may be approved by the Area ONAP without competition in accordance with the applicable requirements of § 953.304.

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§ 953.402 Availability of funds.

Of the funds made available by the NOFA for the ICDBG program, an amount to be determined by the Assistant Secretary may be reserved by HUD for grants under this subpart. The amount of funds reserved for imminent threat funding during each funding cycle will be stated in the NOFA. If any of the reserved funds are not used to fund imminent threat grants during a fiscal year, they will be added to the allocation of ICDBG funds for the subsequent fiscal year and will be used as if they were a part of the new allocation.

Subpart F—Grant Administration

§ 953.500 Responsibility for grant administration.

(a) One or more tribal departments or authorities, including existing tribal public agencies, may be designated by the chief executive officer of the grantee to undertake activities assisted by this part. A public agency so designated shall be subject to the same requirements as are applicable to subrecipients.

(b) The grantee is responsible for ensuring that ICDBG funds are used in accordance with all program requirements. The use of designated public agencies, subrecipients, or contractors does not relieve the grantee of this responsibility. The grantee is also responsible for determining the adequacy of performance under subrecipient agreements and procurement contracts, and for taking appropriate action when performance problems arise, such as the actions described in § 953.701.

§ 953.501 Applicability of uniform administrative requirements and cost principles.

(a) Grantees and subrecipients which are governmental entities (including public agencies) shall comply with the requirements and standards of OMB Circular No. A–87, ''Principles for Determining Costs Applicable to Grants and Contracts with State, Local and Federally recognized Indian Tribal Governments'', OMB Circular A–128, ''Audits of State and Local Governments'' (implemented at 24 CFR part 44) and with the following sections of 24 CFR part 85 ''Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments''.

(1) Section 85.3, ''Definitions''.

(2) Section 85.6, ''Exceptions''.

(3) Section 85.12, ''Special grant or subgrant conditions for 'high-risk' grantees''.

(4) Section 85.20, ''Standards for financial management systems,'' except paragraph (a).

(5) Section 85.21, ''Payment''.

(6) Section 85.22, ''Allowable costs''.

(7) Section 85.25, ''Program income,'' except as modified by § 953.503.

(8) Section 85.26, ''Non-federal audits''.

(9) Section 85.32, ''Equipment,'' except in all cases in which the equipment is sold, the proceeds shall be program income.

(10) Section 85.33, ''Supplies''.

(11) Section 85.34, ''Copyrights''.

(12) Section 85.35, ''Subawards to debarred and suspended parties''.

(13) Section 85.36, ''Procurement,'' except paragraphs (a) States, (i)(5) Compliance with the Davis Bacon Act (40 U.S.C. 276a to a–7) and (i)(6) Compliance with sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–330). There may be circumstances under which the bonding requirements of § 85.36(h) are inconsistent with other responsibilities and obligations of the grantee. In such circumstances, acceptable methods to provide performance and payment assurance may include:

(i) Deposit with the grantee of a cash escrow of not less than 20 percent of the total contract price, subject to reduction during the warranty period, commensurate with potential risk; or

(ii) Letter of credit for 25 percent of the total contract price, unconditionally payable upon demand of the grantee, subject to reduction during the warranty period commensurate with potential risk.

(14) Section 85.37, ''Subgrants''.

(15) Section 85.40, ''Monitoring and reporting program performance,'' except paragraphs (b) through (d) and paragraph (f).

(16) Section 85.41, ''Financial reporting,'' except paragraphs (a), (b), and (e).

(17) Section 85.42, ''Retention and access requirements for records''. The retention period referenced in § 85.42(b) pertaining to individual ICDBG activities starts from the date of the submission of the final status and evaluation report as prescribed in § 953.506(a) in which the specific activity is reported.

(18) Section 85.43, ''Enforcement''.

(19) Section 85.44, ''Termination for convenience''.

(20) Section 85.51 ''Later disallowances and adjustments''.

(21) Section 85.52, ''Collection of amounts due''.

(b) Subrecipients, except subrecipients that are governmental entities, shall comply with the requirements and standards of OMB Circular No. A–122, ''Cost Principles for Nonprofit Organizations,'' or OMB Circular No. A–21, ''Cost Principles for Educational Institutions,'' as applicable, and OMB Circular A–133, ''Audits of Institutions of Higher Education and Other Nonprofit Institutions'' (implemented at 24 CFR part 45). Audits shall be conducted annually. Such subrecipients shall also comply with the following provisions of 24 CFR part 84 ''Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals and Other Non-Profit Organizations'').

(1) Subpart A—''General''.

(2) Subpart B—''Pre-Award Requirements,'' except for § 84.12, ''Forms for Applying for Federal Assistance''.

(3) Subpart C—''Post-Award Requirements,'' except for § 84.22, ''Payment Requirements,'' grantees shall follow the standards of §§ 85.20(7) and 85.21 in making payments to subrecipients.

(4) Section 84.23, ''Cost Sharing and Matching''.

(5) Section 84.24, ''Program Income'', as modified by § 953.503.

(6) Section 84.25, ''Revision of Budget and Program Plans''.

(7) Section 84.32, ''Real Property.'' In lieu of § 84.32, ICDBG subrecipients shall follow § 953.504 of the ICDBG regulations.

(8) Section 84.34(g) ''Equipment,'' except that in lieu of the disposition provisions of this paragraph:

(i) In all cases in which equipment is sold during the grant period as defined in 24 CFR 85.25, the proceeds shall be program income; and

(ii) Equipment not needed by the subrecipient for ICDBG activities shall be transferred to the grantee for the ICDBG program or shall be retained after compensating the grantee.

(9) Section 84.51, ''Monitoring and Reporting Program Performance.'' Only § 84.51(a) applies to ICDBG subrecipients.

(10) Section 84.52, ''Financial Reporting''.

(11) Section 84.53(b), ''Retention and access requirements for records.'' The retention period referenced in § 84.53(b) pertaining to individual ICDBG activities starts from the date of the submission of the final status and evaluation report as prescribed in § 953.506(a), in which the specific activity is reported.

(12) Section 84.61, ''Termination.'' In lieu of the provisions of this section, ICDBG subrecipients shall comply with § 953.502 (b)(7) of the ICDBG regulations.

(13) Subpart D—''After-the-Award Requirements,'' except for § 84.71, ''Closeout Procedures''.

(c) Cost principles. (1) All items of cost listed in Attachment B of OMB Circulars A–21, A–87, or A–123, as applicable, which require prior Federal agency approval are allowable without the prior approval of HUD to the extent that they comply with the general policies and principles stated in Attachment A of such circulars and are otherwise eligible under subpart C of this part, except for the following:

(i) Depreciation methods for fixed assets shall not be changed without specific approval of HUD or, if charged through a cost allocation plan, the Federal cognizant agency.

(ii) Fines and penalties are unallowable costs to the ICDBG program.

(2) No person providing consultant services in an employer-employee type of relationship shall receive more than a reasonable rate of compensation for personal services paid with ICDBG funds. In no event, however, shall such compensation exceed the equivalent of the daily rate paid for Level IV of the Executive Schedule.

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§ 953.502 Agreements with subrecipients.

(a) Before disbursing any ICDBG funds to a subrecipient, the grantee shall sign a written agreement with the subrecipient. The agreement shall remain in effect during any period that the subrecipient has control over ICDBG funds, including program income.

(b) At a minimum, the written agreement with the subrecipient shall include provisions concerning the following items:

(1) *Statement of work.* The agreement shall include a description of the work to be performed, a schedule for completing the work, and a budget. These items shall be in sufficient detail to provide a sound basis for the grantee effectively to monitor performance under the agreement.

(2) *Records and reports.* The grantee shall specify in the agreement the particular records the subrecipient must maintain and the particular reports the subrecipient must submit in order to assist the grantee in meeting its recordkeeping and reporting requirements.

(3) *Program income.* The agreement shall include the program income requirements set forth in § 85.25 as modified by § 953.503.

(4) *Uniform administrative requirements.* The agreement shall require the subrecipient to comply with applicable administrative requirements, as described in § 953.501.

(5) *Other program requirements.* The agreement shall require the subrecipient to carry out each activity in compliance with all Federal laws and regulations described in subpart G of this part, except that the subrecipient does not assume the grantee's environmental responsibilities described at § 953.605.

(6) *Conditions for religious organizations.* Where applicable, the conditions prescribed by HUD for the use of ICDBG funds by religious organizations shall be included in the agreement.

(7) *Suspension and termination.* The agreement shall specify that, in accordance with 24 CFR 85.43, suspension or termination may occur if the subrecipient materially fails to comply with any term of the award, and that the award may be terminated for convenience in accordance with 24 CFR 85.44.

(8) *Reversion of assets.* The agreement shall specify that upon its expiration the subrecipient shall transfer to the grantee any ICDBG funds on hand at the time of expiration and any accounts receivable attributable to the use of ICDBG funds. It shall also include provisions designed to ensure that any real property under the subrecipient's control that was acquired or improved in whole or in part with ICDBG funds (including ICDBG funds provided to the subrecipient in the form of a loan) in excess of $25,000 is either:

(i) Used to meet the primary objective as stated in § 953.208 until five years after expiration of the agreement, or for such longer period of time as determined to be appropriate by the grantee; or

(ii) Not used in accordance with paragraph (b)(8)(i) of this section, in which event the subrecipient shall pay to the grantee an amount equal to the current market value of the property less any portion of the value attributable to expenditures of non-ICDBG funds for the acquisition of, or improvement to, the property. The payment is program income to the grantee if it is received during the grant period. (No payment is required after the period of time specified in paragraph (b)(8)(i) of this section.)

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§ 953.503 Program income.

(a) Program income requirements for ICDBG grantees are set forth in 24 CFR 85.25, as modified by this section.

(b) *Program income* means gross income received by the grantee or a subrecipient directly generated from the use of ICDBG funds during the grant period, except as provided in paragraph (b)(4) of this section. When program income is generated by an activity that is only partially assisted with ICDBG funds, the income shall be prorated to reflect the percentage of ICDBG funds used.

(1) Program income includes, but is not limited to, the following:

(i) Proceeds from the disposition by sale or long-term lease of real property purchased or improved with ICDBG funds;

(ii) Proceeds from the disposition of equipment purchased with ICDBG funds;

(iii) Gross income from the use or rental of real or personal property

acquired by the grantee or by a subrecipient with ICDBG funds, less costs incidental to generation of the income;

(iv) Gross income from the use or rental of real property, owned by the grantee or by a subrecipient, that was constructed or improved with ICDBG funds, less costs incidental to generation of the income;

(v) Payments of principal and interest on loans made using ICDBG funds, except as provided in paragraph (b)(3) of this section;

(vi) Proceeds from the sale of loans made with ICDBG funds except as provided in paragraph (b)(4) of this section;

(vii) Proceeds from sale of obligations secured by loans made with ICDBG funds;

(viii) Interest earned on funds held in a revolving fund account;

(ix) Interest earned on program income pending its disposition; and

(x) Funds collected through special assessments made against properties owned and occupied by households not of low and moderate income, where the assessments are used to recover all or part of the ICDBG portion of a public improvement.

(2) Program income does not include income earned on grant advances from the U.S. Treasury. The following items of income earned on grant advances must be remitted to HUD for transmittal to the U.S. Treasury and will not be reallocated:

(i) Interest earned from the investment of the initial proceeds of a grant advance by the U.S. Treasury;

(ii) Income (e.g., interest) earned on loans or other forms of assistance provided with ICDBG funds that are used for activities determined by HUD either to be ineligible or that fail substantially to meet any other requirement of this part.

(3) The calculation of the amount of program income for the grantee's ICDBG program as a whole (i.e., comprising activities carried out by a grantee and its subrecipients) shall exclude payments made by subrecipients of principal and/or interest on loans received from grantees where such payments are made from program income received by the subrecipient. (By making such payments, the subrecipient shall be deemed to have transferred program income to the grantee.) The amount of program income derived from this calculation shall be used for reporting purposes and in determining limitations on planning and administration and public services activities to be paid for with ICDBG funds.

(4) Program income does not include any income received in a single year by the grantee and all its subrecipients if the total amount of such income does not exceed $25,000.

(5) Examples of other receipts that are not considered program income are proceeds from fundraising activities carried out by subrecipients receiving ICDBG assistance; funds collected through special assessments used to recover the non-ICDBG portion of a public improvement; and proceeds from the disposition of real property acquired or improved with ICDBG funds when the disposition occurs after the applicable time period specified in § 953.502(b)(8) for subrecipient-controlled property, or in § 953.504 for grantee-controlled property.

(6) For purposes of determining the applicability of the program income requirements included in this part and in 24 CFR 85.25, the grant period is the time between the effective date of the grant agreement and the close-out of the grant pursuant to the requirements of § 953.508.

(7) As provided for in 24 CFR 85.25(g)(2), program income received will be added to the funds committed to the grant agreement and shall be used for purposes and under the conditions of the grant agreement.

(8) Recording program income. The receipt and expenditure of program income as defined in § 953.503(b) shall be recorded as part of the financial transactions of the grant program.

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§ 953.504 Use of real property.

The standards described in this section apply to real property within the grantee's control which was acquired or improved in whole or in part using ICDBG funds in excess of $25,000. These standards shall apply from the date ICDBG funds are first spent for the property until five years after the closeout of the grant from which the assistance to the property was provided.

(a) A grantee may not change the use or planned use of any such property (including the beneficiaries of such use) from that for which the acquisition or improvement was made unless the grantee provides affected citizens with reasonable notice of, and opportunity to comment on, any proposed change, and either:

(1) The new use of such property qualifies as meeting the primary objective set forth in § 953.208 and is not a building for the general conduct of government; or

(2) The requirements in paragraph (b) of this section are met.

(b) If the grantee determines, after consultation with affected citizens, that it is appropriate to change the use of the property to a use which does not qualify under paragraph (a)(1) of this section, it may retain or dispose of the property for the changed use if the grantee's ICDBG program is reimbursed in the amount of the current fair market value of the property, less any portion of the value attributable to expenditures of non-ICDBG funds for acquisition of, and improvements to, the property.

(c) If the change of use occurs after program closeout, the proceeds from the disposition of the real property shall be used for activities which meet the eligibility requirements set forth in subpart C of this part and the primary objective set forth in § 953.208.

(d) Following the reimbursement of the ICDBG program in accordance with paragraph (b) of this section, the property no longer will be subject to any ICDBG requirements.

§ 953.505 Records to be maintained.

Each grantee shall establish and maintain sufficient records to enable the Secretary to determine whether the grantee has met the requirements of this part.

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§ 953.506 Reports.

(a) *Status and evaluation report.* Grantees shall submit a status and evaluation report on previously funded open grants 45 days after the end of the Federal fiscal year and at the time of grant close-out. The report shall be in a narrative form addressing these areas.

(1) *Progress.* The progress made in completing approved activities should be described. This description should include a listing of work remaining together with a revised implementation schedule, if necessary.

(2) *Expenditure of funds.* A breakdown of funds spent on each major project activity or category should be provided.

(3) *Grantee assessment.* If the project has been completed, an evaluation of the effectiveness of the project in meeting the community development needs of the grantee should be provided.

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(b) Minority business enterprise reports. Grantees shall submit to HUD, by April 10, a report on contract and subcontract activity during the first half of the fiscal year and by October 10 a report on such activity during the second half of the year.

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§ 953.507 Public access to program records.

Notwithstanding the provisions of 24 CFR 85.42(f), grantees shall provide citizens with reasonable access to records regarding the past use of ICDBG funds, consistent with applicable State and tribal laws regarding privacy and obligations of confidentiality.

§ 953.508 Grant closeout procedures.

(a) *Criteria for closeout.* A grant will be closed out when the Area ONAP determines, in consultation with the grantee, that the following criteria have been met:

(1) All costs to be paid with ICDBG funds have been incurred, with the exception of closeout costs (e.g., audit costs) and costs resulting from contingent liabilities described in the closeout agreement pursuant to paragraph (c) of this section. Contingent liabilities include, but are not limited to, third-party claims against the grantee, as well as related administrative costs.

(2) With respect to activities which are financed by means of escrow accounts, loan guarantees, or similar mechanisms, the work to be assisted with ICDBG funds has actually been completed.

(3) Other responsibilities of the grantee under the grant agreement and applicable laws and regulations appear to have been carried out satisfactorily or there is no further Federal interest in keeping the grant agreement open for the purpose of securing performance.

(b) *Closeout actions.* (1) Within 90 days of the date it is determined that the criteria for closeout have been met, the grantee shall submit to the Area ONAP a copy of the final status and evaluation report described in § 953.506(a) and a completed Financial Status Report (SF–269). If acceptable reports are not submitted, an audit of the grantee's program activities may be conducted by HUD.

(2) Based on the information provided in the status report and other relevant information, the grantee, in consultation with the Area ONAP, will prepare a closeout agreement in accordance with paragraph (c) of this section.

(3) The Area ONAP will cancel any unused portion of the awarded grant, as shown in the signed grant closeout agreement. Any unused grant funds disbursed from the U.S. Treasury which are in the possession of the grantee shall be refunded to HUD.

(4) Any costs paid with ICDBG funds which were not audited previously shall be subject to coverage in the grantee's next single audit performed in accordance with 24 CFR part 44. The grantee may be required to repay HUD any disallowed costs based on the results of the audit, or on additional HUD reviews provided for in the closeout agreement.

(c) *Closeout agreement.* Any obligations remaining as of the date of the closeout shall be covered by the terms of a closeout agreement. The agreement shall be prepared by the grantee in consultation with the Area ONAP. The agreement shall identify the grant being closed out, and include provisions with respect to the following:

(1) Identification of any closeout costs or contingent liabilities subject to payment with ICDBG funds after the closeout agreement is signed;

(2) Identification of any unused grant funds to be canceled by HUD;

(3) Identification of any program income on deposit in financial institutions at the time the closeout agreement is signed;

(4) Description of the grantee's responsibility after closeout for:

(i) Compliance with all program requirements, certifications and assurances in using program income on deposit at the time the closeout agreement is signed and in using any other remaining ICDBG funds available for closeout costs and contingent liabilities;

(ii) Use of real property assisted with ICDBG funds in accordance with the principles described in § 953.504; and

(iii) Ensuring that flood insurance coverage for affected property owners is maintained for the mandatory period;

(5) Other provisions appropriate to any special circumstances of the grant closeout, in modification of or in addition to the obligations in paragraphs (c) (1) through (4) of this section. The agreement shall authorize monitoring by HUD, and shall provide that findings of noncompliance may be taken into account by HUD as unsatisfactory performance of the grantee in the consideration of any future grant award under this part.

(d) *Termination of grant for convenience.* Grant assistance provided under this part may be terminated for convenience in whole or in part before the completion of the assisted activities, in accordance with the provisions of 24 CFR 85.44. The grantee shall not incur new obligations for the terminated portions after the effective date, and shall cancel as many outstanding obligations as possible. HUD shall allow full credit to the grantee for those portions of obligations which could not be canceled and which had been properly incurred by the grantee in carrying out the activities before the termination. The closeout policies contained in this section shall apply in such cases, except where the approved grant is terminated in its entirety. Responsibility for the environmental review to be performed under 24 CFR part 50 or 24 CFR part 58, as applicable, shall be determined as part of the closeout process.

(e) *Termination for cause.* In cases in which HUD terminates the grantee's grant under the authority of subpart H of this part, or under the terms of the grant agreement, the closeout policies contained in this section shall apply, except where the approved grant is canceled in its entirety. The provisions in 24 CFR 85.43(c) on the effects of termination shall also apply. HUD shall determine whether an environmental review is required, and if so, HUD shall perform it in accordance with 24 CFR part 50.

§ 953.509 Force account construction.

(a) The use of tribal work forces for construction or renovation activities performed as part of the activities funded under this part shall be approved by the Area ONAP before the start of project implementation. In reviewing requests for an approval of force account construction or renovation, the area ONAP may require that the grantee provide the following:

(1) Documentation to indicate that it has carried out or can carry out successfully a project of the size and scope of the proposal;

(2) Documentation to indicate that it has obtained or can obtain adequate supervision for the workers to be used;

(3) Information showing that the workers to be used are, or will be, listed on the tribal payroll and are employed directly by a unit, department or other governmental instrumentality of the tribe or village.

(b) Any and all excess funds derived from the force account construction or renovation activities shall accrue to the grantee and shall be reprogrammed for other activities eligible under this part in accordance with § 953.305 or returned to HUD promptly.

(c) Insurance coverage for force account workers and activities shall, where applicable, include worker's compensation, public liability, property damage, builder's risk, and vehicular liability.

(d) The grantee shall specify and apply reasonable labor performance, construction, or renovation standards to work performed under the force account.

(e) The contracting and procurement standards set forth in 24 CFR 85.36

apply to material, equipment, and supply procurement from outside vendors under this section.

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§ 953.510 Indian preference requirements.

(a) Applicability. HUD has determined that grants under this part are subject to Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b). Section 7(b) provides that any contract, subcontract, grant or subgrant pursuant to an act authorizing grants to Indian organizations or for the benefit of Indians shall require that, to the greatest extent feasible:

(1) Preference and opportunities for training and employment shall be given to Indians; and

(2) Preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned economic enterprises as defined in section 3 of the Indian Financing Act of 1974 (25 U.S.C. 1452).

(b) *Definitions.* (1) The Indian Self-Determination and Education Assistance Act [25 U.S.C. 450b] defines ''Indian'' to mean a person who is a member of an Indian tribe and defines ''Indian tribe'' to mean any Indian tribe, band, nation, or other organized group or community including any Alaska native village or regional or village corporation as defined or established pursuant to the Alaska Native Claims Settlement Act, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(2) In section 3 of the Indian Financing Act of 1974 (25 U.S.C. 1452) *economic enterprise* is defined as any Indian—owned commercial, industrial, or business activity established or organized for the purpose of profit, except that Indian ownership must constitute not less than 51 percent of the enterprise. This act defines *Indian organization* to mean the governing body of any Indian tribe or entity established or recognized by such governing body.

(c) *Preference in administration of grant.* To the greatest extent feasible, preference and opportunities for training and employment in connection with the administration of grants awarded under this part shall be given to Indians.

(d) *Preference in contracting.* To the greatest extent feasible, grantees shall give preference in the award of contracts for projects funded under this part to Indian organizations and Indian-owned economic enterprises.

(1) Each grantee shall:

(i) Advertise for bids or proposals limited to qualified Indian organizations and Indian-owned enterprises; or

(ii) Use a two-stage preference procedure, as follows:

(A) *Stage 1.* Invite or otherwise solicit Indian-owned economic enterprises to submit a statement of intent to respond to a bid announcement or request for proposals limited to Indian-owned firms.

(B) *Stage 2.* If responses are received from more than one Indian enterprise found to be qualified, advertise for bids or proposals limited to Indian organizations and Indian-owned economic enterprises; or

(iii) Develop, subject to Area ONAP one-time approval, the grantee's own method of providing preference.

(2) If the grantee selects a method of providing preference that results in fewer than two responsible qualified organizations or enterprises submitting a statement of intent, a bid or a proposal to perform the contract at a reasonable cost, then the grantee shall:

(i) Re-advertise the contract, using any of the methods described in paragraph (d)(1) of this section; or

(ii) Re-advertise the contract without limiting the advertisement for bids or proposals to Indian organizations and Indian-owned economic enterprises; or

(iii) If one approvable bid or proposal is received, request Area ONAP review and approval of the proposed contract and related procurement documents, in accordance with 24 CFR 85.36, in order to award the contract to the single bidder or offeror.

(3) Procurements that are within the dollar limitations established for small purchases under 24 CFR 85.36 need not follow the formal bid or proposal procedures of paragraph (d) of this section, since these procurements are governed by the small purchase procedures of 24 CFR 85.36. However, a grantee's small purchase procurement shall, to the greatest extent feasible, provide Indian preference in the award of contracts.

(4) All preferences shall be publicly announced in the advertisement and bidding or proposal solicitation documents and the bidding and proposal documents.

(5) A grantee, at its discretion, may require information of prospective contractors seeking to qualify as Indian organizations or Indian-owned economic enterprises. Grantees may require prospective contractors to include the following information prior to submitting a bid or proposal, or at the time of submission:

(i) Evidence showing fully the extent of Indian ownership and interest;

(ii) Evidence of structure, management and financing affecting the Indian character of the enterprise, including major subcontracts and purchase agreements; materials or equipment supply arrangements; and management salary or profit-sharing arrangements; and evidence showing the effect of these on the extent of Indian ownership and interest; and

(iii) Evidence sufficient to demonstrate to the satisfaction of the grantee that the prospective contractor has the technical, administrative, and financial capability to perform contract work of the size and type involved.

(6) The grantee shall incorporate the following clause (referred to as the Section 7(b) clause) in each contract awarded in connection with a project funded under this part:

(i) The work to be performed under this contract is on a project subject to Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b) (Indian Act). Section 7(b) requires that to the greatest extent feasible:

(A) Preferences and opportunities for training and employment shall be given to Indians; and

(B) Preferences in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned economic enterprises.

(ii) The parties to this contract shall comply with the provisions of Section 7(b) of the Indian Act.

(iii) In connection with this contract, the contractor shall, to the greatest extent feasible, give preference in the award of any subcontracts to Indian organizations and Indian-owned economic enterprises, and preferences and opportunities for training and employment to Indians.

(iv) The contractor shall include this Section 7(b) clause in every subcontract in connection with the project, and shall, at the direction of the grantee, take appropriate action pursuant to the subcontract upon a finding by the grantee or HUD that the subcontractor has violated the Section 7(b) clause of the Indian Act.

(e) *Complaint procedures.* The following complaint procedures are applicable to complaints arising out of any of the methods of providing for Indian preference contained in this part, including alternate methods enacted and approved in a manner described in this section:

(1) Each complaint shall be in writing, signed, and filed with the grantee.

(2) A complaint must be filed with the grantee no later than 20 calendar days

from the date of the action (or omission) upon which the complaint is based.

(3) Upon receipt of a complaint, the grantee shall promptly stamp the date and time of receipt upon the complaint, and immediately acknowledge its receipt.

(4) Within 20 calendar days of receipt of a complaint, the grantee shall either meet, or communicate by mail or telephone, with the complainant in an effort to resolve the matter. The grantee shall make a determination on a complaint and notify the complainant, in writing, within 30 calendar days of the submittal of the complaint to the grantee. The decision of the grantee shall constitute final administrative action on the complaint.

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§ 953.511 Use of escrow accounts for rehabilitation of privately owned residential property.

(a) *Limitations.* A grantee may withdraw funds from its line of credit for immediate deposit into an escrow account for use in funding loans and grants for the rehabilitation of privately owned residential property under § 953.202(a)(1). The following additional limitations apply to the use of escrow accounts for residential rehabilitation loans and grants closed after September 7, 1990:

(1) The use of escrow accounts under this section is limited to loans and grants for the rehabilitation of primarily residential properties containing no more than four dwelling units (and accessory neighborhood-scale non-residential space within the same structure, if any, e.g., a store front below a dwelling unit).

(2) An escrow account shall not be used unless the contract between the property owner and the contractor selected to do the rehabilitation work specifically provides that payment to the contractor shall be made through an escrow account maintained by the grantee, by a subrecipient as defined in § 953.4, by a public agency designated under § 953.500(a), or by an agent under a procurement contact governed by the requirements of 24 CFR 85.36. No deposit to the escrow account shall be made until after the contract has been executed between the property owner and the rehabilitation contractor.

(3) All funds withdrawn under this section shall be deposited into one interest earning account with a financial institution. Separate bank accounts shall not be established for individual loans and grants.

(4) The amount of funds deposited into an escrow account shall be limited to the amount expected to be disbursed within 10 working days from the date of deposit. If the escrow account, for whatever reason, at any time contains funds exceeding 10 days cash needs, the grantee immediately shall transfer the excess funds to its program account. In the program account, the excess funds shall be treated as funds erroneously drawn in accordance with the requirements of U.S. Treasury Financial Manual, paragraph 6–2075.30.

(5) Funds deposited into an escrow account shall be used only to pay the actual costs of rehabilitation incurred by the owner under the contract with a private contractor. Other eligible costs related to the rehabilitation loan or grant, e.g., the grantee's administrative costs under § 953.206 or rehabilitation services costs under § 953.202(b)(9), are not permissible uses of escrowed funds. Such other eligible rehabilitation costs shall be paid under normal ICDBG payment procedures (e.g., from withdrawals of grant funds under the grantee's line of credit with the Treasury).

(b) *Interest.* Interest earned on escrow accounts established in accordance with this section, less any service charges for the account, shall be remitted to HUD at least quarterly but not more frequently than monthly. Interest earned on escrow accounts is not required to be remitted to HUD to the extent the interest is attributable to the investment of program income.

(c) *Remedies for noncompliance.* If HUD determines that a grantee has failed to use an escrow account in accordance with this section, HUD may, in addition to imposing any other sanctions provided for under this part, require the grantee to discontinue the use of escrow accounts, in whole or in part.

Subpart G—Other Program Requirements

§ 953.600 Constitutional prohibition.

In accordance with First Amendment Church/State Principles, as a general rule, ICDBG assistance may not be used for religious activities or provided to primarily religious entities for any activities, including secular activities. The following restrictions and limitations therefore apply to the use of ICDBG funds.

(a) ICDBG funds may not be used for the acquisition of property or the construction or rehabilitation (including historic preservation and removal of architectural barriers) of structures to be used for religious purposes or which will otherwise promote religious interests. This limitation includes the acquisition of property for ownership by primarily religious entities and the construction or rehabilitation (including historic preservation and removal of architectural barriers) of structures owned by such entities (except as permitted under paragraph (b) of this section with respect to rehabilitation and under paragraph (d) of this section with respect to repairs undertaken in connection with public services) regardless of the use to be made of the property or structure. Property owned by primarily religious entities may be acquired with ICDBG funds at no more than fair market value for a non-religious use.

(b) ICDBG funds may be used to rehabilitate buildings owned by primarily religious entities to be used for a wholly secular purpose under the following conditions:

(1) The building (or portion thereof) that is to be improved with the ICDBG assistance has been leased to an existing or newly established wholly secular entity (which may be an entity established by the religious entity);

(2) The ICDBG assistance is provided to the lessee (and not the lessor) to make the improvements;

(3) The leased premises will be used exclusively for secular purposes available to persons regardless of religion;

(4) The lease payments do not exceed the fair market rent of the premises as they were before the improvements are made;

(5) The portion of the cost of any improvements that also serve a non-leased part of the building will be allocated to and paid for by the lessor;

(6) The lessor enters into a binding agreement that unless the lessee, or a qualified successor lessee, retains the use of the leased premises for a wholly secular purpose for at least the useful life of the improvements, the lessor will pay to the lessee an amount equal to the residual value of the improvements;

(7) The lessee must remit the amount received from the lessor under paragraph (b)(6) of this section to the grantee or subrecipient from which the ICDBG funds were derived.

(8) The lessee can also enter into a management contract authorizing the lessor religious entity to use the building for its intended secular purpose, e.g., homeless shelter, provision of public services. In such case, the religious entity must agree in the management contract to carry out the secular purpose in a manner free from religious influences in accordance with the principles set forth in paragraph (c) of this section.

(c) As a general rule, ICDBG funds may be used for eligible public services to be provided through a primarily religious entity, where the religious entity enters into an agreement with the grantee or subrecipient from which the ICDBG funds are derived that, in connection with the provision of such services:

(1) It will not discriminate against any employee or applicant for employment on the basis of religion and will not limit employment or give preference in employment to persons on the basis of religion;

(2) It will not discriminate against any person applying for such public services on the basis of religion and will not limit such services or give preference to persons on the basis of religion;

(3) It will provide no religious instruction or counseling, conduct no religious worship or services, engage in no religious proselytizing, and exert no other religious influence in the provision of such public services;

(d) Where the public services provided under paragraph (c) of this section are carried out on property owned by the primarily religious entity, ICDBG funds may also be used for minor repairs to such property which are directly related to carrying out the public services where the cost constitutes in dollar terms only an incidental portion of the ICDBG expenditure for the public services.

§ 953.601 Nondiscrimination.

(a) Under the authority of section 107(e)(2) of the Act, the Secretary waives the requirement that grantees comply with section 109 of the Act except with respect to the prohibition of discrimination based on age, sex, religion, or against an otherwise qualified disabled individual.

(b) A grantee shall comply with the provisions of title II of Pub. L. 90–284 (24 U.S.C. 1301—the Indian Civil Rights Act) in the administration of a program or activity funded in whole or in part with funds made available under this part. For purposes of this section, ''program or activity'' is defined as any function conducted by an identifiable administrative unit of the grantee; and ''funded in whole or in part with funds made available under this part'' means that ICDBG funds in any amount have been transferred by the grantee to an identifiable administrative unit and disbursed in a program or activity.

§ 953.602 Relocation and real property acquisition.

(a) *Minimize displacement.* Consistent with the other goals and objectives of this part, grantees shall assure that they have taken all reasonable steps to minimize the displacement of persons (households, businesses, nonprofit organizations, and farms) as a result of a project assisted under this part.

(b) *Temporary relocation.* The following policies cover residential tenants who will not be required to move permanently but who must relocate temporarily for the project. Such tenants must be provided:

(1) Reimbursement for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporarily occupied housing and any increase in monthly housing costs (e.g., rent/utility costs).

(2) Appropriate advisory services, including reasonable advance written notice of:

(i) The date and approximate duration of the temporary relocation;

(ii) The location of the suitable, decent, safe and sanitary dwelling to be made available for the temporary period;

(iii) The terms and conditions under which the tenant may occupy a suitable, decent, safe, and sanitary dwelling in the building/complex following completion of the repairs; and

(iv) The provisions of paragraph (b)(1) of this section.

(c) *Relocation assistance for displaced persons.* A displaced person (defined in paragraph (g) of this section) must be provided relocation assistance at the levels described in, and in accordance with the requirements of, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA)(42 U.S.C. 4601–4655) and implementing regulations at 49 CFR part 24.

(d) *Optional relocation assistance.* Under section 105(a)(11) of the Act, the grantee may provide relocation payments and other relocation assistance to persons displaced by a project that is not subject to paragraph (c) of this section. The grantee may also provide relocation assistance to persons receiving assistance under paragraph (c) of this section at levels in excess of those required. For assistance that is not required by State or tribal law, the grantee shall adopt a written policy available to the public that describes the relocation assistance that it has elected to furnish and provides for equal relocation assistance within each class of displaced persons.

(e) *Real Property acquisition requirements.* The acquisition of real property for an assisted activity is subject to 49 CFR part 24, subpart B. Whenever the grantee does not have the authority to acquire the real property through condemnation, it shall:

(1) Before discussing the purchase price, inform the owner:

(i) Of the amount it believes to be the fair market value of the property. Such amount shall be based upon one or more appraisals prepared by a qualified appraiser. However, this provision does not prevent the grantee from accepting a donation or purchasing the real property at less than its fair market value.

(ii) That it will be unable to acquire the property if negotiations fail to result in an amicable agreement.

(2) Request HUD approval of the proposed acquisition price before executing a firm commitment to purchase the property. The grantee shall include with its request a copy of the appraisal(s) and, when applicable, a justification for any proposed acquisition payment that exceeds the fair market value of the property. HUD will promptly review the proposal and inform the grantee of its approval or disapproval.

(f) *Appeals.* A person who disagrees with the grantee's determination concerning whether the person qualifies as a ''displaced person,'' or the amount of relocation assistance for which the person is eligible, may file a written appeal of that determination with the grantee. A person who is dissatisfied with the grantee's determination on his or her appeal may submit a written request for review of that determination to the HUD Area ONAP.

(g) *Responsibility of grantee.* (1) The grantee shall certify that it will comply with the URA, the regulations at 49 CFR part 24, and the requirements of this section, *i.e.*, provide assurance of compliance as required by 49 CFR part 24. The grantee shall ensure such compliance notwithstanding any third party's contractual obligation to the grantee to comply with these provisions.

(2) The cost of required relocation assistance is an eligible project cost in the same manner and to the same extent as other project costs. However, such assistance may also be paid for with funds available to the grantee from any other source.

(3) The grantee shall maintain records in sufficient detail to demonstrate compliance with this section.

(h) *Definition of displaced person.* (1) For purposes of this section, the term *displaced person* means any person (household, business, nonprofit organization, or farm) that moves from real property, or moves his or her personal property from real property, permanently, as a direct result of rehabilitation, demolition, or

acquisition for a project assisted under this part. The term ''displaced person'' includes, but is not limited to:

(i) A tenant-occupant of a dwelling unit who moves from the building/complex permanently after the submission to HUD of an application for financial assistance that is later approved.

(ii) Any person, including a person who moves before the date described in paragraph (h)(1)(i) of this section, that either HUD or the grantee determines was displaced as a direct result of acquisition, rehabilitation, or demolition for the assisted project.

(iii) A tenant-occupant of a dwelling who moves from the building/complex permanently, after the execution of the agreement between the grantee and HUD, if the move occurs before the tenant is provided written notice offering him or her the opportunity to lease and occupy a suitable, decent, safe and sanitary dwelling in the same building/complex, under reasonable terms and conditions, upon completion of the project. Such reasonable terms and conditions include a monthly rent and estimated average monthly utility costs that do not exceed the greater of:

(A) The tenant's monthly rent and estimated average monthly utility costs before the agreement; or

(B) 30 percent of gross household income.

(iv) A tenant-occupant of a dwelling who is required to relocate temporarily, but does not return to the building/complex, if either:

(A) The tenant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporarily occupied unit, any increased housing costs and incidental expenses; or

(B) Other conditions of the temporary relocation are not reasonable.

(v) A tenant-occupant of a dwelling who moves from the building/complex after he or she has been required to move to another dwelling unit in the same building/complex in order to carry out the project, if either:

(A) The tenant is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move; or

(B) Other conditions of the move are not reasonable.

(2) Notwithstanding the provisions of paragraph (h)(1) of this section, a person does not qualify as a ''displaced person'' (and is not eligible for relocation assistance under the URA or this section), if:

(i) The person moved into the property after the submission of the application for financial assistance to HUD, but, before signing a lease or commencing occupancy, was provided written notice of the project, its possible impact on the person (e.g., the person may be displaced, temporarily relocated or suffer a rent increase) and the fact that the person would not qualify as a ''displaced person'' or for any assistance provided under this section as a result of the project;

(ii) The person is ineligible under 49 CFR 24.2(g)(2).

(iii) The grantee determines the person is not displaced as a direct result of acquisition, rehabilitation, or demolition for an assisted project. To exclude a person on this basis, HUD must concur in that determination.

(3) A grantee may at any time ask HUD to determine whether a specific displacement is or would be covered under this section.

(i) *Definition of initiation of negotiations.* For purposes of determining the formula for computing the replacement housing assistance to be provided to a person displaced as a direct result of rehabilitation or demolition of the real property, the term ''initiation of negotiations'' means the execution of the agreement covering the rehabilitation or demolition.

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§ 953.603 Labor standards.

In accordance with the authority under section 107(e)(2) of the Act, the Secretary waives the provisions of section 110 of the Act (Labor Standards) with respect to this part, including the requirement that laborers and mechanics employed by the contractor or subcontractor in the performance of construction work financed in whole or in part with assistance received under this part be paid wages at rates not less than those prevailing on similar construction in the locality, as determined by the Secretary of Labor in accordance with the Davis-Bacon Act (40 U.S.C. 276 a to a–7).

§ 953.604 Citizen participation.

(a) In order to permit residents of Indian tribes and Alaska native villages to examine and appraise the applicant's application for funds under this part, the applicant shall follow traditional means of resident involvement which, at the least, include the following:

(1) Furnishing residents with information concerning the amounts of funds available for proposed community development and housing activities and the range of activities that may be undertaken.

(2) Holding one or more meetings to obtain the views of residents on community development and housing needs. Meetings shall be scheduled in ways and at times that will allow participation by residents.

(3) Developing and publishing or posting a community development statement in such a manner as to afford affected residents an opportunity to examine its contents and to submit comments.

(4) Affording residents an opportunity to review and comment on the applicant's performance under any active community development block grant.

(b) Prior to submission of the application to HUD, the applicant shall certify by an official Tribal resolution that it has met the requirements of paragraph (a) of this section; and

(1) Considered any comments and views expressed by residents and, if it deems it appropriate, modified the application accordingly; and

(2) Made the modified application available to residents.

(c) No part of the requirement under paragraph (a) of this section shall be construed to restrict the responsibility and authority of the applicant for the development of the application and the execution of the grant. Accordingly, the citizen participation requirements of this section do not include concurrence by any person or group in making final determinations on the contents of the application.

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§ 953.605 Environment.

(a) In order to assure that the policies of the National Environmental Policy Act of 1969 and other provisions of Federal law which further the purposes of that act (as specified in 24 CFR 58.5) are most effectively implemented in connection with the expenditure of ICDBG funds, the grantee shall comply with the Environment Review Procedures for Entities Assuming HUD Environmental Responsibilities (24 CFR part 58). Upon completion of an environmental review, the grantee shall submit a certification and request for release of funds for particular projects in accordance with 24 CFR part 58. The grantee shall also be responsible for compliance with flood insurance, coastal barrier resource and airport clear zone requirements under 24 CFR 58.6.

(b) In accordance with 24 CFR 58.34(a)(8), grants for imminent threats to health or safety approved under the provisions of subpart E of this part are

exempt from some or all of the environmental review requirements of 24 CFR part 58, to the extent provided in that section.

§ 953.606 Conflict of interest.

(a) *Applicability.* (1) In the procurement of supplies, equipment, construction, and services by grantees and subgrantees, the conflict of interest provisions in 24 CFR 85.36 and 24 CFR 84.42 shall apply.

(2) In all cases not governed by 24 CFR 85.36 and 24 CFR 84.42, the provisions of this section shall apply. Such cases include the provision of assistance by the grantee or by its subrecipients to businesses, individuals, and other private entities under eligible activities that authorize such assistance (e.g., rehabilitation, preservation, and other improvements of private properties or facilities under § 953.202; or grants, loans, and other assistance to businesses, individuals, and other private entities under § 953.203 or § 953.204.).

(b) *Conflicts prohibited.* Except for the use of ICDBG funds to pay salaries and other related administrative or personnel costs, the general rule is that no persons described in paragraph (c) of this section who exercise or have exercised any functions or responsibilities with respect to ICDBG activities assisted under this part or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a personal or financial interest or benefit from an ICDBG assisted activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.

(c) *Persons covered.* The conflict of interest provisions of paragraph (b) of this section apply to any person who is an employee, agent, consultant, officer, or elected or appointed official of the grantee, or of any designated public agencies, or CBDOs under § 953.204, receiving funds under this part.

(d) *Exceptions requiring HUD approval.*—(1) *Threshold requirements.* Upon the written request of a grantee, HUD may grant an exception to the provisions of paragraph (b) of this section on a case-by-case basis, when it determines that such an exception will serve to further the purposes of the Act and the effective and efficient administration of the grantee's program or project. An exception may be considered only after the grantee has provided the following:

(i) A disclosure of the nature of the possible conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made; and

(ii) An opinion of the grantee's attorney that the interest for which the exception is sought would not violate Tribal laws on conflict of interest, or applicable State laws.

(2) *Factors to be considered for exceptions:* In determining whether to grant a requested exception after the grantee has satisfactorily met the requirements of paragraph (d)(1) of this section, HUD shall consider the cumulative effect of the following factors, where applicable:

(i) Whether the exception would provide a significant cost benefit or essential expert knowledge to the program or project which would otherwise not be available;

(ii) Whether an opportunity was provided for open competitive bidding or negotiation;

(iii) Whether the affected person has withdrawn from his or her functions or responsibilities, or from the decision-making process, with reference to the specific assisted activity in question;

(iv) Whether the interest or benefit was present before the affected person was in a position as described in paragraph (b) of this section;

(v) Whether undue hardship will result, either to the grantee or to the person affected, when weighed against the public interest served by avoiding the prohibited conflict;

(vi) Any other relevant considerations.

(e) *Circumstances under which the conflict prohibition does not apply.* (1) In instances where a person who might otherwise be deemed to be included under the conflict prohibition is a member of a group or class of beneficiaries of the assisted activity and receives generally the same interest or benefits as are being made available or provided to the group or class, the prohibition does not apply, except that if, by not applying the prohibition against conflict of interest, a violation of Tribal or State laws on conflict of interest would result, the prohibition does apply. However, if the assistance to be provided is housing rehabilitation (or repair) or new housing, a public disclosure of the nature of the assistance to be provided and the specific basis for the selection of the proposed beneficiaries must be made prior to the submission of an application to HUD. Evidence of this disclosure must be provided as a component of the application.

(f) *Record retention.* All records pertaining to the grantee's decision under this section shall be maintained for HUD review upon request.

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§ 953.607 Lead-based paint.

(a) *Prohibition against the use of lead-based paint.* Section 401(b) of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4831(b)) directs HUD to prohibit the use of lead-based paint in residential structures constructed or rehabilitated with Federal assistance. Such prohibitions are contained in 24 CFR part 35, subpart B, and are applicable to residential structures constructed or rehabilitated with assistance provided under this part.

(b) *Notification of hazards of lead-based paint poisoning.* (1) The Secretary has promulgated requirements regarding notification to purchasers and tenants of HUD-associated housing constructed prior to 1978 of the hazards of lead-based paint poisoning at 24 CFR part 35, subpart A. This paragraph is promulgated pursuant to the authorization granted in 24 CFR 35.5(c) and supersedes, with respect to all housing to which it applies, the notification requirements prescribed by subpart A of 24 CFR part 35.

(2) For properties constructed prior to 1978, applicants for rehabilitation assistance provided under this part and tenants or purchasers of properties owned by the grantee or its subrecipient and acquired or rehabilitated with assistance under this part shall be notified:

(i) That the property may contain lead-based paint;

(ii) Of the hazards of lead-based paint;

(iii) Of the symptoms and treatment of lead-based paint poisoning;

(iv) Of the precautions to be taken to avoid lead-based paint poisoning (including maintenance and removal techniques for eliminating such hazards);

(v) Of the advisability and availability of blood lead level screening for children under six years of age;

(vi) That in the event lead-based paint is found on the property, appropriate treatment procedures may be undertaken.

(c) *Elimination of lead-based paint hazards.* The purpose of this paragraph is to implement the provisions of section 302 of the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. 4822, by establishing procedures to eliminate as far as practicable the hazards due to the presence of paint which may contain lead and to which children under six years of age may be

exposed in existing housing which is rehabilitated with assistance provided under this part. HUD has promulgated requirements regarding the elimination of lead-based paint hazards in HUD-associated housing at 24 CFR part 35, subpart C. This paragraph is promulgated pursuant to the authorization granted in 24 CFR 35.24(b)(4) and supersedes, with respect to all housing to which it applies, the requirements prescribed by subpart C of 24 CFR part 35.

(1) *Applicability.* This paragraph applies to the rehabilitation of applicable surfaces in existing housing which is assisted under this part. The following activities assisted under the Indian Community Development Block Grant program are not covered by this paragraph (c):

(i) Emergency repairs (not including lead-based paint-related emergency repairs);

(ii) Weatherization;

(iii) Water or sewer hook-ups;

(iv) Installation of security devices;

(v) Facilitation of tax exempt bond issuances which provide funds for rehabilitation;

(vi) Other similar types of single-purpose programs that do not include physical repairs or remodeling of applicable surfaces (as defined in 24 CFR 35.22) of residential structures; and

(vii) Any non-single purpose rehabilitation that does not involve applicable surfaces (as defined in 24 CFR 35.22) that does not exceed $3,000 per unit.

(2) *Definitions.*

Applicable surface. All intact and non-intact interior and exterior painted surfaces of a residential structure.

Chewable surface. All protruding painted surfaces up to five feet from the floor or ground, that are readily accessible to children under six years of age, e.g., protruding corners, windowsills and frames, doors and frames, and other protruding woodwork.

Defective paint surface. A surface on which the paint is cracking, scaling, chipping, peeling or loose.

Elevated blood lead level or EBL. Excessive absorption of lead, that is, confirmed concentration of lead in whole blood of 20 ug/dl (micrograms of lead per deciliter) for a single test or of 15–19 ug/dl in two consecutive tests 3–4 months apart.

HEPA. A high efficiency particle accumulator as used in lead abatement vacuum cleaners.

Lead-based paint. A paint surface, whether or not defective, identified as having a lead content greater than or equal to 1 mg/cm2 (milligram per square centimeter) or .5 percent by weight or 5000 parts per million (PPM).

(3) *Inspection and Testing.*—(i) *Defective paint surfaces.* The grantee shall inspect for defective paint surfaces in all units constructed prior to 1978 which are occupied by families with children under six years of age and which are proposed for rehabilitation assistance. The inspection shall occur at the same time the property is being inspected for rehabilitation. Defective paint conditions will be included in the work write-up for the remainder of the rehabilitation work.

(ii) *Chewable surfaces.* The grantee shall be required to test chewable surfaces for lead-based paint if the family residing in a unit, constructed prior to 1978 and receiving rehabilitation assistance, includes a child under six years of age with an identified EBL condition. Testing must be conducted by an inspector certified or regulated by a State or local health or housing agency or an organization recognized by HUD. Lead content shall be tested by using an X-ray fluorescence analyzer (XRF) or by laboratory analysis of paint samples.

(iii) *Abatement without testing.* In lieu of the procedures set forth in paragraph (c)(3)(ii) of this section, in the case of a residential structure constructed prior to 1978, the grantee may forgo testing and treat all applicable surfaces in accordance with the methods set out in paragraph (c)(5) of this section.

(4) *Treatment Actions.* (i) For inspections performed under § 953.607(c)(3)(i) and where defective paint surfaces are found, treatment shall be provided to defective areas in accordance with paragraph (c)(5) of this section. Treatment shall be performed before final inspection and approval of the work.

(ii) For testing performed under § 953.607(c)(3)(ii) and where interior chewable surfaces are found to contain lead-based paint, all interior chewable surfaces in any affected room shall be treated. Where exterior chewable surfaces are found to contain lead-based paint, the entire exterior chewable surface shall be treated. Treatment in accordance with paragraph (c)(5) of this section shall be performed before final inspection and approval of the work.

(iii) When weather prohibits repainting exterior surfaces before final inspection, the grantee may permit the owner to treat the defective paint or chewable lead-based paint as required by this section and agree to repaint by a specified date. A separate inspection is required.

(5) *Treatment methods.* Treatment of defective paint surfaces and chewable surfaces must consist of covering or removal of the paint in accordance with the following requirements:

(i) A defective paint surface shall be treated if the total area of defective paint on a component is:

(A) More than 10 square feet on an exterior wall;

(B) More than 2 square feet on an interior or exterior component with a large surface area, excluding exterior walls and including, but not limited to, ceilings, floors, doors, and interior walls; or

(C) More than 10 percent of the total surface area on an interior or exterior component with a small surface area, including, but not limited to, window sills, baseboards and trim.

(ii) Acceptable methods of treatment are: Removal by wet scraping, wet sanding, chemical stripping on or off site, replacing painted components, scraping with infra-red or coil type heat gun with temperatures below 1100 degrees, HEPA vacuum sanding, HEPA vacuum needle gun, contained hydroblasting or high pressure wash with HEPA vacuum, and abrasive sandblasting with HEPA vacuum. Surfaces must be covered with durable materials with joints and edges sealed and caulked as needed to prevent the escape of lead contaminated dust.

(iii) Prohibited methods of removal are: Open flame burning or torching; machine sanding or grinding without a HEPA exhaust; uncontained hydroblasting or high pressure wash; and dry scraping except around electrical outlets or except when treating defective paint spots no more than two square feet in any one interior room or space (hallway, pantry, etc.) or totalling no more than twenty square feet on exterior surfaces.

(iv) During exterior treatment, soil and playground equipment must be protected from contamination.

(v) All treatment procedures must be concluded with a thorough cleaning of all surfaces in the room or area of treatment to remove fine dust particles. Cleanup must be accomplished by wet washing surfaces with a lead solubilizing detergent such as trisodium phosphate or an equivalent solution.

(vi) Waste and debris must be disposed of in accordance with all applicable Federal, State and local laws.

(6) *Funding for inspection, testing and treatment.* Program requirements and local program design will determine whether the cost of inspection, testing or treatment is to be borne by the owner/developer, the grantee or a combination of the owner/developer and the grantee.

(7) *Tenant protection*. The owner/developer shall take appropriate action to protect residents and their belongings from hazards associated with treatment procedures. Residents must not enter spaces undergoing treatment until cleanup is completed. Personal belongings that are in work areas must be relocated or otherwise protected from contamination. Where necessary, these actions may include the temporary relocation of tenants during the treatment process. The owner/developer shall notify the grantee of all such actions taken.

(8) *Records*. The grantee shall keep a copy of each inspection and/or test report for at least three years.

(9) *Monitoring and enforcement*. Area ONAP monitoring of rehabilitation programs includes reviews for compliance with applicable program requirements for lead-based paint. In cases of noncompliance, HUD may impose conditions or sanctions on grantees to encourage prompt compliance.

(10) *Compliance with other program requirements, Federal, State and local laws*.—(i) *Other program requirements*. To the extent that assistance from any of the programs covered by this section is used in conjunction with other HUD program assistance which have lead-based paint requirements which may have more or less stringent requirements, the more stringent requirements will prevail.

(ii) *HUD responsibility*. If HUD determines that a State or local law, ordinance, code or regulation provides for lead-based paint testing or hazard treatment in a manner which provides a level of protection from the hazards of lead-based paint poisoning at least comparable to that provided by the requirements of this section and that adherence to the requirements of this subpart would be duplicative or otherwise cause inefficiencies, HUD may modify or waive the requirements of this section in such manner as may be appropriate to promote efficiency while ensuring such comparable level of protection.

(iii) *Grantee responsibility*. Nothing in this section is intended to relieve any grantee in the programs covered by this section of any responsibility for compliance with applicable State or local laws, ordinances, codes or regulations governing the inspection, testing or treatment of lead-based paint hazards.

(Approved by the Office of Management and Budget under control number 2577–0191)

§ 953.608 Debarment and suspension.

As required by 24 CFR part 24, each grantee must require participants in lower tier covered transactions (e.g., contractors and sub-contractors) to include the certification in appendix B of part 24 (that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation from the covered transaction) in any proposal submitted in connection with the lower tier transactions. A grantee may rely on the certification , unless it knows the certification is erroneous.

Subpart H—Program Performance

§ 953.700 Review of grantee's performance.

(a) *Objective*. HUD will review each grantee's performance to determine whether the grantee has:

(1) Complied with the requirements of the Act, this part, the grant agreement and other applicable laws and regulations;

(2) Carried out its activities substantially as described in its application;

(3) Made substantial progress in carrying out its approved program;

(4) A continuing capacity to carry out the approved activities in a timely manner; and

(5) The capacity to undertake additional activities funded under this part.

(b) *Basis for review*. In reviewing each grantee's performance, HUD will consider all available evidence which may include, but not be limited to, the following:

(1) The approved application and any amendments thereto;

(2) Reports prepared by the grantee;

(3) Records maintained by the grantee;

(4) Results of HUD's monitoring of the grantee's performance, including field evaluation of the quality of the work performed;

(5) Audit reports;

(6) Records of drawdowns on the line of credit;

(7) Records of comments and complaints by citizens and organizations; and

(8) Litigation.

§ 953.701 Corrective and remedial action.

(a) *General.* One or more corrective or remedial actions will be taken by HUD when, on the basis of the performance review, HUD determines that the grantee has not:

(1) Complied with the requirements of the Act, this part, and other applicable laws and regulations, including the environmental responsibilities assumed under section 104(g) of title I of the Act;

(2) Carried out its activities substantially as described in its applications;

(3) Made substantial progress in carrying out its approved program; or

(4) Shown the continuing capacity to carry out its approved activities in a timely manner.

(b) *Action.* The action taken by HUD will be designed, first, to prevent the continuance of the deficiency; second, to mitigate any adverse effects or consequences of the deficiency; and third, to prevent a recurrence of the same or similar deficiencies. The following actions may be taken singly or in combination, as appropriate for the circumstances:

(1) Request the grantee to submit progress schedules for completing approved activities or for complying with the requirements of this part;

(2) Issue a letter of warning advising the grantee of the deficiency (including environmental review deficiencies and housing assistance deficiencies), describing the corrective actions to be taken, establishing a date for corrective actions, and putting the grantee on notice that more serious actions will be taken if the deficiency is not corrected or is repeated;

(3) Advise the grantee to suspend, discontinue, or not incur costs for the affected activity;

(4) Advise the grantee to reprogram funds from affected activities to other eligible activities, provided that such action shall not be taken in connection with any substantial violation of part 58 and provided that such reprogramming is subjected to the environmental review procedures of part 58 of this title;

(5) Advise the grantee to reimburse the grantee's program account or line of credit in any amount improperly expended;

(6) Change the method of payment from a line of credit basis to a reimbursement basis; and/or

(7) Suspend the line of credit until corrective actions are taken.

§ 953.702 Reduction or withdrawal of grant.

(a) *General.* A reduction or withdrawal of a grant under paragraph (b) of this section will not be made until at least one of the corrective or remedial actions specified in § 953.701(b) has been taken and only then if the grantee has not made an appropriate and timely response. Before making such a grant reduction or withdrawal, the grantee also shall be notified and given an opportunity within a prescribed time for an informal consultation regarding the proposed action.

(b) *Reduction or withdrawal.* When the Area ONAP determines, on the basis of a review of the grantee's performance, that the objectives set forth in § 953.700(a)(2) or (3) have not been met, the Area ONAP may reduce or withdraw the grant, except that funds already expended on eligible approved activities shall not be recaptured.

§ 953.703 Other remedies for noncompliance.

(a) *Secretarial actions.* If the Secretary finds a grantee has failed to comply with any provision of this part even after corrective actions authorized under § 953.701 have been applied, the following actions may be taken provided that reasonable notice and opportunity for hearing is made to the grantee. (The Administrative Procedure Act (5 U.S.C. 551 et seq.), where applicable, shall be a guide in any situation involving adjudications where the Secretary desires to take actions requiring reasonable notice and opportunity for a hearing):

(1) Terminate the grant to the grantee;

(2) Reduce the grant to the grantee by an amount equal to the amount which was not expended in accordance with this part; or

(3) Limit the availability of funds to projects or activities not affected by such failure to comply; provided, however, that the Secretary may on due notice revoke the grantee's line of credit in whole or in part at any time if the Secretary determines that such action is necessary to preclude the further expenditure of funds for activities affected by such failure to comply.

(b) *Secretarial referral to the Attorney General.* If there is reason to believe that a grantee has failed to comply substantially with any provision of the Act, the Secretary may refer the matter to the Attorney General of the United States with a recommendation that an appropriate civil action be instituted. Upon such a referral, the Attorney General may bring a civil action in any United States district court having venue thereof for such relief as may be appropriate, including an action to recover the amount of the assistance furnished under this part which was not expended in accordance with this part or for mandatory or injunctive relief.

Dated: June 18, 1996.

Michael B. Janis,

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 96–19350 Filed 7–30–96; 8:45 am]

BILLING CODE 4210–32–P

federal register

Wednesday
July 31, 1996

Part III

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Part 6, et al.

Federal Acquisition Regulations; Competitive Range Determinations; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 6, 12, 15, and 52

[FAR Case 96–303]

RIN 9000–AH15

Federal Acquisition Regulation; Competitive Range Determinations

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are proposing to amend the Federal Acquisition Regulation (FAR) to implement Sections 4101 and 4103 of the Federal Acquisition Reform Act of 1996. The rule provides the contracting officer with the authority to limit the size of the competitive range, in accordance with criteria specified in the solicitation, to the greatest number that will permit an efficient competition. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This is not a major rule under 5 U.S.C. 804.

DATES: Comments should be submitted on or before September 30, 1996 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVRS), 18th & F Streets, NW, Room 4037, Washington, DC 20405.

Please cite FAR case 96–303 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph DeStefano at (202) 501–1758 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAR case 96–303.

SUPPLEMENTARY INFORMATION:

A. Background

Subsections 4101 (a) and (b) of the Federal Acquisition Reform Act of 1996 (Pub. L. 104–106) (the Act) require FAR implementation of the requirement to obtain full and open competition in a manner that is consistent with the need to efficiently fulfill the Government's requirements. Section 4103 of the Act provides that the contracting officer may limit the number of proposals in the competitive range, in accordance with criteria specified in the solicitation, to the greatest number that will permit an efficient competition. The proposed rule revises FAR 6.101(b), 12.301(e), 15.407(d)(4), 15.609, 52.212–1(g) and 52.215–16 to implement sections 4101 and 4103. The integrity, fairness, and openness principles in FAR subpart 1.102 are not changed.

B. Regulatory Flexibility Act

The proposed changes may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule revises the procedures for determining the competitive range in negotiated acquisitions. The size of the competitive range will be reduced in some negotiated acquisitions and some offerors may be eliminated from a competition earlier than they would be eliminated under existing procedures. However, bid and proposal costs are expected to decrease, as an offeror who is not likely to receive an award will be less likely to remain in a competition. An Initial Regulatory Flexibility Analysis has been performed and will be provided to the Chief Council for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the FAR Secretariat. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected FAR subpart will be considered in accordance with section 610 of the Act. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 96–303), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose any substantial change in recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 6, 12, 15 and 52

Government procurement.

Dated: July 25, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, it is proposed that 48 CFR Parts 6, 12, 15 and 52 be amended as set forth below:

1. The authority citation for 48 CFR Parts 6, 12, 15 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. 2301 to 2331; and 42 U.S.C. 2473(c).

PART 6—COMPETITION REQUIREMENTS

2. Section 6.101 is amended by revising paragraph (b) to read as follows:

6.101 Policy

* * * * *

(b) Contracting officers shall provide for full and open competition through use of the competitive procedure, or combination of competitive procedures, contained in this subpart that is best suited to the circumstances of the contract action and is consistent with the need to efficiently fulfill the Government's requirement. Contracting officers must use good judgment in selecting the procedure that best meets the needs of the Government.

PART 12.3—ACQUISITION OF COMMERCIAL ITEMS

3. Section 12.301 is amended by adding new paragraph (e)(4) to read as follows:

12.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

* * * * *

(e) * * *

(4) The contracting officer may reserve the right to conduct discussions with offerors determined to be within the competitive range after evaluation of proposals and to limit the number of proposals in the competitive range to the greatest number that will permit an efficient competition among the most highly rated proposals. 52.215–16, Contract Award, Alternate III, may be used in solicitations for this purpose.

* * * * *

PART 15—CONTRACTING BY NEGOTIATION

4. Section 15.407 is amended by revising paragraph (d)(4)(ii) and adding new paragraph (d)(4)(iii) to read as follows:

15.407 Solicitation provisions.

* * * * *

(d) * * *

(4) * * *

(ii) If awards are intended to be made without discussions with offerors within the competitive range, use the basic provision with its Alternate II.

(iii) If the Government wishes to reserve the right to limit the competitive range to no more than a specific number, use the basic provision with its Alternate III, or the basic provision with both Alternates II and III.

* * * * *

5. Section 15.609 is revised to read as follows:

15.609 Competitive range.

(a) The contracting officer shall determine the competitive range for the purpose of conducting written or oral discussion (see 15.610(b)) based on cost or price and other factors in the solicitation. The competitive range consists of proposals having the greatest likelihood of award based on the factors and subfactors in the solicitation.

(b) In planning an acquisition, the contracting officer may determine that the number of proposals that would otherwise be included in the competitive range is expected to exceed the number at which an efficient competition can be conducted. In reaching such a conclusion, the contracting officer may consider such factors as the results of market research, historical data from previous acquisitions for similar supplies and services, and the resources available to conduct the source selection. Alternate III of 52.215–16, Contract Award, may be used to indicate the Government's estimate of the greatest number or proposals that will be included in the competitive range for purposes of conducting an efficient competition among the most highly rated proposals.

(c) After evaluating offers, the contracting officer may determine that the number of proposals that would otherwise be included in the competitive range exceeds the number at which an efficient competition can be conducted. Provided the solicitation notifies offerors that the competitive range can be limited for purposes of efficiency, the contracting officials may limit the number of proposals in the competitive range to the greatest number that will permit an efficient competition among the most highly rated proposals. The basic solicitation provisions at 52.215–16, Contract Award, reserves the contracting officer's right to limit the competitive range for purposes of efficiency.

(d) If the contracting officer determines that an offeror's proposal is no longer in the competitive range the proposal shall no longer be considered for award. Written notice of this decision shall be provided to the unsuccessful offeror at the earliest practicable time (see 15.1002(b)).

(e) Offerors excluded from the competitive range may request a debriefing. When a debriefing is requested, see 15.1004.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

6. Section 52.212–1 is amended by revising the provision date and paragraph (g) to read as follows:

52.212–1 Instructions to Offerors—Commercial Items.

* * * * *

Instructions to Offerors—Commercial Items (Date)

* * * * *

(g) *Contract award (not applicable to Invitation for Bids*). The Government intends to evaluate proposals and award a contract without discussions with offerors (except communications conducted for the purpose of minor clarification). Therefore, each individual offer should contain the offeror's best terms from a cost or price and technical standpoint. However, the Government reserves the right to conduct discussions if the Contracting Officer later determines them to be necessary. If discussions are held and the Contracting Officer determines that the number of proposals that would otherwise be in the competitive range exceeds the number at which an efficient competition can be conducted, the Contracting Officer may limit the number of proposals in the competitive range to the greatest number that will permit an efficient competition among the most highly rated proposals. The Government may reject any or all offers if such action is in the public interest; accept other than the lowest offer; and waive informalities and minor irregularities in offers received.

* * * * *

7. Section 52.215–16 is amended by revising the provision date and paragraph (c), revising Alternate II (c), and adding a new Alternate III to read as follows:

52.215–16 Contract Award.

* * * * *

Contract Award (Date)

* * * * *

(c) The Government intends to evaluate proposals and award a contract after conducting discussions with responsible offerors whose proposals have been determined to be within the competitive range. If the Contracting Officer determines that the number of proposals that would otherwise be in the competitive range exceeds the number at which an efficient competition can be conducted, the Contracting Officer may limit the number of proposals in the competitive range to the greatest number that will permit an efficient competition among the most highly rated proposals. Therefore, each initial offer should contain the offeror's best terms from a cost or price and technical standpoint.

* * * * *

Alternate II (Date) * * *

(c) The Government intends to evaluate proposals and award a contract without discussions with offerors (except communications conducted for the purpose of minor clarification). Therefore, each individual offer should contain the offeror's best terms from a cost or price and technical standpoint. However, the Government reserves the right to conduct discussions if the Contracting Officer later determines them to be necessary. If discussions are to be held and the Contracting Officer determines that the number of proposals that would otherwise be in the competitive range exceeds the number at which an efficient competition can be conducted, the Contracting Officer may limit the number of proposals in the competitive range to the greatest number that will permit an efficient competition among the most highly rated proposals.

Alternate III (Date). As prescribed in 15.407(d)(4)(iii), insert the following paragraph (i) in the basic provision:

(i) If the Contracting Officer exercises the Government's right to limit the number of proposals in the competitive range, the competitive range will be limited to no more than _____ (insert number).

[FR Doc. 96–19351 Filed 7–30–96; 8:45 am]

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federal register

Wednesday
July 31, 1996

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Parts 91, 93, 121, and 135

Special Flight Rules in the Vicinity of Grand Canyon National Park; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 91, 93, 121, and 135

[Docket No. 28537; Notice No. 96–11]

RIN 2120–AF93

Special Flight Rules in the Vicinity of Grand Canyon National Park

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice of proposed rulemaking proposes to amend part 93 of the Federal Aviation Regulations by adding a new subpart to codify and amend the provisions of Special Federal Aviation Regulation No. 50–2, Special Flight Rules in the Vicinity of Grand Canyon National Park. Specifically, the FAA is proposing to modify the dimensions of the Grand Canyon National Park Special Flight Rules Area (SFRA); establish new and modify existing flight-free zones; establish new and modify existing flight corridors; and establish reporting requirements for commercial sightseeing companies operating in the SFRA. In addition, to provide further protection for Park resources, this notice contains proposals for flight-free periods within the Park and/or an interim moratorium on additional commercial sightseeing air tours and tour operators. Both flight-free periods and a moratorium could be effected in various ways; in order to focus public comment, this notice contains a description of both fixed and variable flight-free periods and one possible moratorium. The FAA is proposing these changes to reduce the impact of aircraft noise on the park environment and to assist the National Park Service in achieving its statutory mandate imposed by Public Law 100–91 to provide for the substantial restoration of natural quiet and experience in Grand Canyon National Park.

DATES: Comments must be received on or before September 30, 1996.

ADDRESSES: Comments on this NPRM should be mailed, in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC–200), Docket No. 28537, 800 Independence Avenue, SW., Washington, DC 20591. Comments may also be sent electronically to the Rules Docket by using the following Internet address: nprmcmts@mail.hq.faa.gov. Comments must be marked Docket No. 28537. Comments may be examined in the Rules Docket in Room 915G on weekdays between 8:30 a.m. and 5:00 p.m., except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Neil Saunders, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; Telephone: (202) 267–8783.

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 the environmental, energy, federalism, or economic impact that may result from adopting the proposals in this notice are also invited. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions. Communications should identify the regulatory docket number and be submitted in triplicate to the above specified address. All communications and a report summarizing any substantive public contact with FAA personnel on this rulemaking will be filed in the docket. The docket is available for public inspection both before and after the closing date for receiving comments.

Before taking any final action on this proposal, the Administrator will consider all comments made on or before the closing date for comments, and the proposal may be changed in light of the comments received.

The FAA will acknowledge receipt of a comment if the commenter includes a self-addressed, stamped postcard with the comment. The postcard should be marked ''Comments to Docket No. 28537.'' When the comment is received by the FAA, the postcard will be dated, time stamped, and returned to the commenter.

Availability of the NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Rulemaking, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9677. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future FAA NPRM's should request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes application procedures.

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) or the Federal Register's electronic bulletin board service (telephone: 202–512–1661). 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.

History

Beginning in the summer of 1986, the FAA initiated regulatory action to address increasing air traffic over Grand Canyon National Park (GCNP). On March 26, 1987, the FAA issued Special Federal Aviation Regulation (SFAR) No. 50 (subsequently amended on June 15, 1987; 52 FR 22734) establishing flight regulations in the vicinity of the Grand Canyon. The purpose of the SFAR was to reduce the risk of midair collision, reduce the risk of terrain contact accidents below the rim level, and reduce the impact of aircraft noise on the park environment.

In 1987, Congress enacted Public Law (Pub. L.) 100–91, commonly known as the National Parks Overflights Act (the Act). The Act stated, in part, that noise associated with aircraft overflights at GCNP was causing ''a significant adverse effect on the natural quiet and experience of the park and current aircraft operations at the Grand Canyon National Park have raised serious concerns regarding public safety, including concerns regarding the safety of park users.''

Section 3 of Pub. L. 100–91 required the Department of the Interior (DOI) to submit to the FAA recommendations to protect resources in the Grand Canyon from adverse impacts associated with aircraft overflights. The law mandated that the recommendations: (1) provide for substantial restoration of the natural quiet and experience of the park and protection of public health and safety from adverse effects associated with aircraft overflight; (2) with limited exceptions, prohibit the flight of aircraft below the rim of the canyon; and (3) designate flight-free zones except for purposes of administration and emergency operations.

In December 1987, the DOI transmitted its ''Grand Canyon Aircraft Management Recommendation'' to the FAA, which included both rulemaking and nonrulemaking actions. Pub. L. 100–91 required the FAA to prepare and issue a final plan for the management of air traffic above the Grand Canyon, implementing the recommendations of the DOI without change unless the FAA

determined that executing the recommendations would adversely affect aviation safety. After the FAA determined that some of the DOI recommendations would adversely affect aviation safety, the recommendations were modified to resolve those concerns.

On May 27, 1988, the FAA issued SFAR No. 50–2 revising the procedures for operation of aircraft in the airspace above the Grand Canyon (53 FR 20264, June 2, 1988). SFAR No. 50–2 established a Special Flight Rules Area (SFRA) from the surface to 14,499 feet above mean sea level (msl) in the area of the Grand Canyon. The SFAR prohibited flight below a certain altitude in each of five sectors of this area, with certain exceptions. The SFAR established four flight-free zones from the surface to 14,499 feet msl above large areas of the park. The SFAR provided for special routes for commercial sightseeing operators, which are required to conduct operations under part 135, as authorized by special operations specifications. Finally, the SFAR contained certain terrain avoidance and communications requirements for flights in the area.

A second major provision of section 3 of Pub. L. 100–91 required the DOI to submit a report to Congress ''* * * discussing * * * whether [SFAR No. 50–2] has succeeded in substantially restoring the natural quiet in the park; and * * * such other matters, including possible revisions in the plan, as may be of interest.'' The report was to include comments by the FAA ''regarding the effect of the plan's implementation on aircraft safety.'' The Act mandated a number of studies related to the effect of overflights on parks. The National Park Service (NPS) took longer than originally anticipated to complete the studies because many of the issues involved are on the cutting edge of technical and scientific capability. According to the NPS, measuring natural quiet is different from measuring levels of aircraft noise. On June 15, 1992, the FAA promulgated a final rule to extend the expiration date of SFAR No. 50–2 to June 15, 1995, while the NPS studies and analyses were being conducted (57 FR 26764).

On September 12, 1994, the DOI submitted its final report and recommendations to Congress. This report, entitled, Report on Effects of Aircraft Overflights on the National Park System, was published in July 1995. The report recommended numerous revisions to SFAR No. 50–2 that are described below.

On June 15, 1995, the FAA published a final rule that extended the provisions of SFAR No. 50–2 to June 15, 1997 (60 FR 31608). This action allowed the FAA sufficient time to review thoroughly the NPS recommendations as to their impact on the safety of air traffic over GCNP, and to initiate and complete any appropriate rulemaking action.

Interagency Working Group

On December 22, 1993, Secretary of Transportation Federico Peña and Secretary of the Interior Bruce Babbitt formed an interagency working group (IWG) to explore ways to limit or reduce the impacts from overflights on national parks, including GCNP. Secretary Babbitt and Secretary Peña concur that increased flight operations at GCNP and other national parks have significantly diminished the national park experience for some park visitors, and that measures can and should be taken to preserve a quality park experience for visitors, while providing access to the airspace over national parks. The Secretaries see the formation of the working group and the mutual commitment to addressing the impacts of park overflights as the initial steps in a new spirit of cooperation between the two departments to promote an effective balance of missions. The FAA has been working closely with the NPS to identify and deal with the impacts of aviation on parks, and the two agencies will continue to identify and pursue the most effective solutions. This close cooperation is necessary because the FAA has sole authority for control of the nation's airspace to ensure aviation safety and efficiency, while the NPS is charged with managing the natural and cultural resources in the national park system and providing for public enjoyment of those resources in such a manner that they are unimpaired for the enjoyment of future generations.

The FAA's role in the IWG has been to promote, develop, and foster aviation safety, and to provide for the safe and efficient use of airspace, while recognizing the need to preserve, protect, and enhance the environment by minimizing the adverse effects of aviation on the environment. The NPS' role in the IWG has been to protect public land resources in national parks, preserve environmental values of those areas, including wilderness areas, and provide for public enjoyment of those areas.

In March 1994, the two agencies jointly issued an advance notice of proposed rulemaking (ANPRM) seeking public comment on policy recommendations addressing the effects of aircraft overflights on national parks, including GCNP (59 FR 12740; March 17, 1994). The recommendations presented for comment included voluntary measures, altitude restrictions, flight-free periods, flight-free zones, allocation of noise equivalences, and incentives to encourage use of quiet aircraft technology.

The President, on April 22, 1996, issued a Memorandum for the Heads of Executive Departments and Agencies to address the significant impacts on visitor experience in national parks. Specifically, the President directed the Secretary of Transportation to issue proposed regulations for the Grand Canyon National Park placing appropriate limits on sightseeing aircraft to reduce the noise immediately and make further substantial progress toward restoration of natural quiet, as defined by the Secretary of the Interior, while maintaining aviation safety in accordance with the Overflight Act (Public Act 100–91). This proposed rule was issued in response to the President's direction.

In response to the ANPRM, the FAA received 30,726 comments, including duplicate form letters and several petitions with multiple signatures; the FAA received 24,510 submissions of one form letter with comments addressing the GCNP. Of the total number of comments, 1,975 were distinct letters. This NPRM will discuss only those comments that relate to GCNP. The remainder of the comments relating to the above noted recommendations may be addressed in a later rulemaking.

Of the 644 comments that specifically addressed GCNP, 337 commenters opposed, while 232 commenters supported, further regulation. Commenters included members of State and local governments; congresspersons; helicopter operators; Native Americans and other individuals; and aviation, environmental, and recreational organizations and associations.

Commenters opposing additional regulation argued that: (a) SFAR No. 50–2 is effective, decreasing the visitor complaint rate by 92 percent; (b) air tour operator-funded studies indicate that natural quiet has been restored and the NPS studies are substantially flawed and biased; (c) 84 percent of the park is already off limits to air tour operations; (d) air tours are an environmentally friendly way to see the park and provide a real service to the handicapped; (e) additional regulation could present safety implications or cause compression of traffic; (f) more regulations will have economic impacts; (g) noise budgets are too complex and will not work; (h) quieter aircraft are

expensive and incentives to invest in this technology are needed; (i) although there have been adverse impacts on the noise level in GCNP, those impacts have only occurred in limited corridors and only because of visitors' demand; (j) the growth of the commercial sightseeing industry at about 5.9 percent is about the same as other types of visitor tours; (k) air passengers do not use any NPS resources like trails or trash disposal; (l) to protect sound for sound's sake is in conflict with the FAA's interpretation of its mission to protect persons and property on the ground; and (m) air tour passengers are paying visitors and should be accorded the same considerations as ground visitors.

Commenters supporting additional regulation argued that: (a) Current measures are not effective and have not increased the safety of operations, but instead have compressed traffic; (b) the total number of flights must be restricted to pre-1975 levels to lessen noise disruption caused by unlimited flights and to protect passenger safety; (c) air tours over national parks use parks by consuming the natural quiet resources, imposing costs, and detracting from scenic values; (d) the NPS should decide the level of protection of park resources that is necessary for it to achieve its mission and mandates under existing laws and regulations; (e) results of the NPS study should be used to strengthen SFAR No. 50–2 that must include limits on the number of air tours to be effective; (f) to resolve noise problems at GCNP, more flight-free zones should be established, all flights should be perpendicular to hiking trails and the Colorado River, and flights should be prohibited during the oars-only season; (g) an aircraft noise budget should be created; and (h) incentives to minimize noise per passenger should be established.

Other commenters argued that: (a) Commercial jets should be routed away from the Grand Canyon; (b) the airspace around the canyon should be simplified for noncommercial visual flight rules (VFR) pilots who want to sightsee from the air; (c) park boundaries on the charts should be better defined; and (d) ''natural quiet'' should be redefined as a metric that involves perception, rather than percent time audible.

Since issuance of the joint ANPRM, the FAA and the NPS have continued to evaluate the impact of noise from aircraft overflying the Grand Canyon for the purpose of developing a comprehensive policy to minimize these impacts. (See Other Actions section.)

NPS Report to Congress

The NPS ''Report on Effects of Aircraft Overflights on the National Park System,'' was based on more than 20 separate studies. These studies included acoustical measurements from GCNP sites, GCNP visitor surveys, noise dose-visitor response analyses, and noise modeling of commercial sightseeing aircraft overflying GCNP using FAA survey data.

The NPS defined natural quiet as the natural ambient sound conditions found in the park and ''substantial restoration'' to mean when 50 percent or more of the park achieved ''natural quiet'' (i.e., no aircraft audible) for 75 to 100 percent of the day.

The NPS evaluated whether SFAR No. 50–2 resulted in the substantial restoration of quiet and concluded, in part:

9–3. Flight-free zones can limit the areas where aircraft, especially tour aircraft, are audible high percentages of the time. But aircraft of all types may still be heard for some percent of the time at virtually all areas where sound data were collected, notably within a few miles of the edges of some of the flight-free zones. These results suggest that a substantial restoration of natural quiet has not been achieved for large segments of the Canyon.

9–4. The percent of time aircraft are audible correlates with how visitors feel about aircraft sound. Even when aircraft are audible for relatively low percentages of time, a percentage of the visitors can notice the aircraft and believe that the sound has interfered with their appreciation of natural quiet. Further, it is likely that visitors who hike away from auto accessible locations are more sensitive to intruding aircraft sounds than are visitors who do not. Hence, the NPS concludes that preservation of natural quiet is of significant value to visitors, especially for the backcountry, river corridor and Cross Canyon Corridor trail system use zones at GCNP.

9–5. The Air Access Coalition-sponsored data demonstrate that SFAR 50–2 has reduced aircraft should levels significantly at some locations. However, these data do not address restoration of natural quiet, since no information is given about how much of the time aircraft can be heard, and reported non-aircraft sound levels are probably inaccurately high.

9–8. Except for park management and emergency-related overflights, large percentages of Grand Canyon visitors regard aircraft overflights within sight or hearing of visitors on the ground as somewhat of very inappropriate over National Park areas.

9–9. There is little support among the five categories of Grand Canyon visitors for a ''do nothing'' policy or a ''reasonable growth'' policy. Maintenance of the current level, or reduction/elimination are preferred policies.

9–10. A majority of visitors to the Grand Canyon would support several specific types of limitations on air tour overflights.

9–11. Computer modeling supports the conclusion that natural quiet has not been substantially restored, that very few areas currently experience natural quiet, and that the areas of natural quiet will diminish considerably if no quiet aircraft are introduced and if tour operations are permitted to increase. The acoustic profiles tend to verify the computed results.

9–12. There has not been a substantial restoration of natural quiet in Grand Canyon, although the NPS acknowledges the value of the SFAR [50–2] and the improvement it has brought.

9–13. If no changes are made to the SFAR [50–2], progress to date in the restoration of natural quiet will be lost. Projections suggest that without further improvements, the loss of natural quiet will accelerate to an unacceptable level.

An NPS analysis, using 1989 FAA survey data of commercial sightseeing route activity, indicated that 43 percent of GCNP met the NPS criterion for substantially restoring natural quiet at that time. However, a subsequent NPS analysis using 1995 FAA survey data indicated that 31 percent of GCNP met the NPS criterion for substantially restoring natural quiet. The NPS concludes that the noise mitigation benefits of SFAR No. 50–2 are being significantly eroded. As noted in conclusion 9–13, if no further action is taken, the proportion of GCNP experiencing a substantial restoration of natural quiet would probably drop to less than 10 percent by the year 2010.

NPS studies maintain that the percent of time that aircraft are audible is a good predictor of visitor sensitivity to aircraft. This is especially true relative to backcountry and river users who are more sensitive to noise than other visitors. Specifically, the NPS noise dose-visitor response studies suggest that among those individuals who hike away from their cars, approximately 30–40 percent can be expected to report moderate to extreme interference with their appreciation of natural quiet when aircraft are audible as little as 10 percent of the time. NPS acoustic measurements from a variety of sites throughout the park showed that the sound of aircraft was measurable for some part of the time at virtually all areas where sound data was collected, even well within flight-free zones. NPS acoustic modeling also suggests that aircraft sound will carry 13–16 miles on the eastern end of the canyon and even farther on the western end, more than enough to fully penetrate to the center of every flight-free zone created by SFAR No. 50–2.

Based on the extent of aircraft noise exposure and low ambient sound levels found by NPS measurements, visitor response to those noise levels, and the predicted aircraft noise levels over the park, the NPS believes that airspace management must be used as one means

of noise abatement to create a maximum separation between noise sources and sensitive resources and visitor use sites. Consequently, the NPS concluded that flight-free zones must be as large as possible.

Based on these study conclusions, the NPS developed recommendation No. 10 in its report to Congress: ''Improve SFAR 50–2 to Effect and Maintain the Substantial Restoration of Natural Quiet at Grand Canyon National Park.'' This recommendation incorporated the following general concepts: simplification of the commercial sightseeing route structure; expansion of flight-free zones; accommodation of the forecast growth in the air tour industry; phased-in use of quieter aircraft technology; temporal restrictions (''flight-free'' time periods); use of the full range of methods and tools for problem solving; and institution of changes in approaches to park management, including the establishment of an acoustic monitoring program by the NPS in coordination with the FAA.

Flagstaff, Arizona, Public Meeting

On June 28, 1995, the FAA and the NPS jointly published a notice announcing a public meeting to provide the interested parties with an opportunity to comment on improving SFAR No. 50–2 (60 FR 33452). The meeting, held on August 30, 1995, yielded 62 speakers representing air tour operators, environmentalists, government, tourist boards, corporations, Native American tribes, and other individuals. An additional 349 public comments were subsequently received during the comment period that ended on September 8, 1995.

Eighty percent of the speakers and the majority of written comments support the operating procedures in SFAR No. 50–2 and the air tour industry operating in the Grand Canyon. Many commenters supporting aircraft overflights in GCNP were associated with the industry or were satisfied customers who had flown over the Grand Canyon. Their comments relate to: (a) the positive effects of SFAR No. 50–2; (b) access for the disabled or elderly; (c) jobs or support for small business; and (d) lessened impact of air tourism relative to on-ground use.

Many commenters opposing aircraft overflights in GCNP were affiliated with the river-running industry, environmental groups, and recreationists. They cite personal experiences that were marred by aircraft noise. Their comments relate to: (a) new regulations and greater restrictions on overflights to restore natural quiet to the area, including limitations on the number of overflights each day; (b) a greater number of flight-free zones; and (c) higher minimum altitudes over the park.

Consultation With Native Americans

Three Indian reservations border GCNP, and several tribes have cultural ties to the Grand Canyon. The DOT and the DOI recognize that, before taking any final action, they have an obligation to consult with these tribes, on a government-to-government basis, concerning the possible effects of this proposed rule. Both the Department of Transportation and the Department of Interior have a responsibility to address tribal concerns including the effects of the proposed rule on the economic opportunities of the tribes as well as to assure that noise impacts are not simply transferred to tribal lands.

Opportunities have been provided for the tribes to make their views known to the DOT. The Hualapai tribe submitted comments to the ANPRM jointly issued by the DOT and DOI, one member of the Hualapai Tribe spoke at the Flagstaff public meeting, and the Hualapai Tribe submitted written comments in response to the public meeting. Also, informal discussions covering aircraft overflight matters, among other issues, have taken place between NPS personnel and tribal leaders locally. The DOT and the DOI have received correspondence identifying interests of the Hualapai Tribe, and the DOT and the FAA met with Hualapai leaders and heard first hand many of their specific concerns.

The DOT and the DOI are committed to full consultation with tribal governments and will consult directly with interested tribes concerning the potential impacts of the proposed rule during the comment period.

The Proposal

This proposal is based on the comments received in response to the ANPRM jointly issued by the FAA and the NPS, recommendation No. 10 in the NPS report to Congress, comments from the Flagstaff meeting, recommendations from the IWG, and the FAA's assessment of safety and noise issues. The proposal contains several elements.

First, the FAA is proposing to restrict the areas of Grand Canyon National Park in which commercial tour operations would be permitted. Accordingly, the FAA is proposing to: (a) modify the dimensions of the SFRA; (b) establish new and modify existing flight-free zones; (c) establish new and modify existing flight corridors; and (d) establish reporting requirements for commercial sightseeing companies operating in the SFRA. The proposal would continue to prohibit aircraft from operating within 500 feet of any terrain or structure located between the north and south rims of the Grand Canyon, with certain exceptions. The proposal would continue to require that pilots monitor certain frequencies while operating in the SFRA.

Second, and in addition to the above, the FAA is proposing to establish flight-free periods (curfews) for commercial sightseeing operations; and/or to cap the number of commercial sightseeing aircraft, operations, or operators operating in the SFRA. Such a curfew or cap could be made effective either immediately or in two years' time. The preamble discussion below first describes the proposed new operating rules and flight-free zones in the SFRA, and then turns to an explanation of the additional curfew and/or moratorium limits under consideration.

The proposed rule makes significant progress toward the substantial restoration of natural quiet in GCNP. NPS modeling indicates that the proposal provides almost as much immediate natural quiet restoration as provided through the NPS report to Congress recommendation.

Special Flight Rules Area

Proposed § 93.301 describes the lateral and vertical dimensions of the SFRA. (See attached map.) All persons operating aircraft in this airspace must comply with the special rules contained within the new proposed subpart U. The proposal would modify the dimensions of the SFRA as follows:

(a) Extend the SFRA north-northeast of the confluence of the Little Colorado and Colorado Rivers to allow commercial sightseeing aircraft to remain within the SFRA while avoiding expanded flight-free zones.

(b) Extend the SFRA southward below the Bright Angel and Desert View Flight-free Zones to allow commercial sightseeing aircraft to remain within the SFRA while avoiding expanded flight-free zones.

(c) Extend the SFRA at the western edge to cover that portion of the Grand Wash Cliffs in the park that was inadvertently omitted from the 1987 NPS Grand Canyon Aircraft Management Recommendation and the original rule.

(d) Increase the altitude of the SFRA ceiling from 14,499 to 17,999 feet msl. The proposed altitude modification protects the park from the impact of commercial sightseeing aircraft overflying the flight-free zones and ensures effective FAA management of

the SFRA up to the 17,999-foot msl ceiling. It would have minimal impact on commercial sightseeing operators and no impact on other types of aviation. Additionally, it would not affect any minimum altitudes established in the SFRA.

The SFRA continues to exclude the GCNP airport Class D Airspace Area in recognition of the need for aircraft to descend to and climb out from the airport. Further, the SFRA boundary would still provide for unrestricted access to the airport on the Hualapai Reservation, located south of the canyon rim in the west canyon area. The minimum sector altitudes for North Canyon, Marble Canyon, Supai, Diamond Creek, and Pearce Ferry Sectors remain unchanged, with the exception of the minimum sector altitudes for transient and general aviation operations in Marble Canyon. The minimum sector altitudes for the North Canyon and Marble Canyon Sectors would increase from 5,000 and 6,000 feet msl, respectively, to 8,500 feet msl for transient and general aviation operations.

This proposal increases the lateral dimensions of the existing SFRA by approximately 2.8 percent.

Flight-Free Zones and Flight Corridors

Proposed § 93.305 describes the lateral and vertical dimensions of the flight-free zones. (See attached map.) Except in an emergency, or unless necessary for safety of flight, or unless authorized by the Flight Standards District Office (FSDO), no person may operate an aircraft in these flight-free zones.

The proposal would increase the size of the flight-fee zones as part of the continuing effort to meet the stated objectives of the drafters of Pub. L. 100–91. As stated by Senator John McCain in the legislative history of Pub. L. 100–91.

> The purpose of flight-free areas is to provide a location where visitors can experience the park essentially free from aircraft-sound intrusions. The boundaries of these flight-free zones are meant to be drawn to maximize protection to the backcountry users and other sensitive park resources. The extent of these areas should be adequate to ensure that sound from aircraft traveling adjacent to these zones is not detectable from most locations within the zones. It is within these zones that we expect to achieve the substantial restoration of the natural quiet. (Congressional Record—Senate, p. S10799, July 28, 1987)

This proposal creates two new flight-free zones: the Sanup Flight-free Zone in the southwest portion of the park and the Marble Canyon Flight-free Zone in the northeast portion of the park. The park areas covered by the new Marble Canyon flight-free zones have been identified by the NPS as especially valued by river and backcountry users. In the western end of GCNP which, according to the NPS, is important to river users and commercial sightseeing, the southwest boundary of the Sanup Flight-free Zone would be configured to continue allowing commercial sightseeing flights to access both sides of the Colorado River from Pearce Canyon to near Separation Canyon. This is consistent with the NPS report to Congress. The proposed Sanup Flight-free Zone would affect the minimum en route altitude (MEA) on Victor Airway 235 between the Peach Springs VHF Omnidirectional Range/Tactical Air Navigation (VORTAC) and Mormon Mesa VORTAC. Specifically, the proposed Sanup Flight-free Zone would require, if adopted, raising the MEA of the above indicated portion of Victor Airway 235 from 10,000 to 14,500 feet msl. The FAA will address this matter, if the proposed flight-free zone is adopted, in a separate rulemaking action.

In addition, the proposal merges the Toroweap/Thunder River and Shinumo Flight-free Zones and extends this zone to the park boundary. The current Desert View Flight-free Zone would be expanded to the north and east to the GCNP boundary. The current Bright Angel Flight-free Zone would be extended to the north to the GCNP boundary; it would also be expanded to the south to enclose a portion of the park that was inadvertently omitted form the original rule. The net result would be five, rather than four, flight-free zones; these new flight-free zones would cover 87, rather than 45, percent of the park area. The five new flight-free zones are: Marble Canyon, Desert View, Bright Angel, Toroweap/Shinumo, and Sanup. The upper limit of the flight-free zones remains unchanged at 14,499 feet msl.

This proposal is consistent with the NPS recommendation to provide a maximum separation between aircraft noise sources and sensitive resource areas and visitor use sites, especially since the Dragon Corridor, recommended for closure in NPS recommendation No. 10, remains open. By leaving the Dragon Corridor open, the proposal maintains certain viable commercial sightseeing routes over the canyon while providing greater noise mitigation in other parts of the park from larger flight-free zones. The legislative history of Pub. L. 100–91 indicates that it was not the intent of the legislation to ban aircraft from overflying the Grand Canyon.

Based on the NPS modeling using FAA-supplied information on 1995 commercial sightseeing operations, the proposal would increase to 38 percent the proportion of the park experiencing a substantial restoration of natural quiet at 1995 operational levels. This restoration includes a significant 14 percent of the area experiencing a total restoration of natural quiet. In total, the NPS believes that this proposal has major mitigation value for users of the Cross-Canyon Corridor Trail System, other parts of the park's trail system in the eastern half of the Canyon, and the river corridor.

Section 93.305 also describes the five flight corridors that allow access through the canyon area for general aviation and transient operations and routes for commercial sightseeing flights. (See attached map.) Flight corridors are areas established for pilot use in navigating the SFRA while avoiding flight-free zones. Prominent terrain features were chosen, where feasible, to assist pilots in navigating the corridors.

The historical context of flight corridors is in the 1987 NPS Grand Canyon Aircraft Management Recommendation. The NPS proposed establishing flight corridors to provide: (a) an opportunity to fly over Grand Canyon to view scenic vistas; (b) approximately 30- to 60-minute commercial sightseeing opportunities from GCNP Airport; and (c) avoidance of noise-sensitive locations within the park.

The proposal adds or modifies existing flight corridors, as follows:

(a) Two new flight corridors would be established in the proposed Marble Canyon Flight-free Zone to facilitate transient, general aviation, and commercial sightseeing traffic through the area: the Navajo Bridge Corridor in northern Marble Canyon and the North Canyon Corridor over central Marble Canyon.

(b) The Fossil Canyon Corridor would be closed as a result of the merger of the Toroweap-Thunder River and Shinumo Flight-free Zones. There is a low amount of traffic in this corridor, little of which is commercial sightseeing traffic. Closure makes an important contribution to the NPS statutory mandate to provide for the substantial restoration of natural quiet and experience in the GCNP.

(c) The Zuni Point Corridor would be extended into a Y-shape in the north to accommodate the extension of the flight-free zones. Commercial sightseeing aircraft would be allowed to operate in only one direction. This traffic pattern would limit noise

exposure along the Zuni Point Corridor, mitigating some of the impacts from overflights. It would provide aerial access to the eastern end of the canyon or a link to a longer aerial route around to Dragon Corridor.

(d) The Dragon Corridor remains open with traffic patterns unchanged, but the southern portion of the corridor would shift toward the west. This action should mitigate the aircraft noise in the Hermit Basin region. The change is consistent with the 1987 NPS recommendation and responds to comments made at the Flagstaff public meeting. These changes provide for noise mitigation while supporting a viable industry at the eastern end of the canyon.

Proposed corridors would remain 2 nautical miles wide for commercial sightseeing operations and 4 nautical miles wide for general aviation and transient operations. Tuckup Corridor would remain limited to general aviation and transient operations.

Minimum Flight Altitudes

Proposed § 93.307 describes different minimum altitudes in sectors and corridors for commercial sightseeing flights, and transient and general aviation operations to separate different types of operations to the maximum extent practical. Minimum altitudes for Zuni Point Corridor, Dragon Corridor, and Tuckup Corridor would not change. Minimum altitudes for Navajo Bridge Corridor and North Canyon Corridor would be 5,000 feet msl for commercial tour operations and 8,500 feet msl for general aviation and transient operations.

The Las Vegas FSDO would develop specific conditions and limitations, including the location of sightseeing routes for each commercial sightseeing operator in the SFRA. Those conditions and limitations would be included in each operator's operations specifications and would be enforced by the FAA. The provisions would detail routes, altitudes, communications and other procedures, pilot experience, and equipment requirements.

All pilots flying in the SFRA remain fully responsible for seeing and avoiding other aircraft. While the routes reserve different altitudes for different types of operations, they do not in any way assure separation of individual aircraft. Further, the routes do not relieve pilots of compliance with any other Federal Aviation Regulation. As in SFAR No. 50–2, all pilots could continue to deviate from course to maintain safety of flight in avoidance of other aircraft or unsafe weather conditions.

The SFRA boundaries, flight-free zones, flight corridors, minimum altitudes, commercial sightseeing routes, and radio frequencies would continue to be indicated on the revised Grand Canyon VFR aeronautical chart. The chart would be published to coincide with the effective date of the final rule.

Proposals for Further Action (Curfews and Caps)

The FAA and NPS believe additional action is necessary to protect the resources of Grand Canyon National Park from adverse effects of aviation noise. The agencies are proposing two additional means to achieve this objective—flight-free period (curfews) and a temporary moratorium on increasing the number of commercial sightseeing flights (caps). Moreover, we seek comment on whether caps should be employed beyond the temporary period for which it is proposed.

We recognize that each of these options has both advantages and disadvantages and the discussion below is intended to encourage public comment on how best to fashion the final rule. Moreover, these proposals should not be considered mutually exclusive; commenters are expressly invited to consider whether and how the FAA might adopt a rule different from the current proposal, combining parts or none of the two options.

Flight-Free Periods (Curfews)

Proposed § 93.316(a) would establish specific time periods during which commercial sightseeing operations over the GCNP would be prohibited. Curfews could be imposed in terms of fixed periods throughout the year, variable periods based on perceived noise impacts in specific areas, or a combination of conditions. The FAA is requesting specific comments on the general concept as well as the specific questions listed below, under ''Questions About Curfews,'' to assist the FAA in determining whether a certain type of limitation on sightseeing overflights would be beneficial and, if so, whether the limitations should be imposed on an immediate basis or in the near future.

General Curfew Provisions

Flight-free periods would prohibit the operation of commercial sightseeing aircraft during specific hours of the day in flight corridors and routes in the GCNP. The flight-free periods would not apply to the ''Blue Direct'' route, but the Blue One tour route is covered which carriers traffic flying between Las Vegas and GCNP airports but would apply to the ''Blue 1, Blue Direct'' route for commercial sightseeing operations. If adopted, the flight-free period would apply to all commercial sightseeing operators. Flight-free period limitations would be incorporated into the operations specifications for commercial air tour companies and enforced by the FAA. Flight-free periods could be adopted in two different ways—fixed and variable.

Fixed Flight-Free Periods (Fixed Curfews)

Fixed flight-free periods would close commercial sightseeing operations in the GCNP during specific time periods the NPS has identified as particularly sensitive for park visitors. Fixed flight-free periods could defined in terms of an absolute ban during specified times of the day; e.g., from 6 p.m. to 8 a.m. daily throughout the year. Such flight-free periods also could, for example, be based on season and time of day. For example, the FAA is proposing to establish the following fixed flight-free periods for commercial sightseeing operations:

(a) Summer season (May 1–September 30)—6 p.m. to 8 a.m. daily; and

(b) Winter season (October 1–April 30)—5 p.m. to 9 a.m. daily.

Variable Flight-Free Period (Variable Curfews)

Variable flight-free periods would be designed to provide a flexible regulatory response to potential changes in the noise impact of commercial sightseeing air tours. Information reported by commercial air tour companies (see Reporting Requirements), acoustic monitoring and modeling protocols, and other analyses jointly developed and approved by the FAA and the NPS would be used to determine whether there is a need to establish or modify a variable flight-free period. Either agency would be able to initiate recommendations to the IWG, and the IWG would serve as the forum for discussion of these recommendations. The FAA would disseminate the results of the above-mentioned analyses, and the criteria used to apply the variable flight-free restrictions, for public review and comment. It would then take action to invoke any restrictions necessary.

The variable restrictions could be expanded to the following absolute maximum time periods, provided such restrictions would not adversely affect aviation safety:

(a) Dragon Corridor—2 p.m. to 10 a.m.; and

(b) All other routes—4 p.m. to 9 a.m.

However, variable flight-free periods could be established to restrict

operations for lesser time periods depending on the supporting evaluation.

Questions About Curfews

The FAA is requesting specific comments on the nature of the proposals for flight-free periods. Should fixed flight-free periods be constant during the year or should they vary be season? Would a combination of fixed and variable flight-free periods be appropriate? There are a number of basic questions applicable to flight-free periods in general, whether fixed or variable. Should flight-free periods be applied to specific routes or areas or implemented park-wide? Would flight-free periods act to discourage or encourage the cooperation of the sightseeing operators to convert to quieter type aircraft or voluntarily act in a manner as to reduce the effect of overflight noise? What would be the economic consequences associated with the implementation of flight-free periods? How many operations would be curtailed by the reduced time periods during which commercial sightseeing operations could be conducted? What would be the effect of flight-free periods on the schedule of operations that remain after restrictions are imposed? What is the effect on an operator's schedule for those operations that are not curtailed? What would be the effect on revenue if flight-free periods are implemented? Is it likely that operators would use different aircraft for the commercial sightseeing operations; i.e., larger or smaller aircraft, if flight-free periods are imposed? Since creation of flight-free periods is only one of the two major alternatives under consideration in this notice, what would be the effect of employing flight-free periods in conjunction with and in addition to a ''cap,'' i.e., a moratorium? Can flight-free periods be developed and applied with the current level of data and information available to the decision-makers? Should they be imposed immediately or only after commercial sightseeing operations data are collected for a minimum of 2 years following the effective date of the final rule and evaluated for impact on GCNP? Should flight-free periods be set for a specific length of time (one, two, three years, etc.), stay in existence until the final management plan is announced, or indefinitely? Should they expire 5 years after the effective date of the final rule, when the FAA and the NPS plan to implement a more comprehensive noise management plan for substantially restoring natural quiet to GCNP (see Other Actions)? Are flight-free periods necessary to and can their implementation help to achieve the goal of substantial restoration of natural quiet in the GCNP? If so, would fixed or variable flight-free periods be most effective in substantially restoring natural quiet in the GCNP with the least impact on air tour operators and Park visitors?

Temporary Moratorium on Increasing Commercial Sightseeing Operations

A moratorium would place a cap on the number of commercial air tour operations, aircraft, and/or operators within the Grand Canyon SFRA. Such a cap could be imposed in a variety of ways, and commenters are specifically invited below to address these different possibilities. It is the opinion of FAA and the NPS, nonetheless, that public comment should be focused on the regulatory language of at least one cap option. That option, as developed by the NPS, is presented in proposed section 93.316(b). The FAA and the NPS believe that public comments will be facilitated by the public review of the cap proposed by 93.316(b). Therefore, the FAA is requesting specific comments on the proposed limitations as well as the questions listed to assist the FAA in determining what is the most appropriate type of limitation to adopt.

Section 93.316(b) would establish a temporary moratorium on increasing commercial sightseeing flights for 1997 and 1998. Under this proposal, each operator would be limited to the number of monthly operations equal to the monthly operations in the base year August 1, 1995 through July 31, 1996. Operators would establish their baseline monthly allocation by certifying to the number of operations conducted each month during the period from August 1, 1995, through July 31, 1996. One means that the FAA may use as evidence of the accuracy of the information filed by operators is to compare it to the payment made of fees by operators as required under the Budget Reconconciliation Act of 1993 (P.L. 103–66). Operators also would file monthly reports, along with fees required by the Budget Reconciliation Act, certifying that they did not exceed their monthly allocation of the base year in the most current month. As a convenience, commercial tour operators could choose to submit the reports through the NPS, along with NPS' appropriate fee for use of the park, as required by the Budget Reconciliation Act of 1993 (P.L. 103–66), rather than submit them directly to the FAA. For operator choosing to file through the NPS, the NPS would forward the report to the FAA.

If an operator intended to reduce operations so that it did not use its monthly allocation or terminate operations altogether, it would so advise the FAA. New or existing operators could apply for the monthly allocation. In the event that there is more than one operator applying for the monthly allocation, a preference would be granted to the operator which will utilize the quietest commercially available new or retrofitted aircraft among the applicants. This preference is intended to serve as an incentive to employ quieter aircraft in the Park. No operator would have any property rights in its monthly allocation.

These restrictions would apply to all commercial sightseeing operators for the two-year period. By adopting a temporary moratorium on flights, the FAA is seeking to assure that the noise mitigation benefits of the proposal are not significantly eroded during this period. The FAA also seeks comments on whether the temporary moratorium should be extended until the adoption of the comprehensive Noise Management Plan. It also seeks comments on whether a cap should be a component of the Noise Management Plan itself.

Keeping in mind the goal of the proposed rulemaking, there are a variety of limitations or caps that could be placed on commercial air tour oveflights, on either an interim or permanent basis, that might achieve the desired effect. The FAA is seeking comments on what type of cap would have the greatest effect on substantial restoration of natural quiet. While this proposal envisions one type of cap on an interim basis, there are other approaches, described below, on which we seek comment.

Cap on Operations

One form of cap would be to impose a limitation on the number of operations conducted by commercial air tour operators. An operational limitation could be applied to restrict the number of overflights on a hourly, daily, weekly, monthly, or seasonal basis. If the FAA adopts a cap on operations, it might be necessary to include a definition of an ''operation'' within the airspace over the GCNP, as, for example, a one-way or directional pass, a round-trip, or any penetration of airspace over the Park. Some operators might be differentially affected by the definition selected. The FAA requests comments on these factors from the perspective of both noise and economic impact.

Cap on Aircraft

Similarly, limitations or caps could be placed on the number of commercial sightseeing aircraft, the type of aircraft used or both? Should the number of aircraft permitted to operate above GCNP be affected by the type of aircraft used; i.e., if an aircraft is using a more quiet technology, should the number of aircraft be increased? As in the case of caps on operations, should caps be implemented on a time or seasonal basis?

Cap on Air Tour Operators

A third limitation or cap could be placed on the number of air tour operators permitted to operate within GCNP airspace. As with the caps on operations or aircraft, a cap on the number of operators could be utilized in a variety of ways. For instance, should the current operators be grandfathered? Should the current operators be permitted to operate indefinitely or should there be a time restriction with a requirement of renew ability to operate? Should caps be set at a level that would permit the introduction of new entrants into the GCNP market? The particular proposal set forth in this notice describes one method of allocating operating rights and accommodating new entrants. Are there other methods that would be fairer or more efficient?

General Questions About Caps

In addition to the types of caps listed above, the FAA would appreciate comments proposing different limitations that would work to achieve the goal of substantially restoring natural quiet in the GCNP. No matter what form of cap is implemented, there are several basic questions applicable to caps in general and to each cap in particular. For instance, regardless of the type of cap imposed, should caps be implemented on an immediate basic to act as a freeze of current numbers, should it be implemented on a future basis, or should it be implemented using the numbers of a date that predates the publication of this NPRM? What should the duration of caps be? Should caps be set for a specific length of time (one, two, three years, etc.), stay in existence until the final management plan is announced, or indefinitely? Should caps or restrictions be based on the average number of operations or the maximum number? Should there be any operational exceptions, such as for the quietest commercially available aircraft, to the restrictions or caps? How will the size of aircraft operated under caps be affected by 14 CFR Part 119? Can caps be developed and applied with the current level of data and information available to the decision-makers?

How should these caps be allocated or distributed? Should the current level of operations, aircraft, or operators be grandfathered? Should all operators, including those that presently do not operate above GCNP be able to participate in the allocation? Will new entrants into the commercial air tour market over GCNP be able to gain access or entry into the market? Should existing operators be required to decrease existing levels to create a pool available to be used only by the new entrants? If an allocation procedure is required, what type of process should be used, i.e., lotteries, auctions, administrative allocation, other mechanisms?

In addition to those operators eligible for the allocation of the subject caps (limitations on the number of operations, aircraft, or operators), should caps or the rights to operate above GCNP be transferable from one operator to another? Should commercial sightseeing operators be permitted to lease, trade, sell or buy the ability to operate over the Park? Should the operating ability be returned to the FAA, as would be required in the example set forth in proposed § 93.316(b), if an operator ceases operation? Has the FAA created a ''right'' or ''privilege'' subject to withdrawal when it would establish the limitation or cap system?

Concerning the applicability of caps, should a cap be applied to specific routes or areas or should it be implemented park-wide? Would any of the limitations or caps act to discourage or encourage the cooperation of the sightseeing operators to convert to quieter type aircraft or voluntarily act in a manner as to reduce the effect of overflight noise? If so, why, and in what way? What would be the economic consequences associated with the implementation of one or a combination of any of the types of caps? How many operations would be curtailed? What would be the impact of caps on the schedule of operations that remain? What is the impact on an operator's schedule for those operations that are not curtailed? What would be the impact on revenue if caps are implemented? Is it likely that operators would use different aircraft for the commercial operations, i.e., larger or smaller aircraft? Are caps necessary to and can the implementation of caps help to achieve the goal of substantial restoration of natural quiet? If so, which type of cap would do the most to restore substantially the natural quiet in the Park with the least impact on tour operators and Park visitors?

The proposal described in § 93.316(b) would be predicated upon information reported by commercial air tour companies. Should other information, such as acoustic monitoring and modeling protocols, or other analyses be used separately or in combination with the information received from the operators? What standards and criteria should be used for the necessity for and the result of implementing caps? Similarly with the process cited for the implementation of the variable flight-free periods, the IWG would serve as the forum for discussion of recommendation coming from either the FAA or NPS as to the need for and type of cap that should be implemented. As a result of the comments received to this NPRM, the FAA may decide to promulgate a curfew, a cap, a combination of the two, or neither.

The questions outlined above are suggested to help focus public discussion. The public response to these questions will assist in the adoption of a rule limiting overflights by commercial sightseeing operators.

Potential Alternatives to Implementation of the Curfew and/or the Cap

The FAA seeks specific comments on any alternatives to imposing either the proposed curfew or proposed cap that would address the problem of aircraft noise in GCNP in a different manner, such as by limiting the number of commercial sightseeing aircraft operating in the SFRA during certain hours of the day. Aircraft authorized to fly under the cap could fly between 8 a.m. and 6 p.m. during the summer season (May 1–September 30) and 9 a.m. and 5 p.m. during the winter season (October 1–April 30). Other aircraft, not subject to the cap, would be limited to operations between 10 a.m. and 2 p.m. year round. If the number of aircraft are limited, any replacement aircraft could be limited to those with a certificated noise level equal to or less than the aircraft being replaced.

If this alternative is selected, the cap would be applied only after commercial sightseeing operations data are collected for a minimum of 2 years following the effective date of the final rule and evaluated for impact on GCNP. This evaluation would be based on information reported by commercial sightseeing companies (see Reporting Requirements), acoustic monitoring and modeling protocols, and other analyses jointly approved by the FAA and the NPS. This temporary noise management mechanism would expire 5 years after

the effective date of the final rule, at which time the FAA and the NPS plan to implement a more comprehensive noise management plan. The duration of any aircraft authorization under the cap would similarly expire 5 years after the effective date of the final rule. By posing the above questions, the FAA solicits specific comments on the effectiveness and feasibility of implementing a temporary cap.

The FAA wishes to advise the public that a broad array of different regulatory approaches may be adopted as a result of this notice. No combination of options is foreclosed.

Quieter Aircraft

The NPS report to Congress suggested that quieter aircraft could be used in substantial restoration of natural quiet in GCNP. It identified the DHC–6–300 Vistaliner and Cessna 208 Caravan airplanes and the McDonnell Douglas ''No Tail Rotor'' helicopters as the quietest aircraft currently operating in the park. The NPS made this determination based on its evaluation of aircraft certification data derived from applicable noise certification standards in part 36 of Title 14 of the Code of Federal Regulations and from NPS flyover noise measurements taken in the park. In addition, the cap option described in this Notice contains a provision that would give a preference to operators of quieter aircraft in the event that unused allocation becomes available. Comenters are invited to address the criteria that should be used in selecting the quietest aircraft.

Reporting Requirements

Proposed § 93.317 would establish commercial sightseeing flight reporting requirements. During the 5-year period following the effective date of the final rule, each certificate holder would be required to submit, in a form and manner acceptable to the Administrator, three operational reports yearly to the Las Vegas FSDO. Each report would cover a 4-month period ending April 30, August 31, or December 31, and would be required to be submitted no later than 30 days after the reporting period closes. Certificate holders would be required to provide the aircraft identification number (registration number), departure airport, departure date and time, and route(s) for each operation flown in the SFRA. Note that, as currently contemplated, these reports would be in addition to any reports required for the purpose of monitoring the use of an allocation under an interim moratorium. However, the FAA invites comments on how to combine the reports or otherwise minimize the reporting burden on operators.

Changes in reporting requirements for commercial sightseeing aircraft operating in the SFRA are essential to: (a) Establish accurate information on GCNP overflights for noise and safety management purposes; (b) validate FAA and NPS noise models for use in mitigating studies; (c) determine with precision when and where noise mitigation is required; and (d) provide the basis for a more flexible and adaptable noise management system.

Environmental Review

The FAA is preparing an environmental assessment (EA) for this proposed action to assure conformance with the National Environmental Policy Act of 1969. The FAA has conducted an abbreviated scoping process and prepared a Draft EA. Copies of the Draft EA will be circulated to interested parties and placed in the docket, where it will be available for review. Comments are invited concerning the Draft EA and the environmental impacts that might result from adopting this rule for 45 days. Before the final rule is issued, the FAA will prepare a Final EA and determine whether a Finding of No Significant Impact may be issued or an environmental impact statement is required.

Regulatory Evaluation Summary

Proposed changes to Federal regulations must undergo several economic analyses. First Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic effect of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade. A regulatory evaluation of the proposal is in the docket.

In conducting these analyses, the FAA has determined that this NPRM would be ''a significant regulatory action'' as defined in the Executive Order and the Department of Transportation Regulatory Policies and Procedures. In consideration of the proposed changes scheduled to take affect upon promulgation of a final rule, this proposed rulemaking would also have a significant impact on a substantial number of small entities. The FAA has therefore included an Initial Regulatory Flexibility Analysis in the Regulatory Evaluation which includes consideration of three alternatives to the current proposed rulemaking. The FAA has concluded, however, that the current NPRM is preferable to the alternative considered and would assure the continued viability of the GCNP commercial sightseeing industry. Although the proposed changes contained in the NPRM would not constitute a barrier to international trade, a loss of foreign tour dollars could result.

Introduction

To assist the NPS effort to measure aircraft noise levels in GCNP, the Las Vegas FSDO conducted a field survey of all operators certified to provide commercial sightseeing tours within the GCNP SFRA. The Las Vegas FSDO SFAR No. 50–2 Air Tour Route Usage Report (field survey) detailed information for each operator with regard to the number of operations conducted along each commercial sightseeing tour route within the GCNP SFRA. This information was further broken down for each type of commercial sightseeing aircraft in the operator's fleet that operated along these routes during the most recent 3 years through early October 1995. With the exception of the ''Blue Direct South'' and certain ''Brown'' routes for fixed wing aircraft and the ''Green 3'' and ''Green 3A'' routes for helicopters, all routes identified in the Grand Canyon VFR Aeronautical Chart were identified by GCNP commercial operators as routes flown.

To determine the different kinds of commercial sightseeing tours as well as to estimate the total number of commercial sightseeing tours, commercial sightseeing passengers, and commercial sightseeing revenue for GCNP, the FAA, utilizing known passenger seating capacities of each type of aircraft used by GCNP commercial sightseeing operators, cross referenced the Las Vegas FSDO field survey detail with tour and cost information as provided in Grand Canyon commercial sightseeing brochures. The estimates derived from this cross referencing form the basis on which the FAA developed the preliminary cost estimates of this NPRM.

Costs

In 1995, commercial sightseeing tours of GCNP numbered approximately 70,000, were provided by 31 operators using 136 aircraft, carried 682,500 passengers, and generated $115.9 million in revenue as measured in 1995 dollars. Proportionately, fixed-wing tours accounted for 72.4 percent of the commercial sightseeing tours, 85.6

percent of the commercial sightseeing passengers, and 89.2 percent of commercial sightseeing revenue in GCNP. Helicopter tours accounted for 27.6 percent of the commercial sightseeing tours, 14.4 percent of the commercial sightseeing passengers, and only 10.8 percent of commercial sightseeing revenue in GCNP.

Forty-four percent of all commercial sightseeing tours were fixed-wing tours conducted along the ''Blue 1, Blue Direct'' commercial sightseeing route. However, an overwhelming 80 percent of all commercial sightseeing revenue was generated by the various tours conducted along this tour route. Comparatively, fixed-wing and helicopter tours that featured or included the Dragon Corridor accounted for about 25 percent of all commercial sightseeing tours (about 50/50 for each aircraft type), but only accounted for about 10.7 percent of commercial sightseeing revenue. Estimates for the Zuni Point Flight Corridor are very nearly the same; 24.6 percent of all commercial sightseeing tours account for approximately 11.2 percent of all GCNP commercial sightseeing tour revenue.

Changes to Operating Corridors, Flight-Free Zones, Etc.

The proposed changes would effectively reconfigure GCNP flight-free zones and flight corridors and require certain current commercial sightseeing routes to be adjusted or possibly eliminated. The reconfiguration of flight-free zones and flight corridors would require some commercial sightseeing operators to redesign and repackage certain currently available commercial sightseeing tours, and in those cases where a VFR route would be eliminated, to create new commercial sightseeing offerings, if possible. Based on a analysis of the commercial sightseeing revenue generated in 1995 by different commercial sightseeing routes, the FAA has determined that these proposed modifications could result in costs associated with loss of revenue or increased commercial sightseeing prices due to the elimination or modification of commercial sightseeing tours.

The proposed extension of the GCNP SFRA would result in only those costs associated with revising and publishing a new Grand Canyon VFR Aeronautical Chart. Similarly, the proposal to increase the altitude of the SFRA ceiling from 14,499 to 17,999 feet msl would have minimal impact on GCNP commercial sightseeing operators; its cost would be included under the revision and publishing costs noted above. The FAA considers these costs to be a part of normal, on-going administrative costs, not costs incurred as a result of this rulemaking action.

The reconfiguration of GCNP flight-free zones and flight corridors would impact several commercial sightseeing routes. The total commercial sightseeing revenue derived from those routes was just over $10.7 million in 1995, or about 9.3 percent of the $115.9 million total GCNP commercial sightseeing revenue generated in 1995. It is based on the estimated revenue generated by 18 operators conducting about 21,700 commercial sightseeing tours serving 122,700 passengers in 1995 on the affected commercial sightseeing routes.

The $10.7 million estimate represents the maximum potential revenue impact of these two proposed changes on GCNP commercial sightseeing operators. Only under the unlikely worst case scenario in which GCNP commercial sightseeing operators directly impacted by the reconfiguration of the GCNP SFRA cease commercial sightseeing operations in the canyon altogether, would it represent the maximum potential revenue loss. The FAA estimates that the potential dollar cost of the proposed changes to the current configuration of the flight-free zones and the flight corridors is more likely to be about $1.2 million in average annual revenue loss and added flight time cost for the 10-year period, 1997–2006.

The FAA believes this estimate more accurately reflects the true cost of the proposed modifications because several viable alternative tour configurations remain available to the GCNP commercial sightseeing industry. And GCNP commercial sightseeing operators would most likely adapt their commercial sightseeing tours to the proposed reconfigurations, and pass on the increased costs to commercial sightseeing passengers. However, commercial sightseeing operators' adaptation to the proposed changes could result in possible addition of nearly 3,800 commercial sightseeing flights annually through the Dragon Corridor as a result of restricting the Zuni Point Corridor to one-way traffic only. The FAA solicits specific comments on the ability of GCNP commercial sightseeing operators to change their commercial sightseeing routes to minimize the impact of the reconfiguration of GCNP flight-free zones and flight corridors. Comments should address the impact on specific commercial sightseeing tours and tour routes.

The proposed 5-year recordkeeping requirements would cost the commercial sightseeing operators approximately $366,000 ($73,200, 5-year average annual cost) and the FAA approximately $16,000 ($3,200, 5-year average annual cost).

Curfews and Caps

The adoption of a curfew would reduce the time available in the day during which commercial sightseeing tours could be conducted. Either fixed flight-free periods or variable flight-free periods would require operators to conduct all commercial sightseeing tours inside a tighter time frame. Commercial sightseeing aircraft operate at virtually full capacity utilization during the peak summer season, There, operators would likely have to eliminate some portion of the number of commercial sightseeing tours currently offered during the summer season. To offset the potential revenue loss associated with a reduction in commercial sightseeing tours, commercial sightseeing operators could raise the price of their tours. While these monopolistic rents for commercial sightseeing operators would tend to offset revenue losses for tour operators, it would shift the cost burden to the consumers of commercial sightseeing tours. In either event, there would be an economic cost to society.

A cap or moratorium could result in a reduction of commercial sightseeing tours during the summer season and concomitant loss of revenue or increased commercial sightseeing prices. A cap would impose a ''freeze'' on commercial sightseeing activity; for example, in proposed § 93.316(b) this freeze would be applied on a monthly basis at the level existing during the corresponding month between August 1995 and July 1996. Caps, therefore, are essentially a containment of commercial sightseeing activity as all growth in commercial sightseeing operations would be suspended.

The impact of the fixed flight-free periods is most likely to be realized by GCNP operators only during the summer season, because commercial sightseeing aircraft are utilized at full operational capacity during the summer season. In the absence of a substantial commitment to additional aircraft with the concomitant increase in operating requirements, the only alternative available to GCNP commercial sightseeing operators during the summer season would be the elimination of commercial sightseeing tours which currently occur during the hours included in the flight-free period. The FAA assumes that during the winter season operational under-utilization of aircraft could allow GCNP operators to reschedule commercial

sightseeing tours currently operating during the proposed fixed flight-free period into non-flight-free times.

The FAA estimates that the amount of 1995 commercial sightseeing revenue that could be potentially lost during the summer season is approximately $5.3 million. This potential loss of revenue is about 5.7 percent of the $115.9 million total GCNP commercial sightseeing revenue generated in 1995. The estimated amount of average annual commercial sightseeing revenue for the 10-year period 1997–2006 that could be potentially affected during the summer season is about $5.5 million. The breakdown by principal commercial sightseeing tour routes indicates potential average annual revenue losses of: (1) $2.3 million for commercial sightseeing tours operating on the ''Blue 1, Blue Direct'' tour routes; (2) $2.7 million for commercial sightseeing tours flying the Dragon Corridor; and (3) $1.6 for commercial sightseeing tours operating along all other tour routes.

The FAA estimates that approximately 5,160 additional commercial sightseeing tours would be rescheduled during the proposed winter season. The resulting air traffic compression during non-flight-free periods would result in increased aircraft activity and corresponding increased noise levels in GCNP during the time periods that commercial sightseeing aircraft are permitted to operate. The FAA seeks specific comments on the capability and flexibility of commercial sightseeing operators to rearrange GCNP tour schedules to minimize the impact of the flight-free period during the proposed winter season curfew.

Implementation of variable flight-free periods would be predicated on information reported by commercial sightseeing operators as specified under the reporting requirements of this proposed rulemaking, and the results from acoustic monitoring and modeling protocols and other analyses jointly developed and approved by the FAA and the NPS. A system of variable flight-free periods would subsume fixed flight-free periods, because the mechanism for imposing variable restrictions would be triggered only if noise data indicated that the initial curfew periods were no longer adequate to reducing noise adverse impacts.

Precise calculation of the actual costs of a cap or variable flight-free periods is not possible at this time. However, placing a cap may limit new entrants in the market and, as a result, could increase costs to users. Similarly, with fewer new entrants, there may be less competition in the quality, number of trips, and other associated amenities. However, both of these adverse effects would be limited in the cap proposed in § 93.316(b) because of the limited duration (2 years). Similarly, making caps or the rights to operate above GCNP transferable could mitigate these adverse effects by allowing more efficient new entrants to replace operators with more costly operations. Absent the imposition of a cap, the number of air tour overflights could be expected to increase, given past market behavior, bringing with it increased adverse reactions associated with noise disturbance.

Freezing the number of overflights during the interim period would have beneficial effects and enhance some aspects of the recreational experience at Grand Canyon National Park. Further, if the number of overflights is allowed to grow during the time period, it may be markedly more difficult to implement a comprehensive aircraft management plan designed to mitigate noise impacts.

Existing operators likely will have committed additional capital to their operations. Demand may be sufficient to draw new entrants into the market. Other economic activity can be expected to occur in support of these increased investments. One would consider this growth in economic activity beneficial, but it also would adversely affect the experience of park visitors. The cost to park visitors' experience is a loss of benefits which is unaccounted for in national income accounting and may reflect an inefficient, over-investment of capital. The additional capital investment could exacerbate the problem of implementing any restrictions emanating from the management plan.

It is possible, however, to estimate the maximum potential revenue loss from reduced GCNP commercial sightseeing tours that could occur if the most restrictive operating time constraints designated for the variable flight-free periods in the proposal were imposed. This maximum potential revenue loss is estimated to average $10.5 million annually for the 3 years that the variable flight-free periods could be in place. The distribution of the 3-year average annual commercial sightseeing revenue loss is as follows: $4.1 million, ''Blue 1, Blue Direct'' tour routes; $5.2 million, Dragon Corridor tours; and $1.3 million, all other tour routes.

A number of factors come into play to keep actual lost revenues below the maximum estimates. For example, operators may choose to use larger aircraft, raise commercial sightseeing tour prices, reschedule flights, or divert some aircraft to other revenue producing uses. In any event, reduced revenue is by no means a direct measure of cost to commercial sightseeing operators; even in the worst case of an aircraft sitting idle instead of flying commercial sightseeing tours, the operator avoids direct operating costs. Lost revenues, in terms of dollar value, could be viewed as an approximation of the cost to the consumer of the foregone opportunity to take a commercial sightseeing tour; lost revenues reflect what the consumer would have been willing to pay for GCNP commercial sightseeing tours before their elimination under the proposed constraints. Lost revenues are estimated for the summer season only because commercial sightseeing operators can reschedule around the variable flight-free periods during the winter season, thereby avoiding revenue losses.

The FAA also estimates that with the introduction of variable flight-free periods, approximately 8,100 additional commercial sightseeing tours would be conducted during the permitted operating times. This assumes that GCNP commercial sightseeing tour operators are indeed able to reschedule all commercial sightseeing tours affected by the variable flight-free periods during the winter season. This is an increase of nearly 3,000 commercial sightseeing tours (57 percent) being conducted during the permitted operating hours of the variable flight-free periods relative to the fixed flight-free periods.

With the introduction of the variable flight-free periods for the 3-year frame 1999–2001, the average annual cost would rise to about $11.0 million. The potential revenue losses associated with imposing only variable flight-free periods would impact commercial sight-seeing operators conducting tours in the Dragon Flight Corridor more than those operators conducting commercial sight-seeing tours along any of the other routes. About 46 percent of the potential average annual revenue loss would be borne by the commercial sightseeing operators in the Dragon Corridor under the special variable flight-free periods in comparison with about 40 percent under the fixed flight-free periods.

With respect to the particular cap proposed in this notice, the FAA estimates the average annual potential cost impact is $4.6 million during 1997 and 1998. The derivation of the following estimates is predicated on the assumption that all of the 3.3 percent compound annual rate of growth projected for GCNP commercial sightseeing activity would be held in abeyance for the years 1997 and 1998. The distribution of this 2-year average

annual commercial sightseeing revenue loss is as follows: $3.2 million, ''Blue 1, Blue Direct'' tour routes; $513,000, Dragon Corridor tours; and $290,000, all other tour routes. The FAA further estimates that the average annual administrative and reporting costs to the FAA and the operators from the imposition of temporary caps on commercial sightseeing operations would be approximately $640,000. The breakdown is as follows: (1) $418,000 is attributed to the FAA to cover the cost of five full-time employees to receive, analyze, and enforce the cap operation limitations, and (2) $219,600 is attributed as a reporting cost to the operators. The potential cost impact, therefore, is the valuation of the revenue foregone under the presence of caps plus the administrative and reporting requirement of the rule. The estimates, however, do not take into consideration that GCNP operators could adjust for the 2-year cap by adopting similar measures as noted for the variable flight-free periods, any of which would serve to offset revenue losses. The FAA is seeking specific comments on the effectiveness and feasibility of implementing such a temporary cap and the adaptability of GCNP commercial sightseeing operators.

The FAA is also considering combining both caps and curfews by capping operations in the GCNP in addition to imposing flight free periods. The FAA estimates the maximum potential average annual cost impact of combining fixed flight-free periods and caps is $10.2 million for 1997 and 1998. This estimate includes the two-year average annual maximum potential cost of revenue loss due to caps and fixed flight-free periods at $9.6 million. The distribution of this 2-year [average annual] commercial sightseeing revenue loss due to operational caps and fixed flight periods is as follows: $5.2 million, ''Blue 1, Blue Direct'' tour routes; $2.8 million Dragon Corridor tours; and $1.6 million, all other tour routes. The remaining $640,000 loss is attributable to the administrative cost to the FAA of administering and enforcing the rule and the amount attributable to the operator's reporting costs. The potential cost impact is the valuation of the revenue foregone under the addition of caps and fixed flight-free periods and the administrative and reporting costs. The estimates, however, do not take into consideration that GCNP operators could adjust for the 2-year cap by adopting similar measures as noted for the variable flight-free periods, any of which would serve to offset revenue losses. For the combined alternatives, the FAA estimates that the average annual cost would be $8.6 million for imposing caps for two years and flight-free periods for 10 years. The combined alternatives, however, would shift a disproportionate amount of the average annual revenue loss onto the operators of commercial sightseeing tours along the ''Blue 1, Blue Direct'' commercial sightseeing route. Just over 54 percent of the potential average annual revenue loss would be borne by these commercial sightseeing operators under the caps in comparison with about 38 percent under the variable flight-free periods. The FAA is seeking specific comments on the effectiveness and feasibility of implementing a combination of temporary cap with flight-free periods and the adaptability of GCNP commercial sightseeing operator.

The FAA also estimates that that the annual average costs of the different alternatives are as follows: (1) Fixed flight-free periods: $6.6 million (2) Temporary two-year cap on operations: $4.6 million (3) Combination of fixed flight-free periods and two-year caps: $10.2 million (4) Variable flight-free periods: $11 million.

To summarize, the FAA estimates that the annual cost of establishing and modifying the flight-free zones and corridors and adding the new reporting requirement is approximately $1.3 million in potential operator revenue losses and added consumer costs. The breakdown by proposed change is as follows: (1) $1.2 million is accounted for by the proposed establishment and modification of flight-free zones and corridors; and (2) about $76,300 reflects the added costs to the operators and the FAA of new recordkeeping and reporting requirements.

The FAA also estimates that with the introduction of the variable flight-free periods for the 3-year time frame 1999–2001, the average annual cost would rise to about $11.0 million for variable and fixed curfews. The potential revenue losses associated with the expanded variable flight-free periods, only, would impact commercial sightseeing operators conducting tours in the Dragon Flight Corridor more than those operators conducting commercial sightseeing tours along any other routes. About 46 percent of the potential average annual revenue loss would be borne by the commercial sightseeing operators in the Dragon Corridor under variable flight-free periods in comparison with about 40 percent under the fixed flight-free periods.

Benefits

Pub L. 100–91 mandates the NPS to provide for the substantial restoration of natural quiet and experience in GCNP. The NPS defines ''natural quiet'' as the natural ambient sound conditions found in the park and defines ''substantial restoration'' to mean when 50 percent or more of the park has achieved ''natural quiet'' (i.e., no aircraft audible) for 75 to 100 percent of the day. The benefit of this action therefore, would be to contribute to the substantial restoration of natural quiet (e.g., reduce aircraft sound disturbance) in GCNP.

The NPS has concluded that the initial gains made by SFAR No. 50–2 are being steadily eroded by increasing air traffic. The NPS conclusion is based on a comparison of the commercial sightseeing route activity reported in a 1989 FAA survey with the commercial sightseeing route activity reported in a 1995 FAA survey. In 1989, the NPS estimated that 43 percent of GCNP met its criteria for substantially restoring natural quiet. In 1995, a similar analysis indicated that the restoration of natural quiet had been reduced to 31 percent. The NPS also forecasts that if no further action is taken, by the year 2010, less than 10 percent of the park area would experience a substantial restoration of natural quiet.

This proposal would reverse that trend. Based on the NPS' analytic model, and again using 1995 FAA survey data, the proposal would increase the proportion of the park experiencing a substantial restoration of natural quiet to 38 percent, including 14 percent of the park experiencing a total restoration of natural quiet. Therefore, in this proposal, the FAA has attempted to achieve what it believes to be the intent of Congress; that is, to strike a balance that would accommodate a viable commercial aerial sightseeing industry while achieving the substantial restoration of natural quiet in the Grand Canyon.

Conclusion

The proposed rule would promote natural quiet in GCNP more effectively than the current SFAR No. 50–2. However, the estimated 10-year average annual loss of commercial sightseeing tour revenue and added consumer costs for all proposed changes except the introduction of flight-free periods or a moratorium (cap) is just over $1.2 million. For fixed flight-free periods, the estimated 10-year average annual cost is approximately $7.8 million. Variable flight-free periods and cap alternatives would each result in additional lost revenue from some reduction in GCNP

commercial sightseeing tours. The FAA has estimated that the maximum potential incremental revenue loss under the most restrictive conditions would be an average annual revenue loss of $10.5 million for the variable flight-free periods and $4.2 million for the caps alternative for the 1999–2001 time frame only. The actual amount, however, would depend on the as yet undetermined degree to which either the proposal or its possible alternative would be imposed. The FAA is soliciting specific comments regarding the potential economic impacts of the proposed variable flight-free periods and the alternative of caps, particularly as the impacts relate to specific commercial sightseeing tours and tour routes.

From a national perspective, the revenue loss would be much less than that estimated for Las Vegas and the local GCNP community and less than that estimated from the commercial sightseeing operators' perspective because commercial sightseeing operators, pilots, and many businesses that provide services to the GCNP commercial sightseeing industry could move to other areas of the United States. In a sense, the drop in revenues for Las Vegas and the local GCNP community would be offset by the gains other areas of the United States would enjoy as aircraft and personnel were shifted to provide aviation services to these other areas.

The gains that the other areas would experience would not necessarily offset all the expected losses experienced by Las Vegas and the GCNP community. Presumably, providing commercial sightseeing services for GCNP maximizes the revenue streams for the aircraft, personnel, and other resources used to support GCNP commercial sightseeing operations; otherwise, they would already be located elsewhere. It is assumed therefore, that aviation services provided in other areas of the country generate less revenue. The FAA, however, is not able to estimate this differential in revenue when commercial sightseeing aircraft, personnel, and other resources are moved to other areas. Therefore, the FAA is soliciting comments regarding the potential revenue impact of this proposed rule when considered from a national perspective.

Nevertheless, based on the best available information, this proposed rule would strike a balance accommodating a viable commercial sightseeing industry while achieving the substantial restoration of natural quiet in the Grand Canyon.

Initial Regulatory Flexibility Analysis

By both law and executive order, Federal regulatory agencies are required to consider the impact of proposed regulations on small entities. Executive Order 12866 ''Regulatory Planning and Review,'' dated September 30, 1993, states that:

> Each agency shall tailor its regulations to impose the least burden on society, including individuals, businesses of different sizes, and other entities (including small communities and governmental entities), consistent with obtaining the regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations.

The 1980 ''Regulatory Flexibility Act'' (RFA) requires Federal agencies to prepare initial regulatory flexibility analysis of any notice of proposed rulemaking that would have a significant economic impact on a substantial number of small entities. The definition of small entities and guidance material for making determinations required by the RFA were published in the Federal Register on July 29, 1982 (47 FR 32825). FAA Order 2100.14A outlines the agency's procedures and criteria for implementing the RFA.

With respect to this proposed rule, a ''small entity'' is a commercial sightseeing operator who owns, but does not necessarily operate, nine or fewer airplanes. A significant economic impact on a small entity is defined as an annualized net compliance cost to such a small commercial sightseeing operator.

In the case of scheduled operators of aircraft for hire having less than 60 passenger seats, a ''significant economic impact'' or cost threshold is defined as annualized net compliance cost level that exceeds $69,800; for unscheduled operators the threshold is $4,900. A substantial number of small entities is defined as a number that is more than one-third of the small commercial sightseeing operators subject to the proposed rule.

The FAA has determined that this proposal could have a significant economic impact on all operators conducting commercial sightseeing flights within GCNP and therefore has prepared this initial regulatory flexibility analysis. The analysis, structured in accordance with section 603 of the RFA, requires the following:

1. Why FAA action is being considered.

2. Statement of the objectives and legal basis for the proposed rule.

3. Description of and estimated number of small entities effected.

4. Projected reporting, recordkeeping, and other compliance requirements of the proposed rule.

5. Any relevant Federal rules which may duplicate, overlap or conflict with the proposed rule.

1. Why FAA action is being considered. The proposal to modify the dimensions of GCNP SFRA stems from the need to reduce the impact of aircraft noise over the park and to assist the NPS in achieving its statutory mandate imposed by Pub. L. 100–91 to provide for the substantial restoration of natural quiet and experience of the park's environment.

2. Statement of the objectives and legal basis for the proposed rule. In 1987, Congress enacted Pub. L. 100–91, commonly known as the National Parks Overflights Act (the Act). The Act stated, in part, that noise associated with aircraft overflights at GCNP was causing a ''significant adverse effect on the natural quiet and experience of the park and current aircraft operations at GCNP have raised serious concerns regarding public safety, including concerns regarding the safety of park users.''

Pub. L. 100–91 required the DOI to submit to the FAA recommendations to protect resources in the Grand Canyon from adverse impacts associated with aircraft overflights. The law mandated that the recommendations: (1) provide for substantial restoration of the natural quiet and experience of the park and protection of public health and safety from adverse effects associated with aircraft overflights; (2) with limited exceptions, prohibit the flight of aircraft below the rim of the canyon; and (3) designate flight-free except for purposes of administration and emergency operations. In December 1987, the DOI transmitted its ''Grand Canyon Aircraft Management recommendations'' to the FAA. The recommendations included both rulemaking and nonrulemaking actions.

On May 27, 1988, the FAA issued SFAR No. 50–2 revising the procedures for operation of aircraft in airspace above the Grand Canyon (53 FR 20264, June 2, 1988). The SFAR, among other things, limited the areas for aircraft operations by establishing special flight routes for commercial operators. Since then, a substantial amount of public debate has taken place regarding the affect of aircraft noise on the Grand Canyon's environment. The debate and the objective of the proposal is more thoroughly discussed in the preamble of this proposed rulemaking.

3. Description and estimated number of small entities effected. The proposed rule would affect commercial

sightseeing operators conducting flights over the GCNP under part 135 of Title 14 of the Code of Federal Regulations. These commercial operators provide sightseeing tours of the Grand Canyon over the four flight zones established by SFAR No. 50–2. FAA data shows that in 1995, 26 small commercial sightseeing operators were potentially affected. Each operator owned, but did not necessarily operate 9 or fewer aircraft. These operators owned a total of 70 aircraft and the average fleet consisted of about 3 aircraft. The FAA estimates that, in 1997, 26 operators will be impacted by the proposed rule. Therefore 84 percent (26/31=84%) of the affected operators are small entities.

4. Projected reporting, recordkeeping, and other compliance requirements of the proposed rule. The proposal would require affected small commercial sightseeing operators to maintain and report additional information to the Las Vegas FSDO. The information required by the proposal would be needed to establish accurate information on aircraft operations in GCNP. The information required would include aircraft identification number (registration number), departure airport, departure date and time, and route(s) flown. Affected operators would be required to submit this information every 4 months.

The FAA estimates that compliance with the proposed recordkeeping requirements would impose an additional 61 hours of labor per aircraft each year once the initial setup of a reporting system had been accomplished. The average annual cost per aircraft would be about $515, but the average annual cost per affected operator would depend on an operator's fleet size. The one-time initial setup cost for each operator, regardless of fleet size would, be about $340.

5. Any relevant federal rules which may duplicate, overlap or conflict with the proposed rule. There are no relevant Federal rules which would duplicate, overlap or conflict with the proposed rule.

Cost of Compliance to Small Entities

The annualized data derived from the October 1995 SFAR 50–2 Air Tour Route Usage Report indicates that for all of 1995, 31 operators (23 fixed-wing, 7 helicopter, and 1 mixed) utilizing 136 aircraft conducted just over 70,000 commercial sightseeing aircraft tours in GCNP. Of the 136 aircraft identified, 101 were fixed-wing aircraft, ranging from single-engine Piper and Cessna 3-seat models to Twin Otters with 19 passenger seats. Most of the 35 helicopters used for commercial sightseeing tours in the canyon were various Bell models with capacities of four-, five-, and six-passenger seats.

Ten operators conducted commercial sightseeing tours using a single aircraft, six of which accounted for fewer than 100 commercial sightseeing tours each. Only five operators operated fleets of more than nine aircraft. Together, these five operators accounted for over one-third (approximately 26,600) of the total 70,000 plus commercial sightseeing tours estimated for 1995. One operator with nine aircraft accounted for just over 8,200 commercial sightseeing tours.

Increasing the number of flight-free areas could impact GA operations that cannot be conducted above 14,499 feet msl. This requirement would only impact individual GA pilots and not small business entities, small government entities, or small non-profit organizations. The provisions of the RFA do not apply to individual persons; thus, the FAA has not made a regulatory flexibility determination for this proposed requirement.

Excluding the proposed flight-free periods (fixed and variable) and cap, the most costly proposed changes—in terms of increased tour lengths, increased consumer prices, and increased traffic in the Dragon Corridor—would result from the restriction of one-way traffic in the Zuni Point Corridor. This proposed change, however, would only impact the five operators currently offering a two-way tour of the Zuni Point Corridor. The number of operators affected by this proposed requirement is less than one-third of all GCNP commercial sightseeing operators. Thus, a substantial number of small operators would not be impacted.

All commercial sightseeing operators would be subject to the recordkeeping requirement costs. The FAA estimates that the maximum annual cost of this requirement would be about $540 per aircraft. If an operator has nine aircraft (the maximum allowable number of aircraft owned to be considered a small entity), that operator's annual cost would be about $4,860, which is below the thresholds for significant cost for scheduled and unscheduled operators.

If a fixed flight-free period is imposed, the FAA estimates that the annual cost of this requirement would be about $34,600 ($23,800, discounted) in net operating revenue loss per aircraft on average. Clearly, any operator with nine or fewer aircraft would incur costs which exceed the threshold for significant costs for unscheduled ($4,900) operators, and any operator with from three to nine aircraft (but not 2 or 1 aircraft) would exceed the threshold for significant costs for scheduled ($69,800) operators. Only 5 of the 31 operators conducting commercial sightseeing tours of GCNP own more than nine aircraft and would not be considered a small entity. Thus, this proposed requirement would have a significant economic impact on a substantial number of small entities.

Because variable flight-free periods or the caps discussed in this notice would likely be more costly than fixed flight-free periods, further analysis of the potential significant impact of these proposed requirements would be redundant. Combining the costs of the reporting requirements with the costs of a fixed flight-free period results in a per aircraft cost of approximately $35,000. Accordingly, the FAA has determined that the proposed rule would have a significant economic impact on a substantial number of small entities.

Alternatives Considered

After Pub. L. 100–91 was enacted, the NPS and the FAA attempted through SFAR No. 50–2 to accomplish the substantial restoration of the natural quiet.

SFAR No. 50–2 is the first attempt by the FAA to regulate airspace for environmental and safety reasons to such an extent over a national park, and design and implementation of the SFAR was a major accomplishment. As a result of the SFAR:

Four flight-free zones cover 45 percent of the park and have a ceiling of 14,499 feet msl;

Four flight corridors help aircraft navigate the special use airspace while avoiding the flight-free zones;

Approximately 29 aerial tour routes created by the Las Vegas FSDO allow commercial tour aircraft access to 55 percent of SFRA not restricted by flight-free zones; and

At 14,500 feet msl, the entire park is accessible to overflights, including general, high altitude commercial, and military aircraft.

The DOI report to Congress found that, although aircraft sound has been significantly reduced for areas of the Grand Canyon and compliance with SFAR No. 50–2 has been excellent, natural quiet has not been substantially restored to the park. As a result, the NPS and the FAA have made extensive efforts to determine the best alternative action to respond to the Pub. L. 100–91. The following alternative, outlined in the NPS report, describes ways that aircraft noise can be made less obtrusive:

Separation of visitors and overflights. Defining certain areas of the park for tour overflights is likely to be the first

step. In so doing, natural quiet under and to the side of corridors will be degraded. The loss of natural quiet is the consequence of accommodating aircraft overflights. Mitigation opportunities in the land areas adjacent to flight areas or corridors will be park specific, and may take advantage of natural attenuation opportunities.

Exploiting natural attenuation. To the extent that altitudes can be minimized (without going below reasonable minimums), park terrain can sometimes be used to acoustically shield flight-free areas from aircraft noise. If hills or ridges are available, lowering aircraft altitudes may be a consideration. By lowering altitudes, areas directly beneath flight corridors that are already impacted will have impacts intensified, but if local terrain features are present, land areas where the protection of natural quiet is important may be increased. Breaking the line-of-sight between the visitor and aircraft can reduce maximum noise levels by an amount that would otherwise be gained only by a near doubling of the distance between aircraft and the visitor.

In flat or open areas where terrain shielding cannot effectively be used, distance (either in altitude or laterally) is a mitigation option. Very large distance changes may be necessary to achieve natural quiet, however. Depending on atmospheric and ground effect factors, 8–12 decibels of reduction can be expected for every doubling of distance between the visitor and aircraft at its closest point of approach. On the average, to obtain 10 decibels of reduction, an approximate doubling of the existing distance between aircraft and the nearest visitor would be necessary. Continuing with this assumption, to obtain 20 decibels of reduction, the approximate distance would have to quadruple, and to obtain 30 decibels of reduction, the distance would have to increase by a factor of about eight.

Encouraging noise reduction at the source. Another mitigation measure is encouraging and phasing in quieter aircraft, or retrofitting existing aircraft. Aircraft speed, power, and propeller pitch on fixed-wing aircraft, and flight regimes which eliminate blade slap for helicopters are also effective mitigation measures to be taken at the source of the noise. Relationships between these variables and aircraft noise levels will be aircraft specific, and may require additional study.

Reducing duration of noise intrusions. Limiting times of day may be another mitigation alternative, but this measure may result in a greater intensity of flying during other portions of the day. This alternative may not be met with enthusiasm from air tour operators, however, since their investment in aircraft could remain unproductive for periods of time.

Encouraging use of greater payload aircraft. Tour aircraft which can accept greater numbers of passengers without substantial increases in noise level emissions may be an attractive step toward mitigation in some circumstances. With larger numbers of people per flight, and fewer flights, the percentage of time that natural quiet is compromised would be reduced.

Clearly, doing nothing or taking no action is not a feasible alternative. The NPS study has concluded that even with compliance with SFAR 50–2, adequate quiet has not been achieved, and will be further degraded in the future if action is not taken.

Another alternative would be to accept and adopt the NPS following recommendations contained in the DOI report to Congress.

Year 1 of the NPS recommendation expands existing flight-free zones from 45 to 82 percent of the park. Ceilings of the SFRA and flight-free zones are raised to 17,999 feet MSL. About half the current SFAR 50–2 tour routes and route segments are eliminated. The Dragon Flight Corridor is abolished, but two quiet aircraft routes (one for airplanes, one for helicopters) will exist in this area (the new Bright Angel Flight-Free Zone) for five years. The Fossil Canyon Flight Corridor has been realigned and two-way commercial tour traffic eliminated in all flight corridors. The minimum altitude for general aviation aircraft in the Tuckup Flight Corridor has been lowered from 10,500 feet MSL to 9,500 feet MSL.

Year 5 of the NPS recommendation limits the Fossil Canyon Flight Corridor to quiet commercial tour aircraft. Quiet aircraft routes within the new Bright Angel Flight-Free Zone are eliminated.

Year 10 of the NPS recommendation limits the Zuni Point Flight Corridor to quiet commercial tour aircraft.

Year 15 of the NPS recommendation limits the entire SFRA to quiet commercial tour aircraft.

The NPS believes that the above-mentioned alternative would essentially restore quiet to the park, but recognizes that it would have a significant impact on commercial sightseeing operators. For months, the IWG considered modifications to the initial NPS recommendations that would achieve the basic objective of restoring quiet to the park while at the same time preserve the viability of the commercial sightseeing industry serving GCNP. Both the FAA and the NPS recognize that commercial sightseeing operators provide a valuable public service by creating a unique way to all to view the Grand Canyon and provide an effective means for elderly and handicapped individuals to enjoy the park.

The proposed rule makes progress toward meeting the commitment of the NPS and FAA in restoring natural quiet to Grand Canyon National Park.

Members of the IWG carefully worked out the proposal while keeping in mind (1) The views expressed at the Flagstaff public meeting, (2) the objective of the NPS and the FAA to substantially restore the natural quiet of GCNP, (3) the need to avoid expanding adverse noise impacts from commercial sightseeing flight operations for an interim period, and (4) the FAA objective to regulate the airspace over GCNP. Although this proposal will have a significant economic impact on a substantial number of commercial sightseeing operators, it will assure the continued viability of the industry.

International Trade Impact Assessment

The FAA has determined that the proposed rulemaking would not affect non-U.S. operators of foreign aircraft operating outside the United States or U.S. trade. It could however, have an impact on commercial sightseeing at GCNP, much of which is foreign.

The proposed changes would effectively reconfigure GCNP flight-free zones and flight corridors, reduce the time available for commercial sightseeing tours to be conducted, and, in some cases, prolong the time a commercial sightseeing passenger spends in an airplane not necessarily sightseeing. To the extent a commercial sightseeing tour of GCNP is perceived to be a devaluation in the current service offered, commercial sightseeing could be impacted concomitant with a potential loss of revenue.

The United States Air Tour Association estimates that 60 percent of all commercial sightseeing tourists in the United States are foreign. The Las Vegas FSDO, however, believes this estimate to be considerably higher at GCNP, perhaps as high as 90 percent. The FAA cannot put a dollar value on the portion of the potential loss in commercial sightseeing revenue associated with the loss of foreign tour dollars.

Federalism Implications

The regulations 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 12866, it is determined that this rule does not have sufficient federalism implications

to warrant the preparation of a Federalism Assessment.

Paperwork Reduction Act

Section 93.317 contains information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA has submitted a copy of this section to the Office of Management and Budget (OMB) for its review.

Collection of Information: The information to be collected is needed to establish accurate information on aircraft operations in the GCNP. The information to be collected includes aircraft identification number (registration number), departure airport, departure date and time, and route(s) flown. All information must be submitted every 4 months. The annual reporting and recordkeeping burden for this information is estimated to average 30 minutes for each response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Thus the total annual reporting and recordkeeping burden for this collection is estimated to be 60 hours.

Organizations and individuals desiring to submit comments on the information collection requirement should direct them to the Office of Information and Regulatory Affairs, OMB, Room 1235, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for Federal Aviation Administration. A copy of the comments should also be submitted to the FAA Rules Docket.

In addition to the reporting requirement delineated in section 93.317, the FAA is also proposing two additional reporting requirements in section 93.316(b). Section 93.316(b)(2) would require that operators file a report with the FAA Flight Standards District Office certifying that it was operating commercial sightseeing operations in the park during 1995 and 1996 and the number of operations it conducted each month during the period from August 1, 1995, through July 31, 1996. Additionally, section 93.316(b)(3) would require that each operator conducting commercial sightseeing operations in the park would file a monthly report certifying the number of commercial sightseeing operations conducted in that month and whether that number exceeded the operator's monthly operations allocation.

The additional paper burden associated with the requirements of section 93.316(b) (2) and (3) shall be submitted to the Office of Management and Budget for review. Those wishing to comment on this additional reporting requirement should also send comments to the Office of Information and Regulatory Affairs, OMB, Room 1235, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for Federal Aviation Administration. A copy of the comments should also be submitted to the FAA Rules Docket.

The FAA is requesting comments from the public to establish accurate information on GCNP overflights for noise and safety management purposes, validate FAA and NPS noise models for use in mitigation studies, determine with precision when and where noise mitigation is required, and provide the basis for a more flexible and adaptable noise management system.

OMB is required to make a decision concerning the collection of information contained in this NPRM between 30 and 60 days after publication in the Federal Register. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the NPRM.

Conclusion

For the reasons set forth above, the FAA has determined that this proposed rule is a significant regulatory action under Executive Order 12866. In addition, the FAA certifies that this proposal could have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This proposed rule is considered significant under DOT Regulatory Policies and Procedures.

Other Actions

Since the formation of the IWG, the FAA and NPS have been working closely to identify and deal with the impacts of aviation on GCNP, and the two agencies will continue to identify and pursue effective solutions. In this spirit of cooperation, the agencies plan to take the following nonregulatory and regulatory actions to achieve the substantial restoration of natural quiet in GCNP.

Park Air Operations

GCNP has one of the most strictly regulated aviation programs within the NPS and the Department of Interior. The park limits use of its contracted aircraft to activities involving life or health-threatening emergencies, administration and/or protection of resources, and for individually approved special purpose missions. Each flight request is reviewed to ensure that it is the most efficient, economical, and effective method of performing the required task consistent with NPS and GCNP goals. These goals include the protection of natural quiet and experience, as reinforced by the park's recently approved General Management Plan. At the earliest possible date, consistent with contracting requirements and budgetary constraints, GCNP would convert to the quietest aircraft available that would also meet mission requirements.

Development of a Comprehensive Noise Management Plan

NPS modeling has suggested that the conversion of the commercial sightseeing aircraft fleet operating in the SFRA to the best available (quiet) technology would allow for growth of commercial sightseeing operations while providing for substantial restoration of natural quiet mandated by Pub. L. 100–91. Accordingly, a comprehensive noise mitigation plan would be jointly developed to provide a long-term solution. It would address the best available technology, a monitoring program for noise and operations, provision of appropriate incentives for investing in quieter aircraft, appropriate treatment for commercial sightseeing operators that have already made such investments, and a more adaptive management system. The plan would be completed and implemented in time to replace the temporary noise management mechanism defined in section 93.316(a)(2). For the purpose of developing a flexible and adaptive approach to noise mitigation and management, the following actions would be taken:

(a) Development of aircraft operations and noise database. The two agencies would develop and analyze a database on the volume and frequency of operations in the SFRA, the time of day of operations, the routes used, the aircraft types used, and the amount of noise generated. The proposed reporting requirement would be used in developing this database. The two agencies would jointly investigate approaches to monitoring noise and operations in the SFRA and designate an acceptable protocol for use in connection with the development of the plan. Options may include installation of noise monitoring equipment, similar to that used at airports, at the entrances or exits for the flight corridors, and at other locations as deemed necessary.

(b) Validation and use of noise models. Information from the database

established in (a), along with field measurements and other analyses would be used to validate FAA and NPS noise impact modeling for the SFRA. The validated models would then be used to explore and develop noise mitigation measures.

(c) Development and implementation of noise management plan. Approaches for reducing aircraft noise that consider both the noise emission level of aircraft and the number of operations would be reviewed and evaluated for development of an aircraft noise management plan. The plan would be developed and proposed for implementation in time to replace the temporary noise management mechanism defined in § 93.316(a)(2). The plan would address a number of factors, including the utilization of quieter aircraft in the SFRA, appropriate incentives for investment in quieter aircraft, treatment of quieter aircraft that currently operate in the SFRA. Approaches that would be considered in developing the plan would include, but would not be limited to, noise budgets, a freeze on the existing fleet combined with restrictive single event levels based on aircraft noise certification criteria, further closure of corridors, and noise slots.

Before implementing any noise management plan, the FAA would seek public participation/comment.

List of Subjects

14 CFR Part 91

Aircraft, Airmen, Air traffic control, Aviation safety, Noise control, Reporting and recordkeeping requirements.

14 CFR Part 93

Air traffic control, Airports, Navigation (Air), Reporting and recordkeeping requirements.

14 CFR Part 121

Aircraft, Airmen, Aviation safety, Charter flights, Safety, Transportation.

14 CFR Part 135

Air taxis, Aircraft, Airmen, Aviation safety.

The Proposed Amendment

For the reasons set forth above, the Federal Aviation Administration proposes to amend 14 CFR parts 91, 93, 121, and 135 as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

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

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46502, 46504, 46506–46507, 47122, 47508, 47528–47531.

SFAR NO. 50–2 [REMOVED]

2. In parts 91, 121, and 135, Special Federal Aviation Regulation No. 50–2, the text of which appears at the beginning of part 91, is removed.

PART 93—SPECIAL AIR TRAFFIC RULES AND AIRPORT TRAFFIC PATTERNS

3. The authority citation for part 93 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40109, 40113, 44502, 44514, 44701, 44719, 46301.

4. In part 93, subpart U is added to read as follows:

Subpart U—Special Flight Rules in The Vicinity of Grand Canyon National Park, AZ

Sec.
93.301 Applicability.
93.303 Definitions.
93.305 Flight-free zones and flight corridors.
93.307 Minimum flight altitudes.
93.309 General operating procedures.
93.311 Minimum terrain clearance.
93.313 Communications.
93.315 Commercial sightseeing flight operations.
93.316 Limitations on commercial sightseeing operations.
93.317 Commercial sightseeing flight reporting requirements.

Subpart U—Special Flight Rules in the Vicinity of Grand Canyon National Park, AZ

§ 93.301 Applicability.

This subpart prescribes special operating rules for all persons operating aircraft in the following airspace, designated as the Grand Canyon National Park Special Flight Rules Area: That airspace extending upward from the surface up to but not including 18,000 feet MSL within an area bounded by a line beginning at Lat. 35°55′25″ N., Long. 112°04′36″ W.; east to Lat. 35°55′38″ N., Long. 111°42′12″ W.; north to Lat. 36°16′47″ N., Long. 111°42′17″ W.; to Lat. 36°24′49″ N., Long. 111°47′45″ W.; to Lat. 36°52′23″ N., Long. 111°33′10″ W.; west-northwest to Lat. 36°53′37″ N., Long. 111°38′29″ W.; southwest to Lat. 36°35′02″ N., Long. 111°53′28″ W.; to Lat. 36°21′04″ N., Long. 112°00′17″ W.; west-northwest to Lat. 36°30′30″ N., Long. 112°35′59″ W.; southwest to Lat. 36°24′46″ N., Long. 112°51′10″ W.; thence west along the boundary of Grand Canyon National Park (GCNP) to Lat. 36°14′08″ N., Long. 113°10′07″ W.; west-southwest to Lat. 36°09′50″ N., Long. 114°01′53″ W.; southeast to Lat. 36°06′24″ N., Long. 113°58′46″ W.; thence south along the boundary of GCNP to Lat. 36°00′23″ N., Long. 113°54′11″ W.; northeast to Lat. 36°02′14″ N.; Long. 113°50′16″ W.; to Lat. 36°02′16″ N., Long. 113°48′08″ W.; thence southeast along the boundary of GCNP (the historic high-water mark on the southwest shore of the Colorado River) to Lat. 35°58′09″ N., Long. 113°45′04″ W.; southwest to Lat. 35°54′48″ N., Long. 113°50′24″ W.; southeast to Lat. 35°41′30″ N., Long. 113°35′50″ W., thence clockwise via the 4.2-nautical mile radius of the Peach Springs VORTAC to Lat. 35°39′05″ N., Long. 113°27′06″ W.; northeast to Lat. 113°10′58″ N., Long. 113°10′57′ W.; north to Lat. 35°57′51″ N., Long. 113°11′06″ W., east to Lat. 35°57′47″ N., Long. 112°14′32″ W.; thence clockwise via the 4.3-nautical mile radius of the Grand Canyon National Park Airport airport reference point (Lat. 35°57′08″ N., Long. 112°08′49″ W.) to the point of origin.

§ 93.303 Definitions.

For the purposes of this subpart:

(a) *Flight Standards District Office* means the FAA Flight Standards District Office with jurisdiction for the geographical area containing the Grand Canyon.

(b) *Park* means grand Canyon National Park.

(c) *Special Flight Rules Area* means the Grand Canyon National Park Special Flight Rules Area.

§ 93.305 Flight-free zones and flight corridors.

Except in an emergency or if otherwise necessary for safety of flight, or unless otherwise authorized by the Flight Standards District Office for a purpose listed in § 93.309, no person may operate an aircraft below 14,500 feet MSL in the Special Flight Rules Area within the following flight-free zones:

(a) *Marble Canyon Flight-free Zone.* The Marble Canyon Flight-free Zone contains two corridors: the Navajo Bridge Corridor and the North Canyon Corridor. These two corridors separate the flight-free zone into three areas. These three areas are described as follows:

(1) *Marble Canyon Flight-free Zone (north portion).* Within an area bounded by a line beginning at Lat. 36°49′51″ N., Long. 111°37′20″ W.; thence north along the boundary of Grand Canyon National Park (GCNP) to Lat. 36°49′53″ N., Long. 111°37′23″ W.; to the point of origin; but not including the airspace at and above

8,500 feet MSL within 1 nautical mile of the southern boundary of this area. The corridor to the south of this area is designated the ''Navajo Bridge Corridor.'' This corridor is 2 nautical miles wide for commercial sightseeing flights and 4 nautical miles wide for transient and general aviation operations.

(2) *Marble Canyon Flight-free Zone (central portion).* Within an area bounded by a line beginning at Lat. 36°35′55″ N., Long. 111°45′25″ W.; thence north along the GCNP boundary to Lat. 36°47′53″ N., Long. 111°38′27″ W.; to Lat. 36°48′01″ N., Long. 111°38′49″ W.; thence south along the GCNP boundary to Lat. 36°36′41″ N., Long. 111°47′42″ W.; to the point of origin; but not including the airspace at and above 8,500 feet MSL within 1 nautical mile of the northern and southern boundaries of this area. The corridor to the north is designated the ''Navajo Bridge Corridor'' and the corridor to the south is designated the ''North Canyon Corridor.'' These corridors are 2 nautical miles wide for commercial sightseeing flights and 4 nautical miles wide for transient and general aviation operations.

(3) *Marble Canyon Flight-free Zone (southern portion).* Within an area bounded by a line beginning at Lat. 36°16′26″ N., Long. 111°49′21″ W.; thence north along the GCNP boundary to Lat. 36°34′10″ N., Long. 111°47′11″ W.; to Lat. 36°34′38″ N., Long. 111°48′34″ W.; thence south along the GCNP boundary to Lat. 36°19′03″ N., Long. 111°55′42″ W.; to Lat. 36°14′24″ N., Long. 111°52′07″ W.; to the point of origin; but not including the airspace at and above 8,500 feet MSL within 1 nautical mile of the northern boundary of this area; and not including the airspace at and above 10,500 feet MSL within 1 nautical mile of the southern boundary of this area. The corridor to the north is designated the ''North Canyon Corridor''. The corridor to the southeast, between this flight-free zone and the Desert View Flight-free Zone, is designated the ''Zuni Point Northeast Corridor.'' The corridor to the southwest, between the southern portion of the Marble Canyon Flight-free Zone and the Bright Angel Flight-free Zone, is designated the ''Zuni Point Northwest Corridor.'' These corridors are 2 nautical miles wide for commercial sightseeing flights and 4 nautical miles wide for transient and general aviation operations.

(b) *Desert View Flight-free Zone.* Within an area bounded by a line beginning at Lat. 35°59′58″ N., Long. 111°52′47″ W.; thence east and north along the GCNP boundary to Lat. 36°14′05″ N., Long. 111°48′34″ W.; southwest to Lat. 36°12′06″ N., Long. 111°51′14″ W.; to the point of origin; but not including the airspace at and above 10,500 feet MSL within 1 nautical mile of the northern and western boundaries of the zone. The corridor to the north, between this flight-free zone and the Marble Canyon Flight-free Zone, is designated the ''Zuni Point Northeast Corridor.'' The corridor to the west, between the Desert View and Bright Angel Flight-free Zones, is designated the ''Zuni Point South Corridor.'' These corridors are 2 nautical miles wide for commercial sightseeing flights and 4 nautical miles wide for transient and general aviation operations.

(c) *Bright Angel Flight-free Zone.* Within an area bounded by a line beginning at Lat. 35°58′39″ N., Long. 111°55′43″ W.; north to Lat. 36°12′41″ N., Long. 111°53′54″ W.; northwest to Lat. 36°18′18″ N., Long. 111°58′15″ W.; thence west along the GCNP boundary to Lat. 36°20′11″ N., Long. 112°06′25″ W.; south-southwest to Lat. 36°09′31″ N., Long. 112°11′15″ W.; to Lat. 36°04′16″ N., Long. 112°17′20″ W.; thence southeast along the GCNP boundary to Lat. 36°01′16″ N., Long. 112°11′39″ W.; thence clockwise via the 4.3-nautical mile radius of the Grand Canyon National Park Airport reference point (Lat. 35°57′08″ N., Long. 112°08′49″ W.) to Lat. 35°59′30″ N., Long. 112°04′41″ W.; thence east along the GCNP boundary to the point of origin; but not including the airspace at and above 10,500 feet MSL within 1 nautical mile of the eastern boundary or the airspace at and above 10,500 feet MSL within 2 nautical miles of the northwestern boundary. The corridor to the east, between this flight-free zone and the Desert View Flight-free Zone, is designated the ''Zuni Point South Corridor.'' The corridor to the northeast, between the Bright Angel and Marble Canyon Flight-free Zones, is designated the ''Zuni Point Northwest Corridor.'' The corridor to the west, between the Bright Angel and Toroweap/Shinumo Flight-free Zones, is designated the ''Dragon Corridor.'' These corridors are 2 nautical miles wide for commercial sightseeing flights and 4 nautical miles wide for transient and general aviation operations.

(d) *Toroweap/Shinumo Flight-free Zone.* Within an area bounded by a line beginning at Lat. 36°05′44″ N., Long. 112°19′27″ W.; north-northeast to Lat. 36°10′49″ N., Long. 112°3′19″ W.; to Lat. 36°02″ N., Long. 112°08′47″ W.; thence west along the GCNP boundary to Lat. 36°10′58″ N., Long. 113°08′35″ W.; south to Lat. 36°10′12″ N., Long. 113°08′34″ W.; thence northeast along the park boundary (the historic high-water mark on the southeast shore of the Colorado River) to Lat. 36°12′05″ N., Long. 113°04′27″ W.; thence counter-clockwise via the 1.5-nautical mile radius of the Toroweap Overlook (Lat. 36°12′55″ N., Long. 113°03′25″ W.) to Lat. 36°13′31″ N., Long. 113°02′21″ W.; thence in an easterly direction along the park boundary to the point of origin; but not including the following airspace designated as the ''Tuckup Corridor'': at or above 10,500 feet MSL within 2 nautical miles either side of a line extending between Lat. 36°24′42″ N., Long. 112°48′47″ W. and Lat. 36°14′17″ N., Long. 112°48′31″ W.

(e) *Sanup Flight-free Zone.* Within an area bounded by a line beginning at Lat. 36°04′39″ N., Long. 113°19′36″ W.; west to Lat. 36°08′11″ N., Long. 113°50′11″ W.; west to Lat. 36°08′11″ N., Long. 113°54′17″W.; southeast to Lat. 36°00′07″ N., Long. 113°42′58″ W.; southeast to Lat. 35°59′37″ N., Long. 113°42′47″ W.; to Lat. 35°59′20″ N., Long. 113°42′60″ W.; to Lat. 35°58′40″ N., Long. 113°43′58″ W.; southeast to Lat. 35°50′16″ N., Long. 113°37′13″ W.; thence along the park boundary (the historic high-water mark on the south and east shore of the Colorado River) to the point of origin.

§ 93.307 Minimum flight altitudes.

Except in an emergency, or if otherwise necessary for safety of flight, or unless otherwise authorized by the Flight Standards District Office for a purpose listed in § 93.309, no person may operate an aircraft in the Special Flight Rules Area at an altitude lower than the following:

(a) *Minimum sector altitudes.* (1) *Commercial sightseeing flights.* (i) *North Canyon Sector.* Less Ferry to North Canyon: 5,000 feet MSL.

(ii) *Marble Canyon Sector.* North Canyon to Boundary Ridge: 6,000 feet MSL.

(iii) *Supai Sector.* Boundary Ridge to Supai Point: 7,500 feet MSL.

(iv) *Diamond Creed Sector.* Supai Point to Diamond Creek: 6,500 feet MSL.

(v) *Pearce Ferry Sector.* Diamond Creek to the Grand Wash Cliffs: 5000 feet MSL.

(2) *Transient and general aviation operations.* (i) *North Canyon Sector.* Lees Ferry to North Canyon: 8,500 feet MSL.

(ii) *Marble Canyon Sector.* North Canyon to Boundary Ridge: 8,500 feet MSL.

(iii) *Sapai Sector.* Boundary Ridge to Supai Point: 10,000 feet MSL.

(iv) *Diamond Creek Sector.* Supai Point to Diamond Creed: 9,000 feet MSL.

(v) *Pearce Ferry Sector.* Diamond Creek to the Grand Wash Cliffs: 8,000 feet MSL.

(b) *Minimum corridor altitudes.* (1) Commercial sightseeing flights. (i) *Navajo Bridge Corridor,* 5,000 feet MSL.

(ii) *North Canyon Corridor.* 5,000 feet MSL.

(iii) *Zuni Point Corridors.* 7,500 feet MSL.

(iv) *Dragon Corridor.* 7,500 feet MSL.

(2) *Transient and general aviation operations.* (i) *Navajo Bridge Corridor.* 8,500 feet MSL.

(ii) *North Canyon Corridor.* 8,500 feet MSL.

(iii) *Zuni Point Corridors.* 10,500 feet MSL.

(iv) *Dragon Corridor.* 10,500 feet MSL.

(v) *Tuckup Corridor.* 10,500 feet MSL.

§ 93.309 General operating procedures.

Except in an emergency, no person may operate an aircraft in the Special Flight Rules Area unless the operation is conducted in accordance with the following procedures

Note: The following procedures do not relieve the pilot from see-and-avoid responsibility or compliance with the minimum safe altitude requirements specified in 14 CFR 91.119.

(a) Unless necessary to maintain a safe distance from other aircraft or terrain remain clear of the flight-free zones described in § 93.305;

(b) Unless necessary to maintain a safe distance from other aircraft or terrain, proceed through the flight corridors described in § 93.305 at the following altitudes unless otherwise authorized in writing by the Flight Standards District Office:

(1) *Navajo Bridge and North Canyon Corridors.* (i) *Eastbound.* 9,500, 11,500, or 13,500 feet MSL.

(ii) *Westbound.* 8,500, 10,500, or 12,500 feet MSL.

(2) *Zuni Point Northeast, Zuni Point South, Dragon, and Tuckup Corridors.* (i) *Northbound.* 11,500 or 13,500 feet MSL.

(ii) *Southbound.* 10,500 or 12,500 feet MSL.

(3) *Zuni Point Northwest Corridor.* (i) *Northbound.* 10,500 or 12,500 feet MSL.

(ii) *Southbound.* 11,500 or 13,500 feet MSL.

(c) For operation in the flight-free zones described in § 93.305, or flight below the altitudes listed in § 93.307, is authorized in writing by the Flight Standards District Office and is conducted in compliance with the conditions contained in that authorization. Normally authorization will be granted for operation in the areas described in § 93.305 or below the altitudes listed in § 93.307 only for operations of aircraft necessary for law enforcement, firefighting, emergency medical treatment/evacuation of persons in the vicinity of the Park; for support of Park maintenance or activities; or for aerial access to and maintenance of other property located within the Special Flight Rules Area. Authorization may be issued on a continuing basis;

(d) Is conducted in accordance with a specific authorization to operate in that airspace incorporated in the operator's operations specifications and approved by the Flight Standards District Office in accordance with the provisions of this subpart;

(e) Is a search and rescue mission directed by the U.S. Air Force Rescue Coordination Center;

(f) Is conducted within 3 nautical miles of Grand Canyon Bar Ten Airstrip, Pearce Ferry Airstrip, Cliff Dwellers Airstrip, or Marble Canyon Airstrip at an altitude less than 3,000 feet above airport elevation, for the purpose of landing at or taking off from that facility; or

(g) Is conducted under an instrument flight rules (IFR) clearance and the pilot is acting in accordance with ATC instructions. An IFR flight plan may not be filed on a route or at an altitude that would require operation in an area described in § 93.305.

§ 93.311 Minimum terrain clearance.

Except in an emergency, when necessary for takeoff or landing, or unless otherwise authorized by the Flight Standards District Office for a purpose listed in § 93.309(c), no person may operate an aircraft within 500 feet of any terrain or structure located between the north and south rims of the Grand Canyon.

§ 93.313 Communications.

Except when in contact with the Grand Canyon National Park Airport Traffic Control Tower during arrival or departure or on a search and rescue mission directed by the U.S. Air Force Rescue Coordination Center, no person may operate an aircraft in the Special Flight Rules Area unless he monitors the appropriate frequency continuously while in that airspace.

§ 93.315 Commercial sightseeing flight operations.

(a) Non-stop sightseeing flights that begin and end at the same airport, are conducted within a 25-statute-mile radius of that airport, and operate in or through the Special Flight Rules Area during any portion of the flight are governed by the provisions of part 119, SFAR 38–2 of parts 121 and 135 of this chapter, part 121, and part 135 of this chapter, as applicable.

(b) No person holding or required to hold an air carrier certificate or an operating certificate under SFAR No. 38–2 or part 119 of this chapter may operate an aircraft having a passenger-seat configuration of 30 or fewer seats, excluding each crewmember seat, and a payload capacity of 7,500 or less pounds, in the Special Flight Rules Area except as authorized by the applicable operations specifications.

§ 93.316 Limitations on Commercial Sightseeing Operations.

(a) (1) Unless otherwise authorized by the Flight Standards District Office, no person shall conduct commercial sightseeing operations during the following fixed flight-free periods:

(i) Summer season (May 1–September 30)—6 p.m. to 8 a.m. daily; and

(ii) Winter season (October 1–April 30)—5 p.m. to 9 a.m. daily; and

(2) The Administrator may restrict commercial sightseeing operations to the following variable flight-free periods (As discussed in the preamble, the criteria used to apply the variable flight-free restrictions would be disseminated for public review and comment):

(i) Dragon Corridor—2 p.m. to 10 a.m.; and

(ii) All other routes—4 p.m. to 9 a.m.; and/or

(b) (1) Except in an emergency, or if otherwise necessary for safety of flight, or unless otherwise authorized by the Flight Standards District Office for a purpose listed in 93.309, each operator is authorized to conduct only the same number of monthly operations in any month during 1997 and 1998 as were performed during the corresponding months in the baseline period from August 1, 1995 to July 31, 1996.

(2) In order to establish a baseline for monthly operations during the interim moratorium, each operator shall certify to the FAA Flight Standards District Office:

(i) that it was operating sightseeing tours in Grand Canyon National Park in 1995 and 1996, and

(ii) the number of operations it conducted each month during the period of August 1, 1995, through July 31, 1996 (''monthly allocation'').

(3)(i) Each operator shall file a report within 10 days of the end of each month certifying

(A) the number of operations conducted within the Park during the previous month; and

(B) that the number of operations did not exceed the operator's monthly allocation.

(ii) This report shall be filed with the FAA Flight Standards District Office. As an alternative, the operator may include its report along with the fees submitted to the National Park Service in compliance with the Budget Reconciliation Act of 1993. The National Park Service will forward the report to the FAA Flight Standards District Office.

(4) If an operator desires to reduce or terminate commercial sightseeing operations in the Park, it shall surrender to the FAA Flight Standards District Office any portion of its monthly allocation that it does not intend to use. No monthly allocation may be transferred by gift, sale,or otherwise to any person.

(5) If the FAA and the NPS determine that there are unused monthly allocations under the baseline for monthly operations, the FAA may make available such monthly allocations to new or existing commercial sightseeing operators. In the event there is more than one operator applying for such monthly allocations, a preference will be granted to the operator which will utilize the quietest commercially available new or retrofitted aircraft among all of the applicants.

(6) No operator shall have any property right in its monthly allocation. No operator shall have any right to compensation in the event such monthly allocation is surrendered.

§ 93.317 Commercial sightseeing flight reporting requirements.

Each certificate holder conducting commercial sightseeing flights within the Special Flight Rules Area shall submit in writing, within 30 days after April 30, August 31, and December 31, of each year, to the Flight Standards District Office the following information for each operation within the Special Flight Rules Area for the prior 4-month period:

(a) Identification number (registration number) of each aircraft;

(b) Departure airport;

(c) Departure date and time; and

(d) Route(s) flown.

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

5. 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.

PART 135—OPERATING REQUIREMENTS: COMMUTER AND ON-DEMAND OPERATIONS

6. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44705, 44709, 44711–44713, 44715–44717, 44722.

Issued in Washington, DC on July 26, 1996.

Jeff Griffith,

Program Director for Air Traffic Airspace Management.

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

Appendix—Special Flight Rules in the Vicinity of Grand Canyon National Park

[FR Doc. 96–19489 Filed 7–26–96; 3:25 pm]

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federal register

Wednesday
July 31, 1996

Part V

Department of Justice

Bureau of Prisons

28 CFR Part 524

Central Inmate Monitoring (CIM) System; Final Rule

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 524

[BOP–1043–F]

RIN 1120–AA43

Central Inmate Monitoring (CIM) System

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: In this document the Bureau of Prisons is revising its regulations on the central inmate monitoring system for general clarity, to remove obsolete categories, to update staff responsibilities, and to make various changes in administrative procedures. This revision is intended to provide for the continued secure operation of Bureau institutions.

EFFECTIVE DATE: July 31, 1996.

ADDRESSES: Office of General Counsel, Bureau of Prisons, HOLC Room 754, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 514–6655.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is amending its regulations on the central inmate monitoring (CIM) system. A final rule on this subject was published in the Federal Register September 14, 1990 (55 FR 38007).

The CIM system is an administrative program which allows the Bureau to monitor and control the transfer, temporary release, and community activities of inmates who present special needs for management. Examples of such inmates include participants in Witness Security programs, members of gangs or disruptive groups, and inmates who, for their own safety, need to be separated from other identified inmates. The CIM system operates to protect such inmates. In keeping with the regulatory goals of E.O. 12866, the Bureau is revising the entire regulation for the sake of general clarity. The acronym CIM is used more consistently throughout the regulations. Other specific changes are discussed below.

Section 524.70 has been revised to remove redundancy and improve readability. There is no change in the intent of this section.

Section 524.71 has been revised to specify the Case Management Coordinator as the official responsible for oversight and coordination of CIM activities at the institution.

Section 524.72 has been amended to remove the assignment category of sophisticated criminal activity and to rename the assignment category ''security threat groups'' as ''disruptive group''. In addition, the provisions for separation in new paragraph (f) have been amended to note the accommodation of separatees in institutions which have the ability to prevent physical contact between separatees.

Former §§ 524.73 and 524.74 have been combined in new § 524.73 covering classification procedures. Paragraph (a) of new § 524.73 covers procedures for the initial assignment of a CIM classification. These provisions were previously contained in former §§ 524.73(a), and 524.74 (a) and (b). Paragraph (b) of new § 524.73 covers procedures for notification to inmates of CIM classification actions. These provisions were previously contained in former § 524.73 (b), (c), and (d) and in § 524.78. Paragraph (c) of new § 524.73 covers procedures for the initial review of a CIM assignment. These provisions were previously contained in former § 524.74 (d) and (f).

The provisions of former § 524.74(e) have been removed. New § 524.73(a) allows for classification of pretrial inmates, and further specification as to appropriate assignments or procedures is either unnecessary or redundant.

New § 524.74 revises provisions for activities clearance which were contained in former § 524.75. These provisions have been revised for the sake of administrative streamlining. The revised provisions allow for approval by the Warden in all cases except for non-medical emergency clearances of Witness Security cases.

New § 524.75 revises the provisions for periodic review of CIM status contained in former § 524.76. These revisions have been made for the sake of clarity and organization. Provisions on notification contained in paragraph (a) of former § 524.76 have been consolidated into the general requirements for notification in new § 524.73(b). Provisions in paragraph (b) of former § 524.76 for the removal of Department of Justice Witness Security cases have been consolidated into the general requirements for removal of a CIM classification in new § 524.73(d). Provisions in paragraph (c) of former § 524.76 on State prisoner assignments have been consolidated into new § 524.73(a)(2).

New § 524.76 revises the provisions in former § 524.77 for appeals of a CIM classification to conform to previously published revisions in the Administrative Remedy Program (28 CFR part 542) which allow for inmates housed in Community Corrections Centers to file a request with the Community Corrections Manager.

The provisions in former § 524.78 on classification of recommitted offenders have been removed because these provisions have been consolidated into new § 524.73.

Because these provisions impose no further restrictions on inmates and deal with agency procedures designed to help ensure the continued protection of inmates, the Bureau finds good cause for exempting the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public comment, and delay in effective date. Members of the public may submit comments concerning this rule by writing to the previously cited address. These comments will be considered but will receive no response in the Federal Register.

The Bureau of Prisons has determined that this rule is not a significant regulatory action for the purpose of E.O. 12866, and accordingly this rule was not reviewed by the Office of Management and Budget. After review of the law and regulations, the Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), does not have a significant economic impact on a substantial number of small entities, within the meaning of the Act. Because this rule pertains to the correctional management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons, its economic impact is limited to the Bureau's appropriated funds.

List of Subjects in 28 CFR Part 524

Prisoners.

Kathleen M. Hawk,

Director, Bureau of Prisons.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(p), part 524 in subchapter B of 28 CFR, chapter V is amended as set forth below.

SUBCHAPTER B—INMATE ADMISSION, CLASSIFICATION, AND TRANSFER

PART 524—CLASSIFICATION OF INMATES

1. The authority citation for 28 CFR part 524 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3521–3528, 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses

committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

2. Subpart F is revised to read as follows:

Subpart F—Central Inmate Monitoring (CIM) System

Sec.
524.70 Purpose and scope.
524.71 Responsibility.
524.72 CIM assignment categories.
524.73 Classification procedures.
524.74 Activities clearance.
524.75 Periodic review.
524.76 Appeals of CIM classification.

Subpart F—Central Inmate Monitoring (CIM) System

§ 524.70 Purpose and scope.

The Bureau of Prisons monitors and controls the transfer, temporary release (e.g., on writ), and community activities of certain inmates who present special needs for management. Such inmates, known as central inmate monitoring (CIM) cases, require a higher level of review which may include Central Office and/or Regional Office clearance for transfers, temporary releases, or community activities. This monitoring is not to preclude a CIM case from such activities, when the inmate is otherwise eligible, but rather is to provide protection to all concerned and to contribute to the safe and orderly operation of federal institutions.

§ 524.71 Responsibility.

Authority for actions relative to the CIM system is delegated to the Assistant Director, Correctional Programs Division, to Regional Directors, and to Wardens. The Assistant Director, Correctional Programs Division, and Regional Directors shall assign a person responsible for coordinating CIM activities. The Case Management Coordinator (CMC) shall provide oversight and coordination of CIM activities at the institutional level, and the Community Corrections Manager shall assume these responsibilities for contract facilities.

§ 524.72 CIM assignment categories.

CIM cases are classified according to the following assignments:

(a) *Witness Security cases.* Individuals who agree to cooperate with law enforcement, judicial, or correctional authorities, frequently place their lives or safety in jeopardy by being a witness or intended witness against persons or groups involved in illegal activities. Accordingly, procedures have been developed to help ensure the safety of these individuals. There are two types of Witness Security cases: Department of Justice (authorized by the Attorney General under Title V of Public Law 91–452, 84 Stat. 933); and Bureau of Prisons Witness Security cases (authorized by the Assistant Director, Correctional Programs Division).

(b) *Threats to Government officials.* Inmates who have made threats to government officials or who have been identified, in writing, by the United States Secret Service as requiring special surveillance.

(c) *Broad publicity.* Inmates who have received widespread publicity as a result of their criminal activity or notoriety as public figures.

(d) *Disruptive group.* Inmates who belong to or are closely affiliated with groups (e.g., prison gangs), which have a history of disrupting operations and security in either state or federal penal (which includes correctional and detention facilities) institutions. This assignment also includes those persons who may require separation from a specific disruptive group.

(e) *State prisoners.* Inmates, other than Witness Security cases, who have been accepted into the Bureau of Prisons for service of their state sentences. This assignment includes cooperating state witnesses and regular state boarders.

(f) *Separation.* Inmates who may not be confined in the same institution (unless the institution has the ability to prevent any physical contact between the separatees) with other specified individuals who are presently housed in federal custody or who may come into federal custody in the future. Factors to consider in classifying an individual to this assignment include, but are not limited to, testimony provided by or about an individual (in open court, to a grand jury, etc.), and whether the inmate has exhibited aggressive or intimidating behavior towards other specific individuals, either in the community or within the institution. This assignment also includes those inmates who have provided authorities with information concerning the unauthorized or illegal activities of others. This assignment may also include inmates from whom there is no identifiable threat, but who are to be separated from others at the request of the Federal Judiciary or U.S. Attorneys.

(g) *Special Supervision.* Inmates who require special management attention, but who do not ordinarily warrant assignment in paragraphs (a) through (f) of this section. For example, this assignment may include an inmate with a background in law enforcement or an inmate who has been involved in a hostage situation. Others may include those who are members of a terrorist group with a potential for violence.

§ 524.73 Classification procedures.

(a) *Initial assignment.* Except as provided for in paragraphs (a) (1) through (4) of this section, an inmate (including pretrial inmates) may be classified as a CIM case at any time by a Community Corrections Manager or by appropriate staff at the Central Office, Regional Office, or institution. This initial classification is effective upon documentation in the inmate's record.

(1) *Witness Security cases.* Witness Security cases are designated by the Central Office only. An inmate's participation in the Department of Justice Witness Security Program is voluntary. A commitment interview and an admission and orientation interview are to be conducted with the Witness Security inmate to ensure that the inmate understands the conditions of confinement within the Bureau of Prisons. Central Office classification of an individual as a Witness Security case, under either the Department of Justice or Bureau of Prisons, does not require additional review, and overrides any other CIM assignment.

(2) *State prisoners.* Appropriate staff in the Central Office or Regional Office designate state prisoners accepted into the Bureau of Prisons from state or territorial jurisdictions. All state prisoners while solely in service of the state sentence are automatically included in the CIM system to facilitate designations, transfers, court appearances, and other movements.

(3) *Special supervision.* Placement in this assignment may be made only upon the authorization of a Regional Director or the Assistant Director, Correctional Programs Division.

(4) *Recommitted offenders.* An inmate who is recommitted to federal custody, who at the time of release was classified as a CIM case, retains this classification pending a review of the CIM status in accordance with paragraph (c) of this section.

(b) *Notification.* The case manager shall ensure that the affected inmate is notified in writing as promptly as possible of the classification and the basis for it. Witness Security cases will be notified through a commitment interview. The notice of the basis may be limited in the interest of security or safety. For example, in separation cases under § 524.72, notice will not include the names of those from whom the inmate must be separated. The inmate shall sign for and receive a copy of the notification form. If the inmate refuses to sign the notification form, staff witnessing the refusal shall indicate this

fact on the notification form and then sign the form. Notification is not required for pretrial inmates. Any subsequent modification of a CIM assignment or removal from the CIM system requires separate notification to the inmate.

(c) *Initial review.* A classification may be made at any level to achieve the immediate effect of requiring prior clearance for an inmate's transfer, temporary release, or participation in community activities. Except for Central Office or Regional Office classification of an individual as a state prisoner in sole service of the state sentence or for classification of pretrial inmates made by designated staff at the institution, a review by designated staff (ordinarily within 60 days of notification to the inmate) is required to determine whether a sound basis exists for the classification. Staff making the initial classification shall forward to the reviewing authority complete information regarding the inmate's classification. An inmate not notified of a change in the classification by the reviewing authority within 60 days from the date of the initial notification may consider the CIM classification final. Reviewing authorities for CIM classification are:

(1) *Central Office Inmate Monitoring Section*—reviews classification decisions for all future separation assignments (including recommitments) for Witness Security cases and for any combination of assignments involving Witness Security cases.

(2) *Regional Office*—reviews CIM classification decisions for Disruptive Group, Broad Publicity, Threat to Government Officials, Special Supervision, State Prisoners not in sole service of state sentence and initial multiple assignments except Witness Security Cases.

(3) *Warden, or Designee*—reviews CIM classification decisions for all separation assignments.

(d) *Removal.* (1) Because participation in the Department of Justice Witness Security Program is voluntary, such participants may request removal from this assignment at any time. Such request shall be forwarded to the Central Office Inmate Monitoring Section. Actual removal of the CIM assignment will not occur until after approval from the Department of Justice is received.

(2) The reviewing authority is responsible for determining if removal or modification of any CIM classification other than a Department of Justice Witness Security case is appropriate. The inmate retains the CIM classification pending a decision by the reviewing authority.

(3) When an inmate is removed for any reason from a CIM classification (for example, because the reviewing authority either disapproves the CIM classification or approves removal of a CIM classification based on new information), the appropriate staff member shall ensure that the relevant portions of the inmate central file are either removed or, when part of a larger document, are amended to clearly reflect removal of the CIM assignment. Staff shall notify the inmate of the decision and document any change in the inmate's record, and supportive documentation and the written basis for removal are to be retained in the inmate privacy file.

§ 524.74 Activities clearance.

(a) Except as provided for in paragraph (b) of this section, the Warden is the clearance authority on all transfers, temporary releases, community activities, and escorted trips.

(b) *Witness Security cases.* Central Office Inmate Monitoring Section staff shall be the clearance authority on all transfers, temporary releases, community activities, and escorted trips for Witness Security cases, except in a medical emergency. In a medical emergency, the Warden may transfer a Witness Security case to a local hospital for emergency medical care without prior clearance.

§ 524.75 Periodic review.

The Warden shall ensure that the status of an inmate's CIM assignment is considered at each program review. When staff believe that removal or modification of a CIM classification is appropriate, the institution's CMC and the appropriate reviewing authority must be notified. Only the reviewing authority shall determine if removal or modification of the CIM classification is appropriate.

§ 524.76 Appeals of CIM classification.

An inmate may at any time appeal (through the Administrative Remedy Program) the inmate's classification as a CIM case. Inmates identified as Witness Security cases may choose to address their concerns directly to the Inmate Monitoring Section, Central Office, rather than use the Administrative Remedy Program.

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Grain Inspection, Packers and Stockyards Administration

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Energy Efficiency and Renewable Energy Office

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Exclusions; comments due by 8-9-96; published 6-25-96

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

Maleic anhydride-diisobutylene copolymer, sodium salt; comments due by 8-9-96; published 7-10-96

Polyvinylpyrrolidone butylated polymer; comments due by 8-9-96; published 7-10-96

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Arkansas; comments due by 8-5-96; published 6-19-96

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Tribal revenue allocation plans; comments due by 8-6-96; published 6-7-96

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Unitization; model agreements; comments due by 8-5-96; published 6-5-96

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Surface Mining Reclamation and Enforcement Office

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Virginia; comments due by 8-8-96; published 7-24-96

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Immigration and Naturalization Service

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Merchant vessels; electrical engineering requirements; comments due by 8-5-96; published 6-4-96

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Implementation of Equal Access to Justice Act:

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National Traffic and Motor Vehicle Safety Act; fee schedule; comments due by 8-8-96; published 6-24-96

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Merchandise; examination, sampling, and testing:

Detention procedures for merchandise undergoing extended examination; comments due by 8-5-96; published 6-5-96

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Depositaries and financial agents of Federal Government; comments due by 8-5-96; published 6-21-96

LIST OF PUBLIC LAWS

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. 248/P.L. 104–166

To amend the Public Health Service Act to provide for the conduct of expanded studies and the establishment of innovative programs with respect to traumatic brain injury, and for other purposes. (July 29, 1996; 110 Stat. 1445)

S. 1899/P.L. 104–167

Mollie Beattie Wilderness Area Act (July 29, 1996; 110 Stat. 1451)

Last List July 26, 1996